

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 16.11.2017
PRONOUNCED ON : 03.01.2018
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.159 of 2001

1.V.S.Rangasamy (died) ...1st Appellant/Plaintiff
2. R.Chinnasamy
3. R.Revathi
4. Hema
5. Uma maheswari
6. Lakshiammal ...Appellants 2 to 6

(Appellants 2 to 6 are brought on record as LR's of the deceased sole appellant vide order dated 16.12.2003 in MP No.12959 of 2002)

Vs.

S.N.Subramanian ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.72 of 1999, on the file of the Principal Sub-ordinate Court, Gobichettipalayam dated 22.12.2000 by reversing the judgment and decree passed in O.S.No.335 of 1991, on the file of the District Munsif Court, Sathyamangalam dated 14.9.1999.

For Appellants : Mr.S.Parthasarathy, Senior Counsel,
for Mr. V.S. Kesavan.

For Respondent : Mr.R.T.Doraisamy

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 22.12.2000, passed in A.S.No.72 of 1999, on the file of the Principal Sub-ordinate Court, Gobichettipalayam, reversing the judgment and decree dated 14.9.1999, passed in O.S.No.335 of 1991, on the file of the District Munsif Court, Sathyamangalam.

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

3. Suit for declaration and permanent injunction in respect of the plaintiff A schedule property and declaration and recovery of possession in respect of the B schedule property.

4. The case of the plaintiff, in brief, is that the plaintiff's paternal grandfather purchased an extent of 10.01 acres of land in old S.F.No.139 of Sathyamangalam village along with two Wells in the said survey field, through a registered sale deed dated 09.03.1924 and subsequently, his sons partitioned their family properties through a partition deed dated 14.09.1945 and under the said partition deed, the father of the plaintiff, S.R.Sinnasamychettiar was allotted 5 acres of land in common and one half of right in each of the two wells in S.F.No.139 of Sathyamangalam village among other properties and similarly, the other brother S.R.Arumugamchettiar was allotted 5.01 acres of land in common and one half of the right in each of the two wells in old S.F.No.139 of Sathyamangalam village and during the re-survey made in 1969, the old S.F.No.139 of Sathyamangalam village was re-numbered as new S.F.No.401. However, by mistake, the re-survey officials have carved out an extent of 0.05.0 hectares of land, in which, one of the wells is situated from the old S.F.No.139 of Sathyamangalam village and re-numbered as new S.F.No.79/1 of Malayadipudur village, as if, it was a part of old S.F.No.11 of Malayadipudur village and the patta for new S.F.No.79/1 was granted in the name of S.R.Arumugachettiar, the plaintiff's paternal uncle, who is looking after the property then and in fact, the new S.F.No. 139 of Sathyamangalam village was not a part of old S.F.No. 11 of Malayadipudur village as found in the re-survey records. The old S.F.No.139 of Sathyamangalam village and the old S.F.No.11 of Malayadipudur village are adjoining survey fields. After the death of the plaintiff's father and the paternal uncle, the plaintiff and the sons of S.R.Arumugachettiar were jointly in possession and enjoyment of the lands in both new S.F.No.401 of Sathyamangalam village and new S.F.No.79/1 of the Malayadipudur village and on 24.04.1991, they partitioned their properties through a registered partition deed and in that partition, the plaintiff was allotted an extent of 1.64.5 hectares of land in new S.F.No. 401/2 and 401/3 (old S.F.No.139 of Sathyamangalam village) and the suit properties, namely, an extent of 0.05.0 hectares of land in new S.F.No.79/1 of Malayadipudur village, along with the Well and electricity service connection in the survey field and the defendant owns land in new S.F.No.79/2 was a part of old S.F.No. 11 and thereby, forcibly encroached about 0.06 acre of land in New S.F.No.79/1, which is the B schedule property, however, the defendant has no right or title in respect of the same and even assuming that the suit properties form part of the old S.F.No.11, the plaintiff has perfected his

