

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2019

PRONOUNCED ON : 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1836 of 2003
and
C.M.P. No.3567 of 2007

1.Shankar Reddiar (deceased) ...Appellant/Appellant/1st Defendant
2.R.Sumathi
3.R.Malathi ...Appellants

Appellants 2 and 3 brought on record as legal heirs of the deceased sole appellant vide order of court dated 20.02.2019 made in CMP No.3474 of 2019 in S.A.No.1836 of 2003.

Vs.

1.Royal Reddiar
2.Vijayakumar ...Respondents/Respondents/Plaintiff & 2nd Defendant
3.R.Gomathi
4.S.Balachander

Respondents 3 and 4 are impleaded vide order of court dated 05.12.2007 made in CMP No.3123 of 2007 in S.A.No.1836/2003.

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.04.2003 of the Principal District Judge, Villupuram in A.S.No.123 of 2002 and the Cross Appeal, preferred against the decree and judgment dated 05.03.2002 in O.S.No.519 of 1999 on the file of the Additional District Munsif, Villupuram.

For Appellants : Mr.D.Rajagopal
For Respondent : Mr.A.V.Arun
for M/s. C.V.Ramachandramurthy for R1.
Mr.S.Thiruvengadasamy
for Mr.V.Nithyanandan for R2.
Mr.K.Narasimhan for R3 and R4.

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 25.04.2003 passed in A.S.No.123 of 2002 and the Cross Appeal on the file of the Principal District Court, Villupuram, confirming/modifying the judgment and decree dated 05.03.2002 passed in O.S.No.519 of 1999 on the file of the Additional District Munsif Court, Villupuram.

2. For the sake of convenience, the Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, permanent injunction and for damages.

4. The case of the plaintiff, in brief, is that an extent of 65 cents in 1 acre 39 cents in survey No.217 of Kondur village is the ancestral property of the plaintiff and the remaining 74 cents was orally sold to the plaintiff in the year 1984 by the first defendant for a sum of Rs.15,000/- and the original sale deed standing in the name of the first defendant had also been handed over to the plaintiff to evidence the oral sale and surrender and handing over of the possession of the property. The first defendant is the husband of the plaintiff's sister Prema and out of mutual confidence and trust, the registered sale deed was not obtained from him and since the date of oral sale in the year 1984, it is only the plaintiff who has been in the exclusive possession and enjoyment of the suit property as the absolute owner thereof and even from the year 1974, the property was in the possession of the plaintiff as a lessee of the first defendant as the first defendant was residing at Cuddalore. The patta was changed in the name of the plaintiff and accordingly the plaintiff has been paying kists in respect of the suit property and on account of the plaintiff's continuous possession and enjoyment of the suit property, for more than the prescribed period, ever since 1984, he has also prescribed title to the suit property by way of the adverse possession. By fraudulent means, the first defendant had changed the patta in his name on 15.02.1999, which was later deleted by the proceedings of the RDO and Tahsildar dated 21.09.1999 and 18.10.1999. By way of the registered partition deed dated 20.10.1989 between the plaintiff and his brothers, the entire property comprised in survey No.217 has been allotted to the plaintiff and the first defendant being aware of the same, had also attested the said partition deed affirming the title of the plaintiff and thus the plaintiff is the absolute owner of the suit property. While so, the defendants, without any authority, had destroyed the crops raised by the plaintiff in the suit property with the help of the rowdy elements and the value of the crops destroyed by the defendants would be at the value of Rs.15,000/- and hence the plaintiff issued a notice to the first

