

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2018

PRONOUNCED ON : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1834 of 2004

1. K.Thirunavukkarasu  
2. Thirupuram .... Appellants/Defendants

Vs.

1. Loganathan (deceased)  
2. Revathi  
3. L.Jaya  
4. L.Hemavathi  
5. Minor L.Gopi  
(The Minor fourth respondent rep.by  
his next friend and guardian his mother  
the first respondent herein)

(RR2 to 5 brought on record as LRs of the  
deceased sole respondent vide order of  
court dated 09.01.2013 made in  
CMP.Nos.1113 & 1114/2006 in  
S.A.No.1834 of 2004) .... Respondents/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC  
against the Judgement and Decree dated 30.01.2004 passed in  
A.S.No.81 of 2003 on the file of the Principal Subordinate  
Court, Chengalpattu, confirming the Judgment and Decree dated  
20.06.2003 passed in O.S.No.193 of 1990 on the file of the  
District Munsif Court, Chengalpattu.

For Appellants : Mr.S.Subbiah  
Senior Counsel  
for Mr.P.Raja

For Respondents : Mr.K.V.Babu

JUDGMENT

Challenge in this second appeal is made to the  
Judgement and Decree dated 30.01.2004 passed in A.S.No.81 of  
2003 on the file of the Principal Subordinate Court,

Chengalpattu, confirming the Judgment and Decree dated 20.06.2003 passed in O.S.No.193 of 1990 on the file of the District Munsif Court, Chengalpattu.

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

3. Suit for Declaration, Possession and Permanent Injunction.

4. The case of the plaintiff, in brief, is that he is the absolute owner of 0.15 cents out of 0.30cents in dry survey Number 119/1 in Vandalur No.2 Chengalpattu Taluk, described in the plaint A schedule property and had purchased the same from M.Parthasarathy, the registered power of Attorney agent of M.Krishnaswami S/o. M. Srinivasacharlu under a registered sale deed dated 12.10.1989 for Rs.21,000/- and obtained the possession of the suit property from the vendor and prior to the purchase, the plaintiff and his father had been in the possession of the plaint A schedule property for more than 50 years as the tenants of M.Srinivasacharlu Vagaira and the defendants have no interest or right in the suit property and they are inimically disposed of towards the plaintiff for the last 5 years and on 19.03.1990, the defendants high handedly trespassed into the south western portion of the plaintiff's property to an extent of 0.03 cents and put up a hut thereon on 19.03.1990 and 20.03.1990, despite the protests from the plaintiff and the entire 0.15 cents shown in the plaint A schedule property is described as ABCD in the plaint sketch and the portion trespassed by the defendants is described as EFGH in the plaint plan and shown in the plaint B schedule property and as the plaintiff apprehends that the defendants may also trespass into the rest of the portions of the plaint A schedule property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff is not the absolute owner of 0.15 cents out of 0.30 cents in dry survey No.119/1 in Vandalur Village, Chengalpattu Taluk and the land in the abovesaid survey number totally an extent of 0.30 cents is a Poramboke land and the allegation that the Plaintiff had purchased the same from M.Parthasarathy, the registered power of attorney agent of Mr.Krishnaswamy S/o. M. Srinivasacharlu under a registered sale deed dated 12.10.1989 is false and the sale deed is a bogus one. No consideration had been paid under the said sale deed by the plaintiff and the further allegation made by the plaintiff that he had obtained the possession of the plaint A schedule property by way of the abovesaid sale deed is also false. Neither the plaintiff nor his vendor nor the vendor's father had been in