title to the suit properties by way of adverse possession, on account of continuous enjoyment of the same, from the days of his predecessors in title since 1924 and the Well in the plaint A schedule property was dug more than 75 years back and the electricity service connection No.15 was obtained on 30.09.1955, in the name of the plaintiff's father and the paternal uncle. Hence, the defendant has no title or right to the suit properties and on the other hand, as the defendant had encroached into the B schedule property and trying to obstruct the plaintiff from drawing water from the Well in the suit A schedule property, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the plaint A and B schedule properties belong to the plaintiff and it is false to state that during the re-survey in 1969, old S.F.No.139 of Sathyamangalam village was re-numbered as S.F.No.401 and accordingly, re-survey officials, by mistake, have carved out an extent of 0.05.0 hectares land and one of the Wells situated from the old S.F.No.139 of Sathyamangalam village and re-numbered as new S.F.79/1 of Malayadipudur village and it is further false to state that the patta for new S.F.No.79/1 was granted in the name of the plaintiff's paternal uncle, who was looking after the lands at that point of time. As per the re-survey records, new S.F.No. 79/1 of Malayadipudur village corresponds to old S.F.No.11 of the said village and the lands in old S.F.No.11 of Malayadipudur village belongs to the defendant's father Nallakounder and the defendant's paternal uncle Chinnakounder and accordingly, the said land belongs to the defendant and by mistake, the revenue officials had wrongly granted patta in favour of the plaintiff's paternal uncle and neither the plaintiff nor the plaintiff's father nor the plaintiff's paternal uncle had any lands in Malayadipudur village or any Well in the said village. It is false to state that after the death of the plaintiff's father and the paternal uncle, the plaintiff and the sons of the paternal uncle were in joint possession of the land at Sathyamangalam village in new S.F.No.401 and new S.F.No.79/1 of Malayadipudur village and it is false to state that they divided the properties on 24.1.1991, by way of a partition deed and the plaintiff had been allotted lands as pleaded in the plaint and the plaintiff has to establish the truth and validity of the said partition deed. The allegation that the plaintiff had been allotted 0.05.0 hectares of land in new S.F.No.79/1 of Malayadipudur village in the above said partition is false and the said recitals would not in any manner bind the defendant and the same had been falsely incorporated in the partition deed. The land in New S.F.No.79/1 of Malayadipudur village and the Well therein belongs to the defendant and neither the plaintiff nor the

plaintiff's predecessor in interest had enjoyed the same at any point of time and had not obtained any service connection and it is false to state that the defendant had unlawfully encroached into the B schedule property and there is no necessity for the defendant to encroach into the same and the said land belongs to the defendant absolutely and the plaintiff has no right or title to the plaint A and B schedule properties and it is false to state that the plaintiff has also perfected title to the plaint schedule properties by way of adverse possession, on account of long and continuous enjoyment from 1924 onwards and it is false to state that the defendant has attempted to interfere with the plaintiff's possession and enjoyment of the plaint A schedule property and the plaintiff is not entitled to obtain the reliefs sought for in the plaint and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to A18 were marked. On the side of the defendant, DWs 1 and 2 were examined and Exs.B1 to B3 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal by the defendant, the first appellate Court was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been preferred.

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

1. Whether the findings of the lower appellate Court are not vitiated in law by the failure to consider the entire evidence on record and fails to apply the correct principles of law?
2. Whether the lower appellate Court is correct in dismissing the suit when the plaintiff establish his title to the suit property by producing necessary document right from the beginning, but the respondent did not produce any document to establish his title to the suit property?
3. Whether the lower appellate Court is correct in relying on the document Ex.B1, when the xerox copy of the same

is marked subject to objection can be admissible evidence for the purpose of deciding the matter in issue?

4. Whether the lower appellate Court is right in relying on one part of document which is marked in Ex.B1 and rejected another part of the same document which is marked as Ex.A16 and A17?

5. Whether the lower appellate Court is correct in relying on Ex.B1 when the same did not deal with the title to the suit properties?

6. Is it not a mistake of the lower appellate Court in deciding the issue on the basis of erroneous re-survey proceeding which had been questioned in the suit even the erroneous re-survey record do not derogate the plaintiff's title to the suit property?

9. The suit has been laid by the plaintiff for A and B schedule properties and the plaintiff has sought for the relief of declaration in respect of the above said properties in the plaint and sought for the relief of permanent injunction as regards the A schedule property and sought the relief of possession as regards the B schedule property. As per the description of the properties given in the plaint, it is seen that both A and B schedule properties are stated to be situated in Sathyamangalam sub registration district, Sathyamangalam taluk, Malayadipudur village therein. According to the plaintiff, A schedule consist of an extent of 0.05.0 hectares in new S.F.No.79/1 along with the Well, electricity connection no.50 with 5 hp electric motor pumpset thereto within specific boundaries and the B schedule property is said to be consisting of an extent of 0.06 acres of land in new S.F.No.79/1 within specific boundaries. So a reading of the description of the plaint schedule properties would go to disclose that the said properties are stated to be located in Malayadipudur village.