defendant calling upon him to pay the damages and also by asserting his title to the suit property and on the other hand, the defendants had remained hostile to the claim of the title of the plaintiff to the suit property and attempting to trespass into the same forcibly, hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that it is true that 65 cents out of 1 acre and 39 cents in survey No.217 in Kondur Village belong to the plaintiff. However, it is false to state that the first defendant had orally conveyed an extent of 74 cents in the abovesaid survey number to the plaintiff in the year 1984 for a sum of Rs.15,000/- and since then, it is only the plaintiff who has been enjoying the suit property as the absolute owner thereof. The extent of 74 cents in survey No.217 belong to the first defendant by way of the registered sale deed dated 05.02.1970 executed by Kuppusamy Reddiyar and the suit property had not been sold by the first defendant to the plaintiff and not entrusted the possession of the suit property to the plaintiff. It is false to state that the plaintiff has been the lessee of the suit property right from 1974. Inasmuch as the plaintiff was the brother-in-law of the first defendant, accordingly, considering the relationship, the first defendant used to give money to the plaintiff to pay the kists and on the other hand, taking advantage of the same, the plaintiff has, clandestinely, changed the patta in his name in respect of the suit property and the claim of the plaintiff that he has prescribed title to the suit property by way of the adverse possession on account of long and continuous enjoyment of the same is false. On coming to know that the plaintiff has changed the patta in his name, the defendant had taken steps to change the patta in his name and the defendant is unaware of the allotment of the suit property to the plaintiff in the partition deed dated 20.10.1989 and the mere attestation of the first defendant in the partition deed, would not, in any manner, be construed as an acceptance of the plaintiff's title to the suit property on the part of the first defendant. Inasmuch as the first defendant was directed to sign as a witness to the partition deed, he has attested the same and on that score alone, it cannot be inferred that the first defendant is aware of the contents of the partition deed. The first defendant is not aware of the mortgage created in respect of the suit property and even if any such document had been created, the same is not binding upon the first defendant. The first defendant had entrusted the title deed to the plaintiff's brother Ramamurthy and it appears that the plaintiff had stealthily obtained the sale deed from Ramamurthy and on that basis has come forward with the false case by putting forth inconsistent pleas of title to the suit property. It is false to state that the defendants had destroyed the crops raised in

the suit property by the plaintiff and that they are liable to pay the damages to the plaintiff in a sum of Rs.15,000/- as put forth in the plaint and accordingly contended that the plaintiff has no cause of action to institute the suit and prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case P.Ws.1 and 4 were examined and Exs.A1 to A30 were marked. On the side of the defendant D.Ws.1 and 2 were examined and Exs.B1 to B10 were marked. Exs.X1 to X4 were 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 grant the reliefs of declaration and injunction in favour of the plaintiff as prayed for, however, negatived the claim of the damages prayed by the plaintiff in a sum of Rs.15,000/-. Aggrieved over the same, the first defendant preferred the first appeal and the plaintiff is also found to have preferred the cross appeal for claiming the damages, which had been negatived by the trial court. In the first appellate court, it is found that the additional documents have come to be marked on the side of the first defendant as Exs.B11 and B12. The first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to dismiss the first appeal preferred by the first defendant and allowed the cross appeal preferred by the plaintiff and in toto decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid.

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

"1. Whether the plaintiff is entitled to raise inconsistent and conflicting pleas claiming title to the suit property first under the oral sale, secondly by adverse possession and finally under the Ex.A29 partition deed and whether the courts below are justified in permitting those pleas to be raised by the plaintiff and allowing and decreeing the suit on those inconsistent and conflicting pleas?

2. Whether the plaintiff is entitled to raise the plea of title by adverse possession after his claim of title and possession to the suit property under the oral sale is negatived by the lower appellate court in view of the decision in 1988 (1) L.W.590?

3. Whether the courts below are right in allowing the plea of adverse possession to be raised, when the claim to title to the suit property hostile to the 1st defendant had been

made for the first time only in 1999 and the time starts running only from 1999 and the first defendant had also started asserting his right during the said period and the question of the plaintiff being in continuous, uninterrupted and unobjected possession for over the statutory period had not arisen?

9. The relationship between the parties, particularly, between the plaintiff and the first defendant is not in dispute. The first defendant is found to be the husband of the plaintiff's sister. The plaintiff has also not disputed that the first defendant is the owner of the extent of 74 cents in the suit property and that the first defendant had acquired the abovesaid extent in the suit property by way of a sale deed dated 05.02.1970 has not been controverted by the plaintiff. In fact, the abovesaid sale deed has been marked as Ex.A1. Now, according to the plaintiff, the first defendant orally sold the abovesaid extent of 74 cents in the suit property to him in the year 1984 for a sum of Rs.15,000/- and thereby surrendered the possession of the said extent in his favour and also handed over the title deed of the said extent Ex.A1 in his custody and accordingly, it is the case of the plaintiff that he has been enjoying the abovesaid extent as the absolute owner thereof by obtaining the patta, paying kists, etc., The abovesaid oral sale put forth by the plaintiff is seriously challenged by the first defendant and according to the first defendant, no such oral sale had been made by him in respect of the 74 cents in favour of the plaintiff during 1984 as claimed in the plaint and according to the first defendant, he had also not handed over the title deed of the abovesaid extent to the plaintiff as claimed in the plaint. It is stated that the plaintiff had stealthily obtained the sale deed from Ramamurthy, the brother of the plaintiff, to whom the title deed had been handed over by the first defendant.