the possession and enjoyment of the plaint A schedule property and the further allegation that the plaintiff and his father had been in the possession and enjoyment of the plaint schedule property as the tenants of Srinivasacharlu vagaira for the past 50 years is false. The defendants are in the lawful possession and enjoyment of an extent of 0.03 cents in survey No.119/1 described as the plaint B schedule property and the description of the plaint B schedule property as such is not admitted by the defendants and the plaint B schedule property has been in the possession and enjoyment of the defendants for more than 15 years and the buildings have been put up therein by the defendants during 1965 and 1966 and the defendants have spent considerable amount to level the land, put up the building etc. in the suit property and the plaint plan is incorrect. The correct survey number for the suit property is 119/2C1 and the plaintiff, in order to grab the poramboke land in the occupation of the defendants, has come forward with the false suit and there is a Kulakarai road abutting the B schedule property, immediately on its west and on the further west of it, there are three houses of Murugesu Naicker, Kanniappa Naicker and Durai Naicker and on the East of Dharma Naicker's house, there is a house of Loganathan and the plaintiff has not taken any action against the abovesaid persons and has laid the suit only as against the defendants. The defendants had paid 2-A charges for the occupation of the B schedule property and the defendants are entitled to obtain the assignment of the B schedule property in their favour on account of their possession and enjoyment of the same and there is no cause of action for the plaintiff to lay the suit and the suit is therefore liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A3 were marked. On the side of the defendants', DWs1 & 2 were examined and Exs.B1 to B6 were marked. Exs.C1 to C5 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

“ Whether the judgments and decrees of the courts below are sustainable in law, as the entire evidence which is relevant to decide the issue and the relevant question of law applicable to the



facts of the case were not taken into consideration?"

9. Pending the second appeal, it is found that the plaintiff has preferred a petition in CMP.No.74/2014 for the reception of the additional documents in support of his case and after hearing both the parties, this Court was pleased to entertain the said application and accordingly, by order dated 11.06.2014 holding that the documents projected by the plaintiff as additional evidence would enable the Court to pronounce the judgment on merits and accordingly, had directed the first appellate Court to take evidence on the abovesaid additional documents projected by providing opportunities to both parties with reference to the same and accordingly, it is found that following the abovesaid order passed by this Court, the first appellate Court had examined PW2 in support of the plaintiff's case and the additional documents having been marked as Exs.A4 & A5 and after recording the evidence of PW2 in full, has submitted the records to this Court for further consideration.

10. The plaintiff has laid the suit seeking the relief of declaration in respect of the plaint A schedule property, which, according to the plaintiff, is located in dry survey No.119/1 0.15 cents out of 0.30 cents within the specific boundaries and according to the plaintiff, the said property has been shown as ABCD in the plaint sketch, the plaint sketch has come to be marked as Ex.A2. Now, according to the plaintiff, as averred in the plaint, the abovesaid plaint A schedule property was purchased by him by way of a registered sale deed dated 12.10.1989 from M.Parthasarathi, the registered power of attorney agent of Mr.Krishnasamy S/o. M. Srinivacharlu and thus, it is the case of the plaintiff that he has derived title to the plaint A schedule property. Other than making the abovesaid averments to sustain his claim of title to the plaint A schedule property, the plaintiff has not whispered anything as to how his alleged vendor or the vendors as the case may be had derived title to the plaint A schedule property. There is no plea made in the plaint as to how his vendor had derived title to the plaint A schedule property whether by way of purchase or ancestrally or by any other mode. Other than stating that he had purchased the plaint A schedule property under the sale deed dated 12.10.1989, which document has come to be marked as Ex.A1, there is no plea projected as to how the title of the suit property vested with the plaintiff's vendors. A perusal of Ex.A1 also does not throw a clear picture as to how the plaintiff's vendor had acquired the plaint A schedule property. All that the said document reads is that the suit property belonged to Mr.Krishnasamy S/o. Mr.Srinivasacharlu and on that basis, the power of attorney agent of Mr.Krishnasamy viz., Mr. Parthasarathi had executed the abovesaid sale deed in favour of the plaintiff. Thus, it is found that the plaintiff has