10. The plaintiff examined as PW1, during the course of cross examination, has admitted that he claims title to the plaint schedule properties only on the basis of the sale deed obtained by his grand father and it is seen that the above said sale deed dated 09.03.1924, has been marked as Ex.A1. It is further admitted by the plaintiff that his grandfather under Ex.A1 had purchased only the properties located in Sathyamangalam village situated in S.F.No.139 and also admitted clearly that his grandfather did not purchase any properties located in Malayadipudur village. Further, it is the case of

the plaintiff that his father and paternal uncle S.R.Arumugamchettiar had partitioned the properties derived under Ex.A1, by way of a partition deed dated 14.09.1945 and the said deed has been marked as Ex.A2. It is the case of the plaintiff that his father S.R.Sinnasamychettiar was allotted 5 acres of land in common with half right in the Wells in old S.F.No.139 of Sathyamangalam village and the properties allotted to him were described in the B schedule of Ex.A2 and it is stated that along with the above said properties, other properties were also allotted to his father, similarly, it is the case of the plaintiff that his paternal uncle S.R.Arumugamchettiar was allotted properties inclusive of the remaining 5.01 acres in common and half shares in both Wells located in old S.F.No.139 of Sathyamangalam village and it is stated that the property allotted to his paternal uncle had been described under the C schedule of Ex.A2. The plaintiff, during the course of cross examination, had clearly admitted that both in Exs.A1 and A2, only the lands located in Sathyamangalam village had been dealt with and there is no reference about any land located in Malayadipudur village in the above said documents. Thus it is seen that, on a cumulative reading of the evidence of PW1, as above adverted to, it is evident that the plaintiff claims title to the plaint schedule properties only by way of Ex.A1 and A2.

11. In the plaint, it has been clearly averred that re-survey was conducted in the village during 1969 and according to the plaintiff, the old S.F.No.139 of Sathyamangalam village was re-numbered as new S.F.No.401. Further according to the plaintiff, the re-survey officials, by mistake, have carved out an extent of 0.05.0hectares of land, in which, one of the Wells is situated from the old S.F.No.139 of Sathyamangalam village and re-numbered it as new S.F.No.79/1 of Malayadipudur village, as if, it was a part of the old S.F.No.11 of Malayadipudur village. From the above averments contained in the plaint, it is seen that, even according to the plaintiff's case, new S.F.No.79/1 of Malayadipudur village only corresponds to the old S.F.No.11 of Malayadipudur village. However, it is the case of the plaintiff that during re-survey, by mistake, a portion of the lands located in S.F.No.139 of Sathyamangalam village had been re-numbered as new S.F.No.79/1 of Malayadipudur village. This seems to be the basis of the plaintiff's case. It is further seen that no where in the plaint, the plaintiff has averred that he is not aware of the re-survey proceedings conducted by the officers concerned during 1969. In fact, a reading of the plaint as well as the evidence adduced on the part of the plaintiff plus the documents relied upon by the plaintiff to sustain his case, seems to be only on the basis of the revenue records which had emanated following re-survey done by the officials concerned during 1969. It is thus found that the plaintiff claims the reliefs prayed for in the suit only on

the basis of the re-survey conducted during 1969. Now according to the plaintiff, during the course of cross examination, he has clearly admitted that the re-survey conducted during 1969 at Sathyamangalam village came into force in 1972 and thus, it is seen that the re-survey had been given effect to from 1972 onwards as per the above said admission of the plaintiff. Further according to the plaintiff, he has clearly admitted during the course of cross examination that his paternal uncle has not derived any title or interest in the lands by way of purchase situated at Malayadipudur village. As above adverted to, it has been admitted by the plaintiff that the properties described in Exs.A1 and A2 only pertain to Sathyamangalam village and not Malayadipudur village. So, as per the above factual position, it is seen that the plaintiff's paternal uncle does not own any ancestral properties at Malayadipudur village and equally it is also seen that he has not acquired any property in Malayadipudur village by way of purchase and other modes. However, it is seen from the plaintiff's case that his paternal uncle was granted patta for new S.F.No.79/1 and it is also the evidence of the plaintiff that based upon the patta granted to his paternal uncle, it is stated that they had included the properties at Malayadipudur village along with the other properties and accordingly, effected a partition on 24.4.91, as per Ex.A4 partition deed. The patta said to have been issued to the paternal uncle of the plaintiff has come to be marked as Ex.A4 and it is found that as per Ex.A4, S.R.Arumugamchettiar has been granted patta in S.F.79/1 measuring an extent of 0.05.0 hectares located at Malayadipudur village. When according to the plaintiff, the parent title deed, namely, Exs.A1 and A2, do not contain any reference about the property located at Malayadipudur village and only deal with the property located at Sathyamangalam village and when it is also the further case of the plaintiff that his paternal uncle has not acquired any property at Malayadipudur village, by way of purchase etc., it is evident that he has not acquired any ancestral properties at Malayadipudur village. Hence, as rightly found by the first appellate Court, there is no proper explanation on the part of the plaintiff as to on what basis his paternal uncle S.R.Arumugamchettiar had been granted patta by way of Ex.A4, in respect of the above said lands located at Malayadipudur village, situated in S.F.79/1. It is also found that S.R.Arumugamchettiar has been granted patta in respect of the S.F.No.79/1 also measuring an extent of 4.265 hectares of Malayadipudur village. Further, as per the settlement deed, copy of the A register marked as Ex.A6, it is found that new S.F.no.79/1 of Malayadipudur village corresponds only to old S.F.No.11 of Malayadipudur village and does not correlate to old S.F.No.139 of Sathyamangalam village. This fact has been admitted by Taluk Deputy Surveyor examined as PW2 and PW2, during the course of cross examination has admitted that new S.F.No.79/1 of Malayadipudur village corresponds to old