10. The oral sale put forth by the plaintiff is stated to be for a sum of Rs.15,000/-. In such view of the matter, as rightly contended by the defendant's counsel, in the light of the decision reported in 1988(1) L.W 590 (James vs. H.Davidson), it is found that an oral sale of a tangible immovable property of the value of more than Rs.100/- is invalid in law. The same could also be gathered from the provisions contained in Section 54 of the Transfer of Properties Act. Accordingly, when the plea of oral sale projected by the plaintiff is found to be for a sum of Rs.15,000/-, as rightly contended, the abovesaid oral sale is found to be an invalid transaction and therefore, the claim of the plaintiff that since the date of oral sale, he has obtained the absolute ownership of the property, as such, cannot be legally sustained in any manner.

11. When the plea of oral sale put forth by the plaintiff is found to be not a valid transaction, the claim of the plaintiff

that he had been entrusted the possession of the extent of 74 cents by the first defendant following the oral sale also falls to the ground. Equally, the claim of the plaintiff that the title deed had been handed over to him by the first defendant following the oral sale also cannot be countenanced. Therefore, the case projected by the plaintiff that following the oral sale, he had enjoying the suit property as the full owner thereof, including the extent of 74 cents belonging to the first defendant, by obtaining the patta, paying kists, etc., cannot, at all, be countenanced. It is therefore, highly doubtful whether the patta projected by the plaintiff would have been validly obtained by him. According to the plaintiff, he claims to have obtained the patta based on the oral sale projected by him and when the abovesaid oral sale is found to be not legally valid, his further claim that by way of the same, he had obtained the patta and paying the kists in respect of the extent of the 74 cents, as such, cannot be legally countenanced in any manner. The plaintiff has not established that the first defendant has been put on notice about the mutation of the patta in his favour in respect of the extent of 74 cents in the suit property. In such view of the matter, the patta projected by the plaintiff and the kists receipts projected by the plaintiff for sustaining his claim of title to the suit property, cannot, at all, be accepted in any manner.

12. Knowing fully well that the oral sale put forth by him cannot have the legal approval, accordingly, it is found that the plaintiff has also come forward with the case that he has perfected his title to the suit property by way of the adverse possession on account of the long and continuous possession and enjoyment of the same. The abovesaid fact is stoutly challenged by the first defendant in particular.

13. Even the plaintiff has pleaded that, right from 1974 onwards, he is only the lessee of the suit property, i.e., the extent of 74 cents under the first defendant. When the oral sale put forth by him and said to have come into effect during 1984 is found to be an invalid transaction, it is evident that on the basis of the alleged invalid transaction, the plaintiff cannot claim to have acquired the absolute right to the suit property, particularly, to the extent of 74 cents. Therefore, on the oral sale being ignored or eschewed out of the scene, the obvious conclusion would be that the plaintiff continued to be in the occupation of the extent of 74 cents only as a lessee of the first defendant and not in the independent capacity of the same as the lawful owner thereof. In such view of the matter, the claim of the plaintiff that the patta and the kists receipts projected by him would exhibit his adverse title in respect of the 74 cents of land in the suit property cannot at all be countenanced. When the plaintiff has taken the plea of lessee qua the extent of 74 cents under the first defendant right from 1974 onwards and the abovesaid relationship between

the parties has not been pleaded or established to have come to an end and the abovesaid relationship could not have also been put to an end on the basis of the oral sale put forth by the plaintiff, as the plea of oral sale put forth by the plaintiff is an invalid transaction, in such view of the matter, the lessor and lessee relationship between the first defendant and the plaintiff would continue to operate and in such view of the matter, as rightly contended by the first defendant's counsel, taking advantage of the close relationship between the parties, it is found that the plaintiff, without putting the first defendant on notice, appears to have clandestinely secured the patta in his name and in such view of the matter, the patta projected by the plaintiff and the kists receipts projected by the plaintiff for sustaining the title to the suit property either on the basis of the oral sale or on the basis of the adverse possession cannot, at all, be countenanced in any manner and liable to be rejected in toto. The plaintiff having taken the plea of lessee in respect of the 74 cents under the first defendant and when the abovesaid status of the plaintiff has not been pleaded to have come to an end and the same could not have been put to an end by way of the alleged oral sale projected by the plaintiff, therefore, the lessor lessee relationship being in vogue between the parties, conversely, the plaintiff cannot be allowed to claim the title to the suit property, particularly, the extent of 74 cents by way of the adverse title.

