

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2017

PRONOUNCED ON : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.894 of 2001
and
CMP.No.9224 of 2001

1. Vadamalai Gounder
2. Irasa Gounder

.. Appellants/
Respondents 1 & 2/Defendants 1&2

Vs.

1. Murugesan
Rep by Power Agent
Kasi Ammal.
2. Sundaram
3. Srinivsan

.. R1/Appellant/Plaintiff

.. R2 & R3/Respondent No.3 & 4/
Defendants 3 & 4

Prayer :- Second Appeal has been filed under Section 100 of CPC against the judgment and decree dated 14.12.2000 made in A.S.No.2 of 2000 on the file of the I Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 25.01.1999 made in O.S.No.572 of 1995 on the file of the II Additional District Munsif Court, Ulundurpet.

For Appellants : Mr.Muruganandam
for M/s.V.Raghavachari
For Respondents : No appearance

JUDGMENT

This Second Appeal is directed against the judgment and decree dated 14.12.2000 made in A.S.No.2 of 2000 on the file of the I Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 25.01.1999 made in O.S.No.572 of 1995 on the file of the II Additional District Munsif Court, Ulundurpet.

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

3. Suit for declaration, possession and mesne profits.

4. The case of the plaintiff, in brief, is that the suit property and the other properties originally belonged to Chinnathayee, wife of Ayyadurai Gounder and the same had been purchased by the plaintiff's father Chinnathambi gounder by way of a registered sale deed dated 11.07.1962 and accordingly, enjoying the suit property and thereafter, a portion of the suit property had been acquired by the Government on the northern side for widening the road and the remaining property was in the possession and enjoyment of the plaintiff's father and accordingly, the plaintiff's father had settled the suit property and the other properties in favour of the plaintiff and his brother Dhandabani by way of a registered settlement deed dated 21.04.1982 and the plaintiff had accepted the same and obtained possession of the properties comprised in the settlement deed and been enjoying the same, while so, the defendants 1 & 2 attempted to interfere with the plaintiff's enjoyment of the suit property, which was resisted by the plaintiff on the footing that the defendants 3 and 4 had alienated two cents of land in the suit property to them on 08.04.1983 and on the other hand, the defendants 3 and 4 have no right or title to convey any land in the suit property to the defendants 1 and 2 and the father of the defendants 3 and 4 Mottaiya Gounder had purchased the properties from Parvathiammal, wife of Nallathambi gounder on 31.07.1962 and had only alienated the said properties to the defendants 1 and 2 on 08.04.1983 and therefore, the suit property, not comprised in the said sale transaction and hence, the defendants are not entitled to interfere with the possession and enjoyment of the plaintiff and his brother in respect of suit property. The plaintiff and his brother are enjoying the suit property in common without effecting any division and further, the plaintiff and his brother, on account of their long and continuous enjoyment, have also perfected their title to the suit property by way of adverse possession. In this connection, the plaintiff and his brother has issued notice to the defendants on 12.05.1993 and to the same, the defendants had sent a reply containing false allegations, as if patta had been granted in their favour in respect of the suit property and in this connection, police complaint has also been lodged, however, no action has been initiated against the defendants and after the issuance of the reply notice, the defendants 1 and 2 had illegally encroached into the suit property and cut away the trees thereon and hence, the plaintiff being the manager of the family consisting of his brother had laid the suit, accordingly, against the defendants for appropriate reliefs. Pending suit, as the plaintiff was necessitated to leave abroad, he had executed a power of attorney deed in favour of his wife Kasiammal and accordingly, his wife is continuing to prosecute on behalf of the plaintiff as his power agent .