S.F.No.11 of the said village as per the RSR and he has further admitted that as per Ex.A6, new S.F.No.79/1 of Malayadipudur village only corresponds to old S.F.No.11 of the said village and he has clearly admitted that as per the re-survey conducted, new S.F.No.79/1 does not relate to Sathyamangalam village and also admitted that as per re-survey conducted by the survey department, it has been verified and confirmed that old S.F.No.11 of Malayadipudur village only corresponds to New S.F.No.79/1 of the same village and thus being the evidence of PW2 as well as the plaintiff, it is made very clear that new S.F.79/1 corresponds to old S.F.No.11. Both S.F number properties only correspond to the lands located at Malayadipudur village and they do not have anything in common whatsoever with the lands located at Sathyamangalam village. Such being the position, as per the admitted case of the plaintiff as well as the evidence adduced on behalf of the plaintiff, it is found that the plaintiff has without any basis averred that the survey officials, by mistake, during re-survey, had carved out an extent of 0.05.0hectares of land of Sathyamnagalam village located in old S.F.No. 139 and re-numbered it as new S.F.No.79/1 of Malayadipudur village. However, when the above said facts point to otherwise and not corroborate with the pleadings set out in the plaint above referred to, it is seen that the plaintiff for the purpose of his case has putforth the case that the portion of the properties located in old S.F.No.139 of Sathyamangalam village had been wrongly re-numbered as new S.F.No.79/1 of Malayadipudur village. As rightly putforth by the defendant's counsel, the above pleadings or the case projected by the plaintiff seems to be made only to establish the so called patta said to have been issued in favour of his paternal uncle Ex.A4. However, as rightly determined by the first appellate Court, when admittedly neither the plaintiff's father nor the plaintiff's uncle had any ancestral properties located at Malayadipudur village and when it has been clearly admitted that the plaintiff's paternal uncle did not acquired any land at Malayadipudur village by way of purchase or other modes, it is very strange to note that Ex.A4 had come to be issued in favour of the plaintiff's paternal uncle in respect of the lands located at Malayadipudur village in new S.F.No.79/1. With reference to the same, absolutely there is no proper explanation adduced on the part of the plaintiff and it appears that only based upon the said patta Ex.A4, the plaintiff has laid the suit claiming the relief in respect of the plaint schedule properties.

12. As seen from the evidence of the plaintiff, examined as PW1 they have included the properties located at Malayadipudur village in new S.F.No.79/1 for the first time, in the partition deed made on 24.4.91 and the copy of the deed has been marked as Ex.A3. This has been clearly admitted by the plaintiff, during the course of cross examination. Further, PW1, during the

course of cross examination has also admitted that new S.F.No.79/1 of Malayadipudur village is not reflected under Exs.A1 and A2, however, he would contend that only based upon Exs. A1 and A2, he and the sons of his paternal uncle had effected the partition by way of Ex.A3. That apart, PW1 has also further admitted that he had not taken any steps to rectify the mistake committed by the survey officials for their inclusion of the properties at Sathyamangalam village located in S.F.No.139 as being located at Malayadipudur village in new S.F.No.79/1 and the reasons given by him for the same is that inasmuch as the patta stood in their name in respect of the new S.F.No.79/1 of Malayadipudur village, he had not taken necessary steps to rectify the alleged mistake committed by the survey officials during the re-survey. Further, he has also admitted that they had included the properties at Malayadipudur village in Ex.A3 partition deed, as the patta for the said properties had been effected in their names and that apart, he has also admitted that though as per his case, the survey officials had committed the mistake during the re-survey, as patta had been granted in respect of the properties at Malayadipudur village in their names, they had chosen to include the said properties in the partition effected under Ex.A3. Therefore, the cumulative reading of the above admission of PW1, the plaintiff, would go to show the falsity of the case that the survey officials had committed mistake during the re-survey by including certain properties of S.F.No.139 of Sathyamangalam village as being located in new S.F.No.79/1 of Malayadipudur village. If really such a mistake had been committed by the survey officials, the plaintiff, atleast, on being aware of the same would have taken appropriate steps with reference to the same. It is not the case of the plaintiff, either in the plaint or during the course of evidence, that he has not been served with due notice by the survey officials as regards the re-survey conducted by them in 1969. Therefore, it is seen that the plaintiff or his men were aware of the re-survey conducted during 1969 and despite the same, if at all any mistake had been committed during the said re-survey, thereby if the same had affected the plaintiff's case, naturally, one would have expected him to take further steps with reference to the same as provided under the Tamilnadu Surveys and Boundaries Act, 1923. But, the mere admission of PW1 that inasmuch as the patta had been granted in respect of the properties located at Malayadipudur village in their names, they had not preferred any action would only go to show that in other words, the plaintiff had acquiesced to the action of the re-survey done during 1969 and accordingly, it is found that, as such, the plaintiff is claiming reliefs in the suit, only relying upon the records issued by the concerned officials based upon the re-survey made during 1969. Therefore, it is found that the plaintiff was fully aware of the re-survey made during 1969 and that apart, by his conduct and also the mode in which he claims the reliefs in the present suit is also based upon the