14. As above noted, the plaintiff knowing fully well that he cannot plead and obtain the relief of declaration of title to the suit property on the basis of the oral sale, accordingly, he has come forward with the case by seeking the relief of declaration of title to the suit property on the basis of the adverse possession. In the light of the abovesaid position, when the plaintiff has claimed the relief of declaration of title to the suit property i.e. the extent of 74 cents based on the plea of adverse possession and urged the court to grant the said relief of declaration of title on the plea of adverse possession, it is found that on that score alone, the plaintiff's suit is legally unsustainable in the light of the decision of the Apex Court in Gurdwara Sahib vs. Gram Panchayat Village Sirthala and another, reported in (2014) 1 SCC 669. In the said decision, the Apex Court has held that the declaration of ownership of land, on the basis of the adverse possession, cannot be sought by the plaintiff, but, the claim of ownership by adverse possession can be made by way of defence when arrayed as defendant in the proceedings against him and on that determination, upheld the declinement of the decree to the plaintiff by way of adverse possession in the said case by the Trial Court and thus, it is found that when the plaintiff has come forward with the present suit claiming the relief of declaration to the suit property on the basis of adverse possession and when on that basis, the plaintiff is not entitled

to maintain the suit for the relief of declaration as outlined by the Apex Court in the abovesaid decision, it is seen that on the abovesaid factor alone, the plaintiff's suit is liable to be dismissed.

15. Furthermore, the abovesaid decision of the Apex Court has been subsequently, followed by the Apex Court in the decision in Dharampal (dead) through L.Rs. Vs. Punjab Wakf Board and others, reported in (2018) 11 SCC 449 and in the abovesaid decision also, the Apex Court has held that the declaration of ownership to the suit property sought by the plaintiff on the basis of the plea of adverse possession is not permissible and for coming to the said conclusion, the Apex Court has relied upon its decision in Gurdwara Sahib's case (cited supra). The above position of law has also been followed by me in the decision in S.K.Komarasamy Gounder vs. Soundari and others, reported in (2018) 2 MLJ 580, by holding that the plea of declaration of title to the suit property on the basis of the adverse possession, cannot be taken by the plaintiff as the abovesaid plea could be only used as a shield and not as a sword and accordingly, in the light of the abovesaid principles of law outlined by the Apex Court and in the other decision, it is found that the relief claimed by the plaintiff in the present case seeking the relief of declaration on the basis of the adverse possession is found to be not maintainable and on that score alone, the plaintiff's suit has to fail.

16. In the light of the abovesaid position of law, when the plaintiff, as a suitor, cannot seek the declaration of title to the extent of 74 cents of the suit property, as such, on the plea of adverse possession and the said plea of adverse title could only be taken as a shield and not as a sword in the light of the principles of law enunciated by the Apex Court in the decisions above referred to, in all, it is found that the claim of declaration of title to the suit property put forth by the plaintiff on the basis of the adverse possession cannot be legally sustained and the courts below, without considering the abovesaid position of law, is found to have totally erred in accepting the claim of title to the suit property projected by the plaintiff on the plea of adverse possession as the suitor.

17. In addition to that, when the documents projected by the plaintiff marked such as patta and kists receipts seen together, the suit having been laid by the plaintiff on 17.11.1999, even assuming for the sake of arguments that the plaintiff could obtain the relief of declaration of title to the suit property on the plea of adverse possession, considering the documents projected by the plaintiff, they not being continuous and consistent for a period of 12 years prior to the institution of the suit and when the plaintiff cannot be allowed to put forth the plea of oral sale for asserting a valid title to the suit property from 1984, and as the plaintiff's status as the lessee

of the suit property i.e. the extent of 74 cents has not been put to an end by the alleged oral sale, in such view of the matter, the plaintiff, having pleaded that the extent of 74 cents had been in his occupation as a lessee under the first defendant, cannot be allowed to take the inconsistent plea of adverse title to the same and in such view of the matter and furthermore, when the kists receipts projected by the plaintiff are not found to be continuous ranging for the period of 12 years or more and that apart, the kists receipts projected by the plaintiff are not found to be exclusively paid for the extent of 74 cents and when there is no dispute in respect of the plaintiff's ownership over the extent of 65 cents in the suit property, in such view of the matter, the kists receipts projected by the plaintiff would serve no purpose in holding that the plaintiff has been adversely enjoying the extent of 74 cents in the suit property as the full owner thereof by exhibiting animus possidenti to the knowledge of the first defendant, openly, continuously and uninterruptedly beyond the statutory period.