miserably failed to plead and establish as to how his vendor had acquired title to the plaint A schedule property and accordingly, it is found that when the plaintiff has failed to establish his vendor's title to the suit property as such, his claim of title to the plaint A schedule property based on Ex.A1 would not suffice. The abovepoint assumes significance because the defendants have tooth and nail disputed the alleged claim of title of the plaintiff's vendor to the plaint A schedule property. In such view of the matter, it is for the plaintiff to establish that his vendor had a valid claim of title to the suit property i.e. the plaint A schedule property as put forth by him. With reference to the same, when the plaintiff has chosen to mark only the sale deed marked as Ex.A1 and as above discussed, when Ex.A1 does not narrate as to how the vendor described therein has acquired title to the property sold thereunder to the plaintiff, it is found that Ex.A1 sale deed as such could not, in any manner, be safely considered for upholding the alleged title of the plaintiffs' vendor in respect of the suit property. As above seen, the other document relied upon by the plaintiff in support of his case is Ex.A2, the plaint sketch and the same would not assume importance and further, the plaint sketch has been challenged by the defendants as incorrect. The third document relied upon by the plaintiff is the chitta extract marked as Ex.A3. However, a perusal of Ex.A3 would go to show that the same seems to have been obtained after the institution of the suit. Though it is found that a reference has been made in Ex.A3, the chitta extract, pertaining to the property measuring 0.12.0 areas in survey No.119/1 with the names of Padmanaban and Parthasarathy sons of Srinivacharlu, as rightly put forth by the defendants' counsel, the abovesaid revenue document, by itself, could not be safely relied upon to uphold the claim of title of the plaintiff's vendor to the plaint A schedule property. It is a settled principle of law that the revenue document cannot be construed as a document of title and in such view of the matter, it is found that Ex.A3 could not be taken into account for upholding the plaintiff's claim of title to the plaint A schedule property.

11. That apart, there is no document placed by the plaintiff to show that at any point of time, his vendor or his vendor's father had been in the possession and enjoyment of the plaint A schedule property and that apart, though the plaintiff would claim in his plaint that he and his father had been in the possession of the plaint A schedule property as the tenants of Srinivasacharlu for more than 50 years, other than the abovesaid bald allegation, there is no material forthcoming on the part of the plaintiff that he and his father had been in the possession and enjoyment of the plaint A schedule property as the lessees of Srinivasacharlu for more than 50 years as claimed by him. With reference to the above claim, not a scrap of paper has been projected by the plaintiff to point out the same and such being

the position, it is found that absolutely, there is no material worth acceptance placed by the plaintiff to evidence either his possession or his vendor's father possession of the plaint A schedule property at any point of time and thus being the position, it is found that absolutely, there is no material placed by the plaintiff to show that at any point of time, they had been in the possession and enjoyment of the suit property as projected in the plaint.

12. In this connection, the plaintiff examined as PW1, during the course of chief examination, would only state that the 15 cents of land out of 30 cents in old survey No.119/1 and new survey No.307/8 belonged to him by way of his purchase from Krishnaswamy Iyengar and according to the plaintiff, he had purchased the suit property by way of Ex.A1 sale deed. That apart, he has not testified anything during the course of chief examination as to how his alleged vendor had derived title to the plaint A schedule property. In this connection, during the course of cross examination, PW1 has testified that he has not produced any document to show that Srinivasacharlu had owned 30 cents in the suit survey number and according to PW1, before purchasing the property under Ex.A1, he had verified the patta, revenue plan in the name of Srinivasacharlu, however, according to him, he has not obtained the copies of the said documents and also admitted that in Ex.A1, there is no reference as to how Srinivasacharlu had derived title to the 30 cents of land and admitted that he has not verified the power of attorney deed executed in favour of Parthasarathy and also admitted that he has not obtained the document pertaining to patta No.18 and chitta as mentioned in the description of the plaint schedule property and according to him, the remaining 15 cents of land in the suit survey number on the western side belonged to Padmanabhan Iyengar S/o. Srinivasacharlu and also admitted that he does not know how Padmanaba Iyengar had acquired 15 cents of land and though he would claim that Srinivasacharlu has paid kist in respect of the suit property as admitted by him, he has not seen any kist receipt in his name and also not obtained the adangal extract in the name of Srinivasacharlu and also admitted that after his purchase under Ex.A1, he has not effected change of patta in his name in respect of the suit property and also admitted that there is no muchalika executed by his father in favour of Srinivasacharlu with reference to the suit property and further, admitted that he has not enjoyed the suit property on lease arrangement and also admitted that he has not shown the boundaries of the plaint A schedule property in the rough sketch and thus, it is found that based on the abovesaid evidence of PW1, it is seen that without making any basic enquiry as to how his vendor or his vendor's father had acquired title to the plaint A schedule property and also not even obtaining any of the revenue records standing their names either showing prima facie title or possession of the plaint A schedule property, it