5. The case of the defendants 1 and 2, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property originally belonged to Chinnathayee, wife of Ayyadurai gounder and it is false to state that the plaintiff's father Chinnathambi gounder had purchased the suit property from Chinnathayee ammal by way of the sale deed dated 11.07.1962 and enjoying the same and it is false to state that excluding the portion acquired by the Government for widening the road, the remaining property had been in possession and enjoyment of Chinnathambi gounder and he had settled the same in favour of the plaintiff and his brother Dhandapani by way of a settlement deed dated 21.04.1982 and the above facts are stoutly disputed by the defendants. It is false to state that the defendants had illegally encroached into the suit property during 1993 and cut away the trees thereon and it is false to state that the plaintiff and his brother had, by their long and continuous enjoyment, perfected their title to the suit property by way of adverse possession also. The suit property measures only 0.33 cents and it is false to state that the suit property measures 0.46 cents and Chinnathayee has no title or right in respect of the suit property and it is false to state that the defendants 3 & 4 have no right or title to convey the suit property in favour of the defendants 1 & 2 and the defendants 3 and 4 had conveyed the properties to the defendants 1 & 2 on 08.04.1983 only the properties purchased by their father by way of a sale deed dated 31.07.1962. It is stated that the property measuring two cents within the suit property in specific boundaries belonged to Mottaiah gounder, the father of the defendants 3 & 4 ancestrally and he was in possession and enjoyment of the same and after his death, the same was in possession and enjoyment of the defendants 3 and 4 and accordingly, the defendants 3 and 4 had alienated the same to the defendants 1 & 2 represented by their father Muthusamy gounder on 08.04.1983 and accordingly, it is only the defendants 1 and 2 through their father had been in possession and enjoyment of the specific two cents within the specific boundaries in the suit survey number by paying kist and obtaining patta etc., and accordingly, joint patta had been issued in respect of the suit property and thereby, the defendants and their predecessor in interest had also perfected their title to the above said extent in the property by way of adverse possession also and to the notice issued by the plaintiff, the defendants have issued a reply containing true facts and the plaintiff has failed to implead his brother Dhandapani as a party to the suit proceedings and hence, the suit is bad for non joinder of necessary party and therefore, the suit is liable to be dismissed.

6. The case of the defendants 3 and 4, in brief, is that

their father Mottaiah Gounder is not entitled to the suit property and not enjoyed the same at any point of time and after his death, the defendants 3 & 4 have also not been enjoying the suit property, their father had purchased certain item of properties from Parvathiammal on 31.07.1962 and not purchased the suit property and accordingly, the defendants 3 & 4 had alienated only the said properties to the defendants 1 and 2 and the defendants 3 & 4 had not alienated the suit property to the defendants 1 & 2 and it is learnt that by surreptitious method, the defendants 1 & 2 have also included the suit property in the sale transaction without the knowledge of the the defendants 3 & 4 and hence, the suit is liable to be disposed of accordingly.

7. In support of the plaintiffs' case, PWs 1 to 3 were examined and Exs.A1 to A7 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs.B1 to B10 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit laid by the plaintiff. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and accordingly, by allowing the appeal preferred by the plaintiff, decreed the suit as prayed for and aggrieved over the same, the present second appeal has come to be laid.

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

" Whether Dhandapani, the brother of the plaintiff, who is admittedly one of the settlees under Ex.A3 settlement deed is a necessary party to the suit and whether the suit is liable to be dismissed for non-joinder of Dhandapani?"

10. The plaintiff has laid the suit seeking the reliefs of declaration, possession and mense profits in respect of suit property against the defendants.

11. A reading of the plaint on a whole would go to show that the plaintiff does not claim exclusive title to the suit property and on the other hand, the plaintiff claims title to the suit property only by way of a settlement deed dated 21.04.1982 said to have been executed in his favour and in favour of his brother Dhandapani and accordingly, it is seen that if the above said settlement deed is true and valid, both the plaintiff and his brother Dhandapani would be entitled to

claim title to the suit property and despite the above position, it is seen that the plaintiff in the present suit has claimed the relief of declaration, as if he has exclusive title to the suit property, he has not sought for the relief of declaration that he and his brother have title to the suit property as such. No doubt, the plaintiff would aver that the plaintiff has laid the suit in his capacity as the manager of the family consisting of his brother also. However, in the prayer column, the plaintiff has sought for the relief of declaration as if the plaintiff alone has title to the suit property. If really, the above said settlement deed dated 21.04.1982 is true and valid, even in the plaintiff, when the plaintiff has averred that he has laid the suit in his capacity as the manager of the family consisting of his brother, as rightly put forth, the plaintiff should have sought for the relief of declaration that he and his brother Dhandapani have title to the suit property and accordingly, entitled to recover the possession of the same from the defendants.