record effected following the re-survey, it is seen that the plaintiff had given acquiescence of the re-survey proceedings and hence, the contention that the survey officials had committed the mistake during the re-survey, as such, cannot be accepted. When it is the admitted case of the plaintiff that he had no ancestral properties located at Malayadipudur village and the properties at Malayadipudur village are not dealt with under Ex.A1 and A2 and when it is also the admitted case of the plaintiff that his paternal uncle had not acquired any land at Malayadipudur village by sale or otherwise and when it is also not the case of the plaintiff that his paternal uncle owned any land at Malayadipudur village ancestrally, it is found that only based upon the patta marked as Ex.A4, the lands located in Malayadipudur village are included in the partition deed, marked as Ex.A3. Now, Ex.A3 partition deed is found to have been effected on 24.4.91, whereas, the patta relied upon by the plaintiff issued in the name of his paternal uncle S.R.Arumugamchettiar marked as Ex.A4 seems to have been issued on 07.05.1991. It is therefore found that only after the partition had been effected under Ex.A3, patta Ex.A4 seems to have been obtained on 07.05.1991 and the allied documents Exs.A5 and A6, have also come to be issued only on 07.05.1991. When from the above said documents Exs.A5 and A6 seen cumulatively, new S.F.79/1 only corresponds to old S.F.No.11 of Malayadipudur village and when there is no material placed on record to hold that the survey officials had wrongly classified the portion of the lands in S.F.No.139 of Sathyamangalam village as new S.F.No.79/1 of Malayadipudur village and when the evidence of PW2 Deputy Taluk Surveyor also does not lend support to the plaintiff's case, as adverted supra, the plaintiff, without any basis had included the lands in the Malayadipudur village in the partition effected under Ex.A3 and accordingly, has come forward with the false case, as if, in the said partition the lands located in new S.F.No. 79/1 of Malayadipudur village measuring an extent of 0.05.0hectares had been allotted to his share under Ex.A3. When the source of title to the above said lands located in Malayadipudur village shown to be allotted to the plaintiff under Ex.A3 had not been established by the plaintiff either as belonging to him ancestrally or as acquired and when there is no material also to hold that the said lands described under Ex.A3 were originally located or situated in S.F.No.139 of Sathyamangalam village and if really, any such mistake had been committed by the survey officials during the re-survey, the plaintiff, being aware of the same, would have taken appropriate steps to rectify the same and the plaintiff having not moved his little finger to challenge the re-survey and the re-survey records marked, only point out that the new S.F.Number 79/1 corresponds to old S.F.Number 11 of Malayadipudur village. It is seen that without any basis or hold the parties to the partition deed Ex.A3, had included the above said land situated in the Malayadipudur village and shown as if, the same had been