18. In the light of the above discussions, the determination of the courts below that the plaintiff is entitled to obtain the relief of declaration of title to the suit property on the plea of adverse possession is found to be not legally and factually sustainable and liable to be reversed in toto.

19. Knowing fully well that he cannot legally sustain the plea of adverse title in respect of the 74 cents, the plaintiff has also taken the third mode of claim of title to the said extent by putting forth the case that in the partition effected between him and his brothers on 20.10.1989, which partition deed has been marked as Ex.A29, it is pleaded that the first defendant was a consenting party to the same and he had also attested the same and according to the plaintiff, in the abovesaid partition, the suit property in entirety i.e. even the disputed extent of 74 cents, had been allotted to his share and accordingly, it is claimed by the plaintiff that the first defendant is estopped from challenging his right to the extent of 74 cents in the suit property and accordingly the case of the plaintiff should be accepted. Ex.A29 partition deed is dated 20.10.1989. If the plaintiff seeks the claim of title to the property in dispute i.e. the extent of 74 cents on the strength of Ex.A29 partition deed only, it is obvious that only thereafter, he could be said to have projected the adverse claim of title to the entire suit property from the inception of the abovesaid partition deed. Therefore, the suit having been laid on 17.11.1999, the claim of the plaintiff that he has prescribed title to the suit property by way of the adverse possession is found to be striking at him as even prior to the expiry of the period of 12 years from 20.10.1989, it is found that the first defendant has challenged the claim of title to the suit property put forth by the plaintiff on the plea of adverse possession.

Therefore, it is found that the claim of title to the suit property by the plaintiff put forth on the basis of Ex.A29 partition deed and put forth on the plea of the adverse possession are found to be mutually inconsistent and contradictory to each other and on that score alone, the plaintiff's case should be held to be unacceptable in toto.

20.As above noted, the plaintiff and the first defendant are closely related. Even the plaintiff has pleaded that he has been the lessee of the extent of 74 cents under the first defendant from 1974 onwards. The plaintiff has admitted that, it is only the first defendant, who has acquired title to the extent of 74 cents from Kuppusamy Reddiyar by way of Ex.A1 sale deed. When such is the factual position, to say that, the abovesaid extent of 74 cents had also come to be divided between the plaintiff and his brothers by way of Ex.A29 partition deed, as such, cannot be accepted in any manner. At the foremost, the plaintiff has not come forward as to on what basis the extent of 74 cents has been included as a subject matter in the partition effected amongst the brothers by way of Ex.A29. When the plaintiff and his brothers have no claim of semblance of right to the abovesaid 74 cents, in any manner, and on the other hand, when the suit property is admittedly belonging only to the first defendant by virtue of Ex.A1 sale deed and which fact is also known to the plaintiff as abovenoted, the claim of the plaintiff that, by way of Ex.A29 partition deed between him and his brothers, the extent of 74 cents had also been allotted to his share, as such, cannot be legally sustained in any manner. In this connection, the plaintiff cannot take advantage of the oral sale projected by him which is stated to have taken place in the year 1984. The oral sale is found to be legally unsustainable in toto and hence on that basis, the plaintiff cannot put forth the claim that the extent of 74 cents had been included as a subject matter in the partition deed marked as Ex.A29. As above noted, the plaintiff cannot legally maintain the plea of adverse possession to the extent of 74 cents as the suitor. Furthermore, on factual basis also, it has been found that the plaintiff has miserably failed to establish the plea of adverse title to the extent of 74 cents as the documents projected by him do not serve the said claim of the plaintiff. As above noted, the claim of adverse possession projected by the plaintiff is found to be mutually inconsistent with his claim of lessee of the said extent under the first defendant. Therefore, when the very basis of the inclusion of the extent of 74 cents as the subject matter in Ex.A29 partition deed has not been legally sustained by the plaintiff, to say that the first defendant has affirmed his title to the extent of 74 cents by signing the partition deed as an attestor, in my considered opinion, cannot, at all, be countenanced in any manner. By way of repetition, it has to be stressed that the plaintiff and the first defendant are closely related. In such view of the matter,