12. The plaintiff claims title to the suit property from Chinnthayee, wife of Ayyadurai gounder and the same has been disputed by the defendants vehemently. Despite the same, there is no material to hold that Chinnathayee had title to the suit property as claimed in the plaintiff. It has not been mentioned as to how Chinnathayee had title to the suit property, whether she had acquired title to the suit property ancestrally or by other modes. The fact remains that there is no material placed on record to show that Chinnathayee had a valid title to the suit property and had been in possession and enjoyment of the suit property during her life time. It is thus seen that the plaintiff, as such, has failed to establish that Chinnathayee had a valid title to the suit property.

13. Further, according to the plaintiff, Chinnathayee had alienated the suit property and the other properties to the plaintiff's father Chinnathambi gounder on 11.07.1962 and the copy of the above said sale deed has come to be marked as Ex.A2. In this juncture, it is to be noted that while describing the suit property in the plaintiff, it has been stated that it is situated in R.S.No.106 measuring 0.46 cents and in the same, measuring 2 5/9 cents to the south of road, to the West of RS.No.19/7, to the East and north of Kanagasabai land. This is how, the suit property has come to be described in the plaintiff by the plaintiff. The plaintiff had claimed that his father had purchased the suit property by way of Ex.A2 and on a perusal of Ex.A2, it is found that by way of the same, it is noted that an extent of 0.04 cents in common had only been sold out of 0.46 cents in R.S.No.106. It is thus seen that while describing the above said property in Ex.A2 sale deed dated 11.07.1962, there is no reference about the suit property as measuring 2 5/9 cents

within the specific boundaries in the suit survey number. Such being the position, when the suit property as such has not been correctly described in Ex.A2 by giving the extent and the boundaries, within which, it is located as described in the plaint, it is not possible to accept the plaintiff's case that his father had actually purchased the suit property as described in the plaint from Chinnathayee by way of Ex.A2. As seen above, the plaintiff has miserably failed to establish that Chinnathayee had a valid title to the suit property as described in the plaint and also failed to place any material to show that she had been in possession and enjoyment of the plaint schedule property. Accordingly, it is seen in Ex.A2 also, there is no clear and correct description of the suit property as given in the plaint and only it is mentioned as common 0.4 cents in R.S.No.106 0.46 cents. If that be so, it has not been explained by the plaintiff as to on what basis, he had described the suit property to be comprising within the specific boundaries as made out in the plaint. Similarly, according to the plaintiff's case, his father had settled the suit property in his favour and his brother Dhandabani by way of a settlement deed dated 21.04.1982 and the copy of the same has been marked as Exs.A3. In Ex.A3, it is mentioned as 0.2 5/9 in R.S.No.106 0.46 as found in Ex.A2 and in Ex.A3 also, while describing the suit property, in particular, there is no mentioning of the boundaries, within which, the suit property is found to be located and it is only stated as 0.2 5/9 cents in common in R.S.No.106 0.46 cents. This is how the suit property is found to be mentioned in Ex.A3 and such being the position, it has not been explained by the plaintiff, as to on what basis, he claims title to the property as described in the plaint and as situated within the specific boundaries. Further, it is found that other than marking Exs.A2 & 3, which are copies of the documents concerned and not the original documents and the plaintiff has also not offered any explanation for the non production of the original documents and the plaintiff has not cared to place any material as such to hold that Chinnathayee, subsequently his father, Chinnathambi Gounder and thereafter, the plaintiff and his brother Dhandapani had been in possession and enjoyment of the suit property as described in the plaint by obtaining patta, paying kist etc., As regards the proof of possession and enjoyment of the plaint schedule property, it is found that no material, whatsoever, has been placed by the plaintiff and it is thus seen that the plaintiff claims the reliefs of declaration and possession only on the basis of Exs.A2 and A3. When under Exs. A2 and A3, the plaintiff is unable to point out that the suit property as described in the plaint within the specific boundaries is described and on the other hand, when it is only found that in one document 4 cents in common and in another document 0.2 5/9 cents in common, had been dealt with and when it has not been explained by the plaintiff as to on what basis he had furnished