is found that the plaintiff had endeavoured to purchase the plaint A schedule property under Ex.A1 and accordingly, it is seen that even the alleged vendor of Ex.A1 is unable to specifically and clearly state anything in Ex.A1 as to how he had derived title to the plaint A schedule property so as to entitle him to convey the same under Ex.A1. Though the plaintiff would claim that he had verified the patta and revenue plan before his purchase, the said patta document revenue plan etc., alleged to be in the name of the plaintiff's vendors, had not been produced before the Courts below. Further, it is found that PW1 had been recalled for further evidence and during the said course, it is found that chitta extract marked as Ex.A3 had come to be filed through him and with reference to the same, during the course of cross examination, PW1 would clearly admit that Ex.A3 had been obtained after the institution of the suit i.e. he had acquired the same during the month of April, 2003 and also admitted that he has not obtained the patta in the name of the alleged patadhars shown in Ex.A3 and further, admitted that there is no document available with him that the plaint A schedule property belonged to the Pattadhars mentioned in Ex.A3. Such being the position, the evidence of PW1 as regards his vendors' title to the plaint A schedule property being obscure and not helpful in any manner and when as above seen, the defendants have thrown a stout challenge to the claim of title of the plaintiff to the suit property as well as his vendor's title to the suit property, despite the above stand taken by the defendants, when it is found that even thereafter, the plaintiff had not endeavoured to place any material to evidence his vendor's title to the suit property or as above seen, not even a scrap of paper placed to evidence that either the plaintiff's vendor or the plaintiff as the case may be had been in the possession and enjoyment of the suit property as the owner thereof, it is found that as rightly contended by the defendants' counsel, it does not stand to reason as to how the Courts below had mechanically closed their eyes and proceeded to accept the plaintiff's title to the suit property. Only on the plaintiff establishing his vendor's title to the suit property, he would be competent to put forth a case that he has acquired a valid title to the suit property on his purchase of the same from his vendors. When there is no material at all placed, as above discussed, evidencing the alleged title of the plaintiff's vendor to the plaint A schedule property other than Ex.A3 and when Ex.A3 has come into existence after the institution of the suit as admitted by PW1, the plaintiff, the Courts below are found to have based their conclusion that the plaintiff and his vendor had title to the suit property on an erroneous appreciation of the materials placed on record and it is thus found that the determination of the Courts below upholding the plaintiff's title can only be described as perverse and illogical as the said determination is found to be not based on any material worth acceptance.

13. As rightly put forth by the defendants' counsel, it is found that the Courts below seem to have been swayed by the failure of the defendants to co-relate the property in their possession with the suit survey number and on that footing, they appeared to have accepted the plaintiff's case in toto, despite there being no material to sustain the plaintiff's case. Even as per the plaintiff's case, the defendants are admittedly in the possession of the plaint B schedule property. As above seen, there is no material placed to show that the plaintiff and his vendor had been in the possession and enjoyment of the plaint A schedule property at any point of time. Thus being the position, the case of the plaintiff that the defendants had unlawfully trespassed into the plaint B schedule property on 20.03.1990, despite his protests, as such cannot be believed and accepted. Thus, it is found that the alleged plea of trespass projected by the plaintiff is false. On the other hand, according to the defendants, they had been in the possession and enjoyment of the plaint B schedule property i.e. an extent of 3 cents for several years by levelling the land, putting up the structure thereon etc., and according to the defendants, the property in their possession is only a poramboke land located in survey No.119/2C1 and neither the plaintiff nor his vendor had any title to the abovesaid property. The Courts below seem to have on the footing that the defendants had failed to correlate the survey No.119/2C1 with the suit survey number No. 119/1 on that footing, proceeded to hold that accordingly, the survey No.119/2C1 is not the suit property and the documents projected by the defendants do not pertain to the suit property and accordingly, determined that the defendants had encroached into the suit property in survey No.119/1 as put forth by the plaintiff. When the abovesaid approach seems fallacious and unacceptable when it is for the plaintiff to establish his case and the plaintiff cannot be allowed to pick holes in the defence version and thereby, endeavour to succeed in his case, even assuming for the sake of arguments that the defendants are unable to co-relate survey No.119/2C1 with the suit survey, but, that by itself would not automatically lead to the conclusion that the defendants' possession and enjoyment of the plaint B schedule property is only by way of illegal trespass as put forth by the plaintiff. When as above seen, the plaintiff has not placed any material to uphold either his vendor's title or his title as the case may be in respect of the plaint A schedule property and the plaintiff has also failed to establish the alleged trespass of the plaint B schedule property by the defendants and on the other hand, when it is found that the defendants are in the possession and enjoyment of the plaint B schedule property over a long period of time by levelling the land, putting up structure thereon etc., and when it is also seen that the defendants' possession and enjoyment of the plaint B schedule property had been recognised as such, which could be