allotted to the share of the plaintiff under Ex.A3. It is thus seen that there is no basis for the plaintiff for including the said land at Malayadipur village under the partition deed Ex.A3 and it is thus found that the plaintiff cannot claim to hold a valid title to new S.F.No.79/1 measuring 0.05.0 hectares of Malayadipur village based on Ex.A3 alone, when the plaintiff's right to effect the partition to the said properties has not been established clearly with reliable and acceptable materials. However, it is argued by the plaintiff's counsel that in respect of the Well situated in the disputed land, it is only the plaintiff's predecessor in interest, who had obtained the service connection no.15, even way back in 1955 and based upon the said fact, the Court should come to the conclusion that the disputed land had been alone enjoyed by the plaintiff and his predecessor in interest and accordingly, the same had also been the subject matter of the partition effected under Ex.A3. In this connection, reliance is placed upon Ex.A14 and the evidence of PW3. From Ex.A14 and the evidence of PW3, it could be seen that the service connection no.15 was given in respect of the S.F.No.139 of Sathyamangalam village, in connection with the 5 hp motor in favour of the plaintiff's predecessor in interest and according to the plaintiff, the said Well is still available in the disputed lands located at Malayadipur village and based on the same, the Courts should hold that it is only the plaintiff and the predecessor in interest who had title to the Well located in the disputed lands and thereby to the disputed lands also. However, as seen from the evidence of PW3, the electricity board Engineer, it is found that a pole erected with reference to the above said electricity connection has all along been located only in Sathyamangalam village and service connection no.15 had been effected only in respect of the land located in Sathyamangalam village and the pole erected at the time of the effecting the above said service connection has not been changed and it remains at the same place and he has also further stated that if any name of the village is to be mutated in respect of the above said service connection, necessary permission should be obtained and necessary fees should be paid and he has further admitted that service connection no.15 has not been mutated in the name of the another village and it stands, as on date, only as being located at Sathyamangalam village and if any change had been effected without their permission, as regards the change of the village with reference to the service connection, they would take appropriate action. Thus, it is seen from the evidence of the PW3 and the document Ex.A14, service connection no.15 had been effected only to the lands in S.F.No.139 of Sathyamangalam village and such being the position, when the plaintiff has not taken any appropriate steps to effect the change of the above said service connection to the Well located at Malayadipur village, the plaintiff's case that the Well is fitted with service connection no.15 is actually located at the disputed lands as such cannot be accepted. It is

the case of the defendant that one day prior to the lodging of the suit, the plaintiff has illegally shifted the motor to the disputed Well and thereby, after obtaining the ex-parte injunction order had taken the commission inspection and the defendant being aware of the suit proceedings only thereafter. It is thus found and the above facts seen cumulatively, when the claim of the plaintiff that the motor with the service connection no.15 is still available in the disputed lands and when the said case is belied by the evidence of PW3 and Ex.A14 as such, it is seen that as rightly put forth by the defendant, the plaintiff seems to have clandestinely installed the motor pumpset in the Well at the disputed land and thereby, laid the suit for obtaining the relief claimed in the suit. However, when the disputed lands are admittedly situated only at Malayadipur village and when the plaintiff has no source of title to the said disputed land other than Ex.A3 and when the plaintiff has not established his legal rights for the inclusion of the disputed land under Ex.A3 partition deed, the claim that the disputed motor pumpset with service connection no.15 is available in the disputed land, as such, cannot be accepted and hence, it is seen that the first appellate Court has accordingly not accepted the above case of the plaintiff. In this connection, the plaintiff, also during the course of the his evidence, admitted that the suit Well is associated with only the lands at Sathyamangalam village in S.F.No.139 and not located in Malayadipur village and he has not taken any steps with reference to the change of the service connection to Malayadipur village and also admitted that the pole starter etc. for the Well located in the disputed properties were located only in the Sathyamangalam village during the inspection of the Commissioner and the facts being above, that the case of the motor in the disputed Well by alone would not entitle the plaintiff to claim the reliefs sought for in the suit.

13. As per the case of the defendant, the parties had effected a panchayat in respect of the dispute, by way of Ex.B1 and this aspect would also go to show that the plaintiff has no right to claim title to the disputed properties. In this connection, a copy of the Panchayat Muchilika has been marked as Ex.B1 and marked during the course of the cross examination by the plaintiff. No doubt, the original Muchilika has not been marked. However, with reference to Ex.B1 Muchilika, the plaintiff, during the course of cross examination, has admitted that as regards the dispute regarding the Well in the properties, prior to the institution of the suit, he, the defendant and Vairavel had effected Muchilika, based upon the Panchayatdars decision on 12.03.1998 and as per the same, the land in S.F.No.139 measuring 10.01 acres of Sathyamangalam village shown to be belonging to him and Vairavel and they had also in the said Muchilika, admitted that the said land had been re-surveyed as New S.F.No.401/1,2,3 and also admitted that to