the boundary particulars in the plaint, it is seen that based on Exs.A2 and A3 alone, we cannot come to a definite conclusion that the plaintiff and his brother, as the case may be, have title to the suit property as described in the plaint. In this connection, it is to be noted that the plaintiff has miserably failed to establish that Chinnathayee had a valid title to the suit property to convey the same to the plaintiff's father under Ex.A2.

14. In the light of the above position, it has to be further seen, whether the plaintiff has placed any oral evidence as such to establish that he has a valid title to the suit property as put forth in the plaint and whether he and his predecessor in interest has been in possession and enjoyment of the suit property as described in the plaint. As seen from the plaint averments, the plaintiff has not continued the suit, after its institution and according to him, inasmuch as he has to leave abroad midway, it is stated that he has executed a power of attorney in favour of his wife Kasiammal and it is seen that only Kasiammal, who had been continuing to prosecute the suit further and the power deed has been marked as Ex.A1. Kasiammal has been examined as PW1 and PW1, during the course of cross examination, has deposed that the suit property measures slightly more than two cents and she cannot state the exact extent and further according to her, the suit property belonged to Chinnathayee through a document of title from her husband, however, she has not filed the said document and also admitted that she does not know what extent of the property had been purchased by her father-in-law from Chinnathayee by way of Ex.A2 and also stated that she does not know the total extent available in suit survey number and also admitted that she does not know whether Chinnathayee had alienated the property within particular boundaries in the said survey number to her father-in-law under Ex.A2 and does not know whether what extent of property had been enjoyed by her father-in-law and within what specific boundaries in suit survey number, her father-in-law had been enjoying the property by way of Ex.A2 and she further does not know what is the description of the property, within which boundaries, her father-in-law had settled the property by way of Ex.A3 in favour of her husband and brother-in-law and also does not know the extent of the property settled under the said document and also admitted that her husband and brother-in-law as well as father-in-law had not effected any partition in respect of the suit property and does not know whether patta had been changed in their favour and does not know whether patta had been mutated in favour of her husband and brother-in-law pursuant to Ex.A3 and however, would claim that the patta stands in the name of her husband and brother-in-law and also claimed that she has filed the patta and the above being the evidence of PW1, it is seen that PW1 is completely unaware of the source of

title to the suit property and the enjoyment of the suit property by the plaintiff and his predecessors in interest and accordingly, it is seen that she is completely ignorant of the source of title and mode of enjoyment of the suit property in any manner and such being her testimony, it is found that the evidence of PW1 would not be useful to sustain the plaintiff's case that he and his brother had valid title to the suit property and that, he and his brother had been in possession and enjoyment of the suit property from the days of their predecessors in interest. As above noted, the documents Exs.A2 and A3 also do not point out that it is only the suit property, which had been dealt with under the same and though the plaintiff would claim that he has filed patta to evidence the proof of enjoyment by the plaintiff and his brother-in-law, the said patta has not been seen in the light of the day and as adverted above, no proof whatsoever has been placed to evidence the proof of possession and enjoyment of the suit property by the plaintiff and his brother Dhandapani and their predecessors in interest. In such view of the matter, it is seen that the evidence of PW1 cannot be taken into consideration for upholding the plaintiff's case in any manner.