seen from the documents projected as Exs.B2 to B6, the failure of the defendants to co-relate the survey No.119/2C1 with the suit survey could not in any manner be construed as the plaintiff having established his case and it is thus found that the entire approach of the Courts below in proceeding with the litigation is found to be totally against the well established canons of law and the Courts below seem to have accepted the plaintiff's case blindfold by shifting the burden on the defendants as regards their failure to establish their claim of legal possession in respect of the plaint B schedule property.

14. As regards the additional documents projected by the plaintiff during the course of the second appeal marked as Exs.A4 & A5, it is found that they do not in any manner advance the plaintiff's case. Ex.A5 is the copy of the power of attorney deed executed in favour of Parthasarathi by Krishnaswamy and that document would not in any manner be useful to uphold the alleged claim of title of the plaintiff's vendor in respect of the plaint A schedule property. The other document projected is the copy of the partition deed dated 30.11.1955 and the abovesaid documents Ex.A4 & A5 have come to be marked through PW2 who is the wife of the plaintiff. Other than marking Exs.A4 & A5, PW2 has not whispered anything about the abovesaid documents during the course of chief examination. As above seen, the defendants have challenged the title of the plaintiff's vendor and the vendor's father in respect of the plaint A schedule property. Only on the plaintiff establishing his vendor or vendor's father's claim of title to the suit property in the manner known to law, it can be accepted that his vendor's family would be competent to effect partition in respect of the suit survey number measuring 0.30.cents. When the entitlement of Srinivasacharlu and his brother to the suit property had not been established by placing any acceptable document and not even pleaded as to how they had acquired title, the endeavour and the case of the plaintiff that the suit property had come to be allotted to Srinivasacharlu's family under Ex.A4 partition deed as such cannot be readily accepted. In this connection, PW2, during the course of her cross examination, would only go to state that she does not know about the documents marked as Exs.A4 and A5 and according to her, she does not know whether any reference about Ex.A4 partition deed had been made in Ex.A5 power of attorney deed and according to her, by way of Ex.A4 partition deed, survey No.119/1 had been allotted to the share of Parthasarathi and she has testified that she does not know to whom the property in survey No.119/2C1 described in Ex.A4 partition deed had also been allotted and would deny the suggestion put to her that by way of Ex.A4 partition deed, the poramboke property contained in survey No.119/2C1 also had come to be partitioned and according to PW2, only her husband knew as to how Parthasarathi came to own the property comprised in the suit survey No.119/1 and also pleaded ignorance