it is obvious that the first defendant would have been prevailed upon by the plaintiff and his brothers to sign the partition deed as an attester, considering the relationship between the parties. If really the extent of 74 cents had been included as the subject matter in Ex.A29 partition deed to the knowledge of the first defendant, definitely, he would not have subscribed to the said partition deed as an attesting witness. Therefore, merely because the first defendant had signed the said document as an attester, it cannot be imputed that the first defendant is the consenting party to the abovesaid transaction and accordingly, knowing the contents of the said document, he had attested the same as such. In this connection, the decision of our High Court reported in 100 L.W. 363 (K.Nagarathinam and another vs. K.Rajammal) is to be taken note of. In the abovesaid decision, it has been held that the fact whether the attester to a document had attested the same on fully understanding the particulars of the transaction, would all, depend upon the facts and circumstances of each case. Similarly in the decision reported in 2003 (1) CTC 745 (K.A.Selvanachi and another vs. Dr. S.R.Sekar and another), it has been held that the attestation of a document by one person does not, by itself, constitute the acceptance of the contents of such document on the part of the attester and the mere attestation does not impute knowledge of the contents so as to bind the attester and attestation does not imply that the attester had knowledge of the contents of documents and that he accedes and accepts the correctness of the contents of such document and further it has been held that to impute the knowledge of contents of the document on the part of the attester, there must be some evidence intrinsic in the document itself or extrinsic to show that the attester had the knowledge of such contents. The position of law being above, it is not possible to hold that, merely because the first defendant is the attester to Ex.A29 partition deed, he is deemed to have accepted the contents of the document after knowing the same and in this case, considering the close relationship between the parties and when the plaintiff has not established that the first defendant had been put on notice about the inclusion of the extent of 74 cents in Ex.A29 partition deed and the allotment of the same towards his share and after having knowledge of the such position, the first defendant had attested the partition deed, in such view of the matter, on the mere footing that the first defendant had signed the said document as a witness, in my considered opinion, would not hinder the first defendant in challenging the said document after coming to know of the contents and in such view of the matter, it is found that the first defendant has also put forth the claim that on being put on notice about the same in the year 1998, he had questioned the plaintiff and it is also stated that some document had come to be executed by the plaintiff in favour of the first defendant acknowledging his

title, however, as the document had been found to be not legally sustainable, it cannot be exhibited on the part of first defendant in the matter. Be that as it may, on the mere evidence of the other attestors to Ex.A29 partition deed, examined on the part of the plaintiff, we cannot construe that the first defendant had come forward to attest the said deed after knowing the contents of the same in entirety and in such view of the matter, considering the close acquaintance between the plaintiff and the other attestors to Ex.A29 partition deed examined as witnesses on the side of the plaintiff and considering the fact that the first defendant had been all along asserting his claim of title to the extent of 74 cents and not shown to have surrendered his right to the plaintiff, in any manner, and the revenue documents projected by the plaintiff would not confer any right on the part of the plaintiff to acquire full right to the extent of 74 cents, particularly, the said documents having not been established to have been mutated or entered in the name of the plaintiff after notice to the first defendant, in all, it is found that the contention of the plaintiff that the partition deed Ex.A29 would operate as estoppel on the part of the first defendant from claiming right against the plaintiff in respect of the 74 cents in the suit property, cannot, at all, be countenanced in any manner and the determination of the abovesaid point in favour of the plaintiff by the courts below are found to be totally unsustainable in law inasmuch as no acceptable and reliable evidence had been adduced on the part of the plaintiff for safely holding and determining that the first defendant had come forward to attest the said document after knowing the contents of the said document, particularly, the inclusion of the extent of 74 cents belonging to him as a subject matter of the partition deed and when as abovenoted, when the very basis of the inclusion of the extent of 74 cents in the partition has not been legally made out by the plaintiff, in all, it is found that the plaintiff had been clamouring one way or the other for grabbing the extent of 74 cents from the first defendant and accordingly it is found that he has been projecting various pleas for snatching the said property from the first defendant one way or the other, however, unable to sustain the said pleas projected by him, as above discussed. In such view of the matter, the arguments put forth by the plaintiff's counsel that the plaintiff's case should be accepted on the plea of attestation to Ex.A29 partition deed on the part of the first defendant, cannot be accepted in toto.