the east of New S.F.No.401/1,2,3, the land of the defendant at Malayadipudur village in old S.F.No.11 and New S.F.No.79/2 is located and it is seen that under the said document, they had also come to an understanding that they would accordingly, measure the land with the assistance of the surveyor and it is seen that accordingly, the parties have come to an understanding and effected the Muchilika marked as Ex.B1. However, it is seen that, following the same, they have not taken steps to measure the properties concerned through the surveyor and however, the fact remains that as seen from the above admission of PW1, the parties have come to an understanding through the Panchayatdars, by way of Ex.B1 and from the recitals found in Ex.B1 and the evidence of PW1 as narrated above, would go to show that the plaintiff has admitted the ownership of the land at Malayadipudur village located in old S.F.No.11 corresponding to new S.F.No.79 as belonging only to the defendant and it is further seen that in the said document, the plaintiff has not made any claim to the land located at Malayadipudur village, based upon the Ex.A3 partition deed. All these facts would go to show that as the plaintiff is well aware that he has no right or title to the lands located at Malayadipudur village, it is found that he is unable to place any material with reference to the same and substantiate his case and on the other hand, conceding the title of the disputed land as belonging to the defendant, it is found that Ex.B1 Muchilika has come to be effected by the parties though no follow up action has been initiated in continuation of the same and on that score, it cannot be held that Ex.B1 as such had not been effected between the parties concerned. As seen from the discussions made above, the plaintiff has failed to establish that he has valid title or right to the suit properties shown to be located at Malayadipudur village and the Well located therein and in such view of the matter, it is seen that the plaintiff cannot be granted the relief of declaration and also the reliefs of permanent injunction and possession as claimed in the suit.

14. The plaintiff's counsel contended that the defendant has not placed any acceptable and reliable materials with reference to his claim for claiming title to the disputed properties described in the plaint and the defendant has not even cared to mark the sale deed, through which he claims to have acquired title to the disputed properties and such being the position, based upon the partition deed marked as Ex.A3, the Court should uphold the plaintiff's title. However, considering the above discussions, it is seen that the plaintiff cannot be granted title or right to the disputed properties by way of Ex.A3, as the plaintiff and his cousins are not entitled to include the suit properties as the subject matter of the partition under Ex.A3. The plaintiff having come forward with the suit claiming appropriate reliefs and when the said claim of the plaintiff is stoutly resisted by the defendant, it is seen that it is only

for the plaintiff to establish his case by placing acceptable and reliable materials. Merely on account of the failure of the defendant to establish his defence version, that by itself would not lead to the conclusion that the plaintiff's case is true and that he should be granted the reliefs accordingly. In other words, it is seen that the plaintiff cannot be allowed to pick holes in the defendant's case and thereby endeavour to succeed in his case without any basis or proof in respect of his case, for claiming title to the suit properties. Thus being the position, in my considered opinion, de-hors the proof placed by the defendant for claiming title to the disputed properties, in the light of the discussions made, when it is found that the plaintiff has failed to establish his right or title to the suit properties, it is to be held that he cannot be granted the reliefs sought for in the suit.

15. The plaint averments taken as a whole and the plaintiff's evidence read in conjunction with the plaint averments would only go to show that the plaintiff has laid claim to the disputed properties, on the footing that the survey officials had committed mistake during the re-survey made in 1969. However, the said fact had not been substantiated by the plaintiff with acceptable materials. Materials placed would only go to show that new S.F.No.79/1 corresponds only to old S.F.No.11 of Malayadipudur village and has no connection whatsoever to S.F.No.139 of Sathyamangalam village. The reference found in Ex.A12 as if by way of the re-survey conducted, the lands at Sathyamangalam village had decreased and the lands at Malayadipudur village had increased by itself would not lead to the conclusion that it is only the land located at S.F.No. 139 of Sathyamangalam village had been re-surveyed as New S.F.No.79/1 and 2 of Malayadipudur village. Ex.A12 seems to be the integrated field map of old S.F.No.139 of Sathyamangalam village and old S.F.number of Malayadipudur village. However, considering the materials placed and particularly, the evidence of PW2 through whom the documents has come to be marked, when it is found that PW2 is not directly associated with the re-survey of the concerned lands and based on the available materials in the office and based on his above said endorsement, it cannot be held that the mistake had been committed by the re-survey officials by including the portion of the lands in S.F.No.139 of Sathyamangalam village, as located in New S.F.No.79/1 of Malayadipudur village. If really any such mistake had been committed, the plaintiff being aware of the same or having acquiesced to the same and as the plaintiff claims relief in the suit only based upon the re-survey records, it is seen that the plaintiff should have initiated appropriate action against the so called mistake said to have been committed during the re-survey. However, it is the contention of the plaintiff's counsel that inasmuch as no notice has been issued to him or his