15. PW2 Manickam son of Illaiya Perumal would claim that in the suit survey No.106 measuring 0.46 cents, Kanagasabai, Appayee Chettiyar, Ramasamy were owning 23 cents and the remaining 23 cents were owned by Ayyadurai, Ilaiyaperumal, Raman, Mottaiyan. Thus, according to him, Ayyadurai was enjoying $\frac{1}{4}$ share in 23 cents in the suit survey number and it is found that PW2, being the son of Illaiyaperumal was also one of the owners of 23 cents along with Ayyadurai, Raman and Mottaiyan. However, PW2 has not described as to in respect of which $2\frac{5}{9}$ cents in the suit survey number, Chinnathayee had conveyed to Chinnathambi Gounder and has also not explained which $2\frac{5}{9}$ cents in suit survey number, Chinnathambi gounder had settled in favour of his sons by way of Ex.A3. As regards the said position, during the course of cross examination of PW2 has admitted that 46 cents in R.S.No.106 is bound on the northern by road, on the eastern side Vadamalai and Chinnathambi, on the southern and western side Kanagasabai's land. However, he would admit that he does know the survey number of surrounding lands and would claim that he has one or one and a half cents in the suit survey number and also admitted that after the government had acquired the portion of the land in suit survey number for widening the road, he does not know to what extent each sharers were having in the suit survey number and does not know the extent, they were having title and also admitted that as per Ex.A2, $2\frac{1}{2}$ cents were alienated by Chinnathayee, but as he was not a party to Exs.A2 & A3, he does not know above the same directly and also admitted that he does not know under what survey number, to what extent, within which boundaries, the

properties had been conveyed under Exs.A2 and A3. Therefore, such being the evidence of PW2, it is found that 46 cents in Survey No.106 were owned by various persons and after the northern portion had been acquired by the Government for widening the road and only the remaining portion had been left to the owners and with reference to the same, there is no material to hold as to what portion had been acquired by the Government in the suit survey number and thereafter, what portion was left out to the others for their enjoyment and that apart, when PW2 is completely ignorant of the survey number, extent and the boundaries within which the property had been conveyed under Exs.A2 & A3 and unable to state as to the actual extent of the property dealt with by Chinnathayee, Chinnathambi gounder and the plaintiff and his brother Dhandapani, it is seen that his evidence would not be of any use to buttress the plaintiff's case. Therefore, his evidence cannot be the basis for upholding the plaintiff's case.

16. PW3 Chinnathambi, son of Mottaiya Gounder, who is the father of the plaintiff, has claimed during the course of chief examination that he had purchased the suit property from Chinnathayee by way of Ex.A2, thereafter, settled the same in favour of the plaintiff and his another son Dhandapani by way of Ex.A3. It has to be seen whether PW3 would be competent to speak about the source of title, possession and enjoyment of the suit property as pleaded. During the course of cross examination, it is admitted by him that the total extent 46 cents in the suit survey number 106 were owned by Mottaiah Gounder, Ayyadurai, Illaiyaperumal, Annamalai, Ramagounder, Duraisamy Gounder and accepted that he does not know the extent owned by the above said various persons and also admitted that he does not know what extent had been acquired in the said survey number by the Government and also admitted that he has not received any notice from the government as regards the acquisition proceedings and does not know as to what extent or how many cents were acquired from the different owners for widening road and stated that he has not put forth any objection to the acquisition proceedings and would claim that he had purchased 5 cents from Chinnathayee under Ex.A2 and also would claim that 5 cents with boundaries had been given in Ex.A2 and also admitted that following Ex.A2, he had not taken any steps to change patta in his name. It is thus found that PW3 is also unaware of the actual extent available in the suit survey number, how much portion of the same had been acquired by the Government and however PW3 claims title in the suit survey number by way of Ex.A2. If PW3 had a valid title to any extent in the suit survey number by way of Ex.A2, as rightly argued, when acquisition proceedings were initiated by the Government with reference to the suit survey number, definitely PW3 being the owner would have received notice pertaining to the same.