about the absence of any reference as regards the revenue documents, pertaining to the suit property in Exs.A4 & A5 and also admitted that she does not know whether the description boundary had been given in respect of the property mentioned therein and she had denied the suggestion put to her by the defendants that inasmuch as under Exs.A4 & A5, the parties thereto had not traced the acquisition of the properties comprised therein, they as well as the plaintiff would not be entitled to derive the title and denied suggestion that Exs.A4 & A5 had been concocted for the purpose of this case. It is thus found that other than marking Ex.A4, copy of the partition deed, PW2 is unable to throw any picture as to how the parties to the partition deed mentioned in Ex.A4 acquired the competency to divide the suit property, in particular, by way of the said document for enabling the plaintiff's vendor and his family members to effect partition in respect of the suit survey number measuring 0.30 cents. At the foremost, there should be some proof and material to hold that the plaintiff's vendor and his family had acquired title to the suit property as such. When the abovesaid acquisition of the title to the suit property by the plaintiff's vendor and his family has not been established by the plaintiff in any manner, particularly, not even traced their title either in the plaint or during the course of evidence and when with reference to their acquisition of title to the suit property not having been mentioned in Exs.A1, A4 and A5 and when the defendants are stoutly challenging validity of the abovesaid documents, despite the same, the plaintiff having not cared to substantiate or establish her case by summoning and examining her vendor in order to divulge as to how he and his family had acquired title to the suit property and when further the alleged partition deed marked as Ex.A4 had been suggested to be a concocted document by the plaintiff for the purpose of this case by the defendants, in such view of the matter, merely on the production of Ex.A4, the copy of the partition deed, we cannot presume that the plaintiff's vendor and his family members had title to the suit property and accordingly, they are entitled to divide the same under the partition deed. The presumption of 30 years old document that could be raised under Section 90 of The Evidence Act by itself would not enable the plaintiff to seek the authenticity of Ex.A4 partition deed. The presumption that could be raised under Section 90 of the Evidence Act is confined only to the execution and the attestation of the document as such. With reference to the nature and truth of the contents of the document, no presumption could be raised as regards the genuineness of the same and with reference to the same, it is for the plaintiff to establish his case by placing acceptable material. When the defendants have thrown a serious challenge to the authenticity of Ex.A4 partition deed and when PW2 is unable to throw any picture pointing to the entitlement of the plaintiff's vendor and his family members to effect partition of the suit property by way

of Ex.A4 partition deed and when there is no other material placed by the plaintiff to show that his vendors and family members had acquired the plaint schedule property as rightly, put forth by the defendants' counsel, merely on the production of Ex.A4 partition deed, we cannot presume that the plaintiff's vendor had title to the suit property and that, the same had been allotted to his share under the abovesaid partition deed. In toto, it is found that Ex.A4 partition deed marked during the course of this appeal by the plaintiff would not in any manner advance his case and therefore, it is found that the plaintiff has miserably failed to establish his vendor's alleged claim of title to the plaint B schedule property.

15. Inasmuch as the plaintiff is unable to establish his title to the suit property or his vendor's title and accordingly, when it is found that the plaintiff has miserably failed to establish his or his vendor's possession and enjoyment of the suit property at any point of time, accordingly, it is seen that the plaintiff is not aware of the topography or the lie of the suit survey number on ground and accordingly, it is found that he is unable to place the correct particulars of the suit property while describing the same in the plaint. The suit property i.e. the plaint A schedule property is stated to be measuring 0.15 cents out of 0.30 cents in dry survey number 119/1 bound on the west by the land of Padmanabha Iyengar, on the north by Pillaiyar koil street, on the east by the land of R.Iraniya Naicker and south by the land of M.Krishna Naicker and in the rough sketch, the plaint A schedule property has been shown as ABCD. However, as above seen other than showing ABCD, the measurement, extent and the boundaries etc are not given in the rough sketch and as per the case of the plaintiff, the ABCD portion is the plaint A schedule property. In this connection, the advocate commissioner had visited and inspected the suit survey number twice and after the inspection of the suit survey number for the second time, the advocate commissioner has filed his report and plan and in the said report and plan, during the second time, the advocate commissioner had inspected the property with the assistance of the Taluk surveyor and the VAO, it has been mentioned by the advocate commissioner that the survey No.119/1 is now lying as per Natham measurement in survey No.307 and further, according to the advocate commissioner, the abovesaid Natham survey No.307 had been subdivided as 307/8, 307/9 and 307/10 and according to the advocate commissioner, as per the revenue document furnished to him by the surveyor only 307/8 and 10 with patta No.1256 are found to be reflected in the revenue document in the name of Padmanabha Iyengar and Parthasarathy and survey No.307/9 is declared as Poramboke land and shown as road portion and thus, it is found that as on date, old survey No.119 corresponds to New survey No.307/8, 307/9 and 307/10 and on the abovesaid