men as regards the re-survey, it is not incumbent upon him to challenge the same by way of setting-aside the order of the survey officials and in this connection, reliance is placed upon the decision reported in 1974 T.L.N.J. Page 145 (State of Madras by Collector, Ramnad Vs. Kasthuri Ammal and others). A perusal of the above said decision would go to show that when no notice has been served on the affected parties as regards the survey exercise, the concerned party is not required to lay any suit challenging the same within the time allowed by law as per the Tamilnadu Surveys and Boundaries Act, 1923. However, it is found that, in the same, it has been held that when the affected party had acquiesced to the correctness of the survey measurements effected, he has to take necessary action against the survey effected as provided under the Act. In so far as this case is concerned, it is not pleaded by the plaintiff that no notice has been served on him and his men as regards the re-survey exercise made during 1969. It is found that the plaintiff is also aware of the re-survey done during 1969 and despite having knowledge about the same, he has not challenged the proceedings thereof. That apart, the plaintiff has also acquiesced to the re-survey effected and accordingly, placed reliance only upon the re-survey records for claiming the reliefs sought for in this suit. However, the plaintiff has not placed any material as such, to show that the officials had committed mistake during re-survey by including the land at Sathyamangalam village located in S.F.No.139 as being located in New S.F.No.79/1 of Malayadipudur village. When there is no material to hold that the new S.F.No.79/1 of Malayadipudur village has any nexus or connection with the S.F.No.139/1 of Malayadipudur village and on the other hand, when materials pointed out that the new S.F.No.79/1 of Malayadipudur village only corresponds to old S.F.No.11 of Malayadipudur village and in such view of the matter, when it is further found that no mistake had been committed by the officials concerned during the re-survey and accordingly, the plaintiff having knowledge about the re-survey, had also not challenged the same, as provided under the said Act and also has acquiesced to the same by relying upon the re-survey done, it is seen that if at all any mistake as such had been committed, the plaintiff should have only resorted to the appropriate remedies provided under the Tamilnadu Surveys and Boundaries Act 1923 by challenging the same. In this connection, a perusal of the above said Act would only go to show that the aggrieved party had been provided with the appeal remedy, the second appeal remedy and also the revision remedy before the appropriate authorities as provided under Section 12, 12 A and 12 B of the said Act and further, it is found that the aggrieved party is also provided with the remedy of institution of the Civil Suit within three years to establish his rights in respect of the disputed lands by challenging the same and when it is found that the plaintiff has not resorted to any of the above said remedies and also not laid the suit as provided under

the Act, within the time allowed by law and on the other hand, acquiesced to the re-survey proceedings as discussed above, it is seen that it is too late for the plaintiff to complain about the re-survey, as if a mistake had been done by the officials concerned as put forth by him. Inasmuch as no mistake as such had been committed by the officials concerned during the re-survey, it is seen that the plaintiff has not endeavoured to challenge the same. In such view of the matter, when it is found that as per Section 13 of the Act, the records of the survey shall be a conclusive proof that the boundaries determined and recorded therein have been correctly determined as recorded and when the same had not been challenged and set-aside in the manner known law and the survey effected had not been shown to be done wrongly by the plaintiff, by acceptable and reliable materials, it is seen that the plaintiff's case for claiming the relief in the present lis without any basis, has been rightly discountenanced by the first appellate Court.

16. The first appellate Court, on the basis of the materials placed, in the right perspective of the same, in all aspects, both factual as well as legal aspects, had correctly determined that the plaintiff had miserably failed to establish that he has a valid claim and title to the plaint schedule properties and accordingly, it is seen that the first appellate Court has rightly negatived the reliefs sought for by the plaintiff by setting aside the judgment and decree of the trial Court. In view of the above position, the substantial questions of law formulated for consideration in this second appeal are answered against the plaintiff, as the plaintiff has failed to establish with any acceptable and reliable materials, both oral and documentary, in respect of his case and on the other hand, by way of his admission and other materials placed, as discussed above, had admitted that he has no valid title and right to the plaint schedule properties and accordingly, it is found that the plaintiff cannot be allowed to seek and obtain the reliefs sought for in respect of the plaint schedule properties, by way of Ex.A3, partition deed, under which document, the plaintiff and his men are not entitled to include the disputed properties as a subject matter of the partition deed as discussed supra.

17. In the light of the above position, it is found that the reasonings and conclusions of the first appellate Court on the factual aspects of the matter are not shown to be suffering from any perversity or not shown to be lacking support of the materials placed on record and when the plaintiff has also failed to establish his case by a high decree of preponderance of probabilities, it is seen that the judgment and decree of the first appellate Court do not call for any interference and in such view of the matter, the decision relied upon by the plaintiff's counsel reported in (2003) 8 SCC 752

(R.V.E.Venkatachala Gounder Vs.Arulmigu Viswesaraswami & V.P. Temple and another), as rightly argued, would not be applicable to the case at hand.

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

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Principal Sub-ordinate Judge, Gobichettipalayam.

2. The District Munsif
Sathyamangalam.

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

+1 cc to Mr.V.S.Kesavan Advocate sr 344
+1 cc to Mr.R.T.Doraisamy Advocate sr 172

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