On the other hand, according to PW3, he has received no notice from the Government and further, according to him, he had put forth any objection to the acquisition proceedings. This would only go to show that inasmuch as PW3 has acquired no valid title to any extent in the suit survey number, it is seen that he had not received any notice of the acquisition proceedings and also not put forth any objection with reference to the same. If really, PW3 had acquired a valid title under Ex.A2, he would have taken appropriate steps to have the change of patta in his name, however, PW3 has not taken any effective steps with reference to the same. As early seen, there is no material placed on the part of the plaintiff to establish either Chinnathayee or PW3 or the plaintiff and his brother had been in possession and enjoyment of the property described in the plaint at any point of time. Therefore, when it is seen that the plaintiff's father is also unable to throw light into the issues involved into the matter and when he is unable to show that Chinnathayee had a valid title to the suit property and accordingly, he had acquired a valid title by way of Ex.A2 and also had a valid title to settle the property by way of Ex.A3 and when the actual property that had been dealt with under Exs.A2 & A3 had not been clearly spelt out by the plaintiff by acceptable and reliable evidence and on the other hand, when the materials point out that various persons were owning various extents in the suit survey number and when there is no material to hold as to what extent were held by various persons and in particular, what extent was owned by Chinnathayee and when the said essential fact has not been established by the plaintiff, the claim of the plaintiff that Chinnathayee had alienated only the suit property to PW3 under Ex.A2 and further the claim of the plaintiff that PW3 had only settled the suit property under Ex.A3 as such cannot be accepted. Exs.A2 and A3 do not shed any light as to whether actually it is only the suit property, which had been dealt with under the said document as above discussed. In the above said documents, the property has been shown only as common without mentioning the specific boundaries within which it is located and such being the position and when the plaintiff is unable to correlate the suit property with the description of the property found under Exs.A2 and A3, it is found that there is absolutely no material to hold that it is only the suit property, which had been dealt with by the parties concerned under Exs.A2 and A3 and hence, in view of the above position, no safe credence could be attached to Exs.A2 and A3 to hold that the plaintiff has a valid title to the suit property. Similarly, if really, the plaintiff and his predecessors in interest have been in possession and enjoyment of the suit property as claimed by them, at least, the some documents to evidence the same would have been placed before the Court. However, as regards the possession and enjoyment of the same, nil material is placed on the side of the plaintiff and therefore, is found that the

plaintiff is unable to establish the possession and enjoyment of the suit property either by him or by his predecessors in interest at any point of time. Such being the position, it is found that the further claim of the plaintiff in the plaint that he has also perfected his title to the suit property by way of adverse possession on account of continuous enjoyment also cannot be accepted in any manner. The plea of adverse possession is a destructive plea, the plaintiff having claimed a regular title to the suit property, at the same time also claim title to the suit property by way of adverse possession. This attitude of the plaintiff would go to show that inasmuch as the plaintiff does not have a valid title to the suit property accordingly , it is found that he has also chosen to lay a claim in respect of the suit property by way of adverse possession. By way of the same, as rightly put forth indirectly, the plaintiff has admitted the title of the defendants 1 & 2 in respect of the suit property. However, as regards the plea of adverse possession, there is no material on the part of the plaintiff to uphold the same and therefore, it has to be held that the plaintiff has miserably failed to establish that he and his brother have perfected their title to the suit property by way of adverse possession also.

17. It is seen that the first Appellate Court has disbelieved the case of the defendants 1 and 2 and thereby, proceeded to uphold the plaintiff's case, though there is no material as such for accepting the plaintiff's case as discussed above. Now, according to the defendants 1 and 2, they have purchased an extent of 2 cents in the suit survey number from Mottaiah Gounder, the father of the defendants 3 and 4 and the said sale deed has been marked as Ex.B1. It is seen from the evidence adduced on behalf of the plaintiff, Mottaiah Gounder is also one of the owners in the suit survey number. According to the defendants 1 & 2, the extent of 2 cents in the suit survey number was owned by Mottaiah gounder ancestrally. However, the defendants 3 and 4 have taken a plea that they had not sold any extent in the suit survey number to the defendants 1 & 2 by way of Ex.B1. It is their further case that they have sold the other properties to the defendants 1 and 2 purchased by their father and the said properties do not comprise the suit property. However, it is seen that Mottaiah gounder was also owning a particular extent in the suit survey number. In such view of the matter, the contentions put forth before the Courts below that Mottaiah Gounder referred to by the plaintiff's witness is not the father of the defendants 3 & 4 as such cannot be readily accepted. Be that as it may, it is found that by way of Ex.B1, an extent of 2 cents is claimed to have been purchased by them and though the third defendant examined as DW3 has controverted with the said document, he would admit that he and his brother, the defendants 3 & 4 had executed the said