subdivisions, survey no.307/9 has been declared as the poramboke land and shown as road portion and it is found that Survey No.307/9 lies in between survey No.307/8 and survey No.307/10. Thus, it is found that when there is a clear road portion declared as poramboke property lying in between Nos.307/8 and 10 and when according to the revenue records, S.No.307 corresponds to old survey No.119/1 and as seen from the commissioner report and plan, huts are available in survey Nos.307/8 and 307/10, on the face of it, it is found that the description of the plaintiff A schedule property given in the plaint is incorrect and when the road portion declared as the poramboke land is lying in between the suit survey, the plaintiff having not described the same in his plaint, it is found that accordingly, the plaintiff himself is not aware of the lie of the suit property on ground and accordingly unable to give the correct description of the suit property in the plaint and thus, it is found that as rightly put forth by the defendants' counsel, the plaintiff cannot be allowed to obtain the relief of declaration and other reliefs in respect of the property described in the plaint. When the description of the property is palpably incorrect and wrong vis-a-vis the commissioner's report and plan, despite the same, the plaintiff having not endeavoured to amend the plaint for giving the correct description of the property in detail and ask the reliefs appropriately and in any event, with reference to the description of the suit property presently given, the plaintiff having failed to establish his vendor's claim of title to the suit property as above discussed and accordingly, when it is noted that the plaintiff's vendor would not have the competency to convey the suit property to the plaintiff under Ex.A1 and further, the plaintiff having also failed to establish his vendor's possession and enjoyment of the suit property at any point of time and also failed to establish the alleged trespass into the suit property by the defendants and when admittedly the defendants are found to be in the possession and enjoyment of the plaintiff B schedule property as such, the plaintiff not having established either his title or possession and enjoyment of the plaintiff A schedule property excluding the plaintiff B schedule property and also having failed to establish his possession and enjoyment or his vendor's possession and enjoyment of the plaintiff B schedule property prior to the alleged trespass of the defendants, in toto, it is seen that the plaintiff would not be entitled to seek the reliefs sought for in the plaint.

16. In the light of the discussions, as rightly put forth by the defendants' counsel, the judgment and decree of the Courts below cannot be sustained in any manner as the reasonings and conclusions of the Courts below for upholding the plaintiff's claim of title to the suit property and also his entitlement to obtain the reliefs sought for, being based upon without any acceptable and reliable evidence on the part of the plaintiff as

above noted and accordingly, the reasonings and conclusions of the Courts below found to be based only on an improper appreciation of the materials placed on record, accordingly, the judgment and decree of the Courts below in upholding the plaintiff's case are liable to be set aside and accordingly, the substantial questions of law formulated in the second appeal are answered against the plaintiff and in favour of the defendants.

17. The principles of law outlined in the decisions relied upon by the defendants' counsel reported in (2014) 2 Supreme Court Cases 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others), (2003) 2 MLJ 208 (Tuticorin Diocesan Trust Association, Thro its procurator at Tuticorin and others Vs. Thavamani and others) and (2004) 10 supreme Court Cases 779 (Karnataka Board of Wakf Vs. Government of India and others) are taken into consideration and followed as applicable to the case at hand.

In fine, the Judgement and Decree dated 30.01.2004 passed in A.S.No.81 of 2003 on the file of the Principal Subordinate Court, Chengalpattu, confirming the Judgment and Decree dated 20.06.2003 passed in O.S.No.193 of 1990 on the file of the District Munsif Court, Chengalpattu are set aside and the suit laid by the plaintiff in O.S.No.193 of 1990 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Chengalpattu.
2. The District Munsif Judge, Chengalpattu.
3. The Section Officer, V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.P.Raja, Advocate sr.no.45205  
+1cc to Mr.K.V.Babu, Advocate sr.no.45064

S.A.No.1834 of 2004

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