21. In support of his contentions, the plaintiff's counsel relied upon the following decisions.

1. (2019) 3 MLJ 29 (SC) : LNIND 2019 SC 126 (Poona Ram vs. Moti Ram (D) Th. Lrs and others)
2. (2011) 6 MLJ 743 (Subramaniyan (died) and others vs. Venkatachalam Pillai and another)
3. (1993) 4 Supreme Court cases 375 (Parsinni

- (dead) by Lrs and others vs. Sukhi and others)
4. (2003) 1 MLJ 21 (Lakshmana Gounder vs. The Special Deputy Collector (LA), Salem Steel Plant, Salem and others)

Similarly, the counsel for the defendant in support of his contentions placed reliance upon the following decisions:

1. 100 L.W.1028 (P.Subbiah Dass (died) & ors vs. Christudoss Shanmugasundaram (died) & anr.)
2. (2008) 12 Supreme Court cases 796 (Kashmir Singh vs. Harnam Singh and another)
3. 2012 5 L.W. 618 (Sri Ahobila Mutt Jeevar Srivan Sadagopa Sri Narayan Yathendra Maha Desika Swamigal, rep. by their power agent R.Krishnaswamy, Srirangam vs. Sethubava Chatram Haridranathi, and Executive Officer of Sri Chokkanathaswamy Devasthanam, Mannargudi & another).
4. 2011 (3) MLJ 25 : 2010 (36) R.C.R (civil) 463 (Balamurugan vs. Arumugam)
5. 1999 3 L.W 727 (Kammavar Sangam through its secretary R.Krishnasamy vs. Mani Janagarajan)
6. 48 L.W. 959 (Seeram Narayanaswamy Naidu vs. Kethavarapu Lakshmi Narasimha Rao and another)
7. 2001 (2) HLR 63 (Cherichi vs. Ittianam)
8. AIR 2017 Supreme Court 2612 (Alamelu Ammal and another vs.S.Rani and others)
9. (1998) 1 MLJ 601 (Singaravelu Mudaliar and 5 ors vs. Lakshmi Ammal)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

22. In the light of the abovesaid discussions, as rightly put forth by the defendant's counsel, the plaintiff is found to have taken inconsistent pleas for claiming title to the suit property, firstly, under oral sale, secondly, by adverse possession and as a last resort, under Ex.A29 partition deed and the courts below, without analysing the abovesaid pleas both factualwise as well as legalwise and failing to note that the plaintiff has miserably failed to establish the abovesaid pleas in all aspects both factually as well as legally, flawed in accepting the plaintiff's case by erroneously assessing the materials placed on record and in such view of the matter, the determination of the courts below that the plaintiff has acquired title to the suit property by way of adverse possession and that the first defendant is estopped from challenging the title to the plaintiff by way of attestation to Ex.A29 partition deed are all found to be decided on the basis of the wrong appreciation of the materials placed on record and by furnishing unacceptable reasons and conclusions and in such view of the

matter, the reasonings and the conclusions of the courts below suffering from total perversity and also found to be illogical and irrational in all aspects, in all, the judgment and decree of the courts below are liable to be set aside. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendants and against the plaintiff.

23. In conclusion, the judgment and decree dated 25.04.2003 passed in A.S.No.123 of 2002 and the Cross Appeal on the file of the Principal District Court, Villupuram, confirming/modifying the judgment and decree dated 05.03.2002 passed in O.S.No.519 of 1999 on the file of the Additional District Munsif Court, Villupuram are set aside and resultantly, the suit laid by the plaintiff in O.S.No.519 of 1999 on the file of the Additional District Munsif Court, Villupuram is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

bga

1. Principal District Court, Villupuram
2. Additional District Munsif Court, Villupuram

Copy to

The Section Officer, V.R. Section, High Court, Madras.

+2cc to Mr.D.Rajagopal, Advocate SR.No.37488

+1cc to Mr.C.V.Ramachandramurthy, Advocate SR.No.37488

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S.A.No.1836 of 2003

PPA(CO)
GMY(03/10/2019)