document and the contents of the same were written in their presence and read over the same and only after going through the contents, they had executed the said sale deed in favour of the defendants 1 & 2 and at that point of time, the relationship between the parties concerned was very cordial and smooth and they had not objected to the contents of the documents found in Ex.B1 and only with their consent, they had executed the document and thus, it is found that Ex.B1 has come to be brought into existence very smoothly between the parties concerned without any bickers and accordingly, if really, the property comprised in Ex.B1 did not belong to the defendants 3 & 4 naturally, objection would have been put forth by them at the time of execution. On the other hand, it has been clearly admitted by DW3 that without any reservation knowing fully well about the contents of Ex.B1, he and his brother had conveyed the property comprised therein to the defendants 1 & 2. When it is seen that Mottaiya Gounder had owned an extent in the suit survey number and when the said extent had been conveyed to the defendants 1 & 2 by way of Ex.B1 by the defendants 3 & 4, it is found that the claim of the defendants 1 & 2 to the extent of 2 cents in the suit survey number cannot be brushed aside easily. That apart, it is found that following Ex.B1 joint patta had been issued in favour of the defendants 1 & 2 along with others, which has come to be marked as Ex.B2 and pursuant to the same, it is found that they had paid the kist receipts, which have come to be marked as Exs.B3 to 10 and accordingly, the document Exs.B1 to 10 seen cumulatively would go to show that the defendants 1 & 2, are in possession and enjoyment of an extent of 2 cents in the suit survey number by acquiring title to the same by way of Ex.B1. It is to be noted at this juncture that originally the defendants 3 & 4 had remained exparte and later they had chosen to set aside the exparte order passed against them and proceeded to participate in the suit proceedings. This would go to show that as there had been some collusion between the plaintiff and the defendants 3 & 4, it is seen that the defendants 3 and 4 had not contested the plaintiff's suit at the earliest and thereafter, took part in the suit proceedings one way or the other and started challenging the case of the defendants 1 & 2. However, when it is seen that they had without any wrangle conveyed the suit property to the defendants 1 & 2 under Ex.B1, on a whole, it is found that after they had conveyed the property under Ex.B1, with a view to support the plaintiff's case, it is seen that the defendants 3 & 4 have, at a later stage, taken part in the suit proceedings and started contesting the case of the defendants 1 & 2. However, the materials placed would go to show that the defendants 3 & 4 have not come forward with a true case and accordingly, unable to sustain their defence with acceptable materials.

18. Be that as it may, it is found that the plaintiff, at

no point of time, has been found to be in possession and enjoyment of the suit property by claiming a valid title. On the other hand, it is found that the defendants 1 & 2 have placed materials to hold that they had acquired title to a particular extent of the suit property under Ex.B1 and following the same, obtained patta to evidence their possession and also filed kist receipts to show their enjoyment of the property claimed by them in the suit survey number. In such view of the matter, the claim of the plaintiff that the defendants 1 and 2 had encroached into the suit property, after exchange of the notices between the parties cannot be accepted in any manner. Only when the plaintiff has established his possession to the suit property at any point of time, the question of encroachment into the same by the defendants 1 & 2 would arise. In so far as this case is concerned, there is no material either to hold that the suit property was in possession and enjoyment of the plaintiff and his brother at any point of time. On the other hand, it is seen that it is only the defendants 1 & 2, who had been in possession and enjoyment of the suit property as put forth by them and therefore, it is noted that the plea of encroachment of the suit property by the defendants 1 & 2 as projected in the plaint cannot be a true version and hence, cannot be accepted.

19. In view of the above reasons, it is found that the plaintiff has not only miserably failed to establish that he and his brother have a valid title to the suit property and also failed to establish that he and his brother or their predecessors in interest had been in possession and enjoyment of the suit property at any point of time. On the other hand, the plaintiff having no valid title to the suit property and accordingly, chosen to lay a claim to the suit property by way of adverse possession, even that plea had not been proved by acceptable materials. In toto, it is seen that the plaintiff has miserably failed to establish that he and his brother have a lawful title to the suit property and hence, it is seen that they are not entitled to obtain the reliefs of declaration, possession and mesne profits.

20. As seen above, even according to the plaintiff, the suit property belongs to him and his brother Dhandapani. However, the plaintiff has chosen to lay the suit individually claiming that he is laying the suit in his capacity as the manager of the family consisting of himself and his brother. Even otherwise, it has not been explained in the plaint as to what prevented the plaintiff from instituting the suit along with his brother and it is not the case of the plaintiff in the plaint that his brother was not available at the time of institution of the suit. On the other hand, as seen from the evidence of DW1, Dhandapani was very much available in the house at the time of

institution of the suit. However, her husband had not joined with him while instituting the suit and as seen above, though the plaintiff proceeded as if the suit property belongs to the plaintiff and his brother Dhandapani jointly, the plaintiff has chosen to seek the relief of declaration claiming sole title to the suit property as if it belongs to him absolutely, this itself goes to show that the plaintiff has not come out with a clean motive while laying the suit and however, had come forward to lay the suit independently, leaving his brother for one reason or the other and accordingly, unable to place any material as such to hold that he has laid the suit validly on behalf of his brother also. Equally, there is no material to hold that the plaintiff is the manager of the family consisting of himself and his brother and such being the position, it is seen that as rightly put forth by the defendants' counsel, the suit laid by the plaintiff without impleading his brother as such is found to be not maintainable. Even though a co-parcener is entitled to maintain the suit on behalf of other co-parceners, it is found that insofar as this case is concerned, when the plaintiff has failed to establish as to why he had chosen to lay the suit individually, when admittedly his brother was very much available at the time of institution of the suit and when there is no material to hold that his brother had knowledge about the institution of the suit and also when there is no material to hold that he and his brother constitute a joint family and that the plaintiff is the manager of the joint family and in such view of the matter, it is seen that as rightly put forth by the defendants' counsel, when it is found that as per the case of the plaintiff, Dhandapani is also one of the settlees under Ex.A3 settlement deed, the plaintiff having sought for the relief of declaration of title to the suit property independently leaving his brother Dhandapani, as contended and in such circumstances, Dhandapani is a proper and necessary party to the suit proceedings and hence, the suit laid by the plaintiff without impleading Dhandapani is bad in law and on that ground also, the plaintiff's suit should fail. Accordingly, the substantial questions of law formulated in this second appeal is answered against the plaintiff and in favour of the defendants.

21. In support of his contentions, the defendants' counsel placed reliance upon the decisions reported in 2005 (1) CTC 506 (Munusamy gounder and another Vs. Sadasivam), 2010 (4) CTC 640 (Venkataramana and six others Vs. N.Munuswamy Naidu and four others). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

22. In the light of the above discussions, the judgement

and decree dated 14.12.2000 made in A.S.No.2 of 2000 on the file of the I Additional Subordinate Court, Villupuram, are set aside and the judgment and decree dated 25.01.1999 made in O.S.No.572 of 1995 on the file of the II Additional District Munsif Court, Ulundurpet are confirmed. Accordingly, the Second Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

adl/sms

1. The I Additional Subordinate Judge,
Villupuram
2. The II Additional District Munsif,
Ulundurpet
3. The Record Keeper
VR Section,
High Court, Madras-104 (2 Copies)

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.2

in S.A.No.894 of 2001
and
CMP.No.9224 of 2001

EV(CO)
CS/13/03/18

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