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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2019

PRONOUNCED ON : 12.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.801 of 2005
and
C.M.P.No.11222 of 2005

1. Jayavel
2. Settu
3. Dhanusu Ammal

...Appellants

Vs.

1. Manikandan
2. Elumalai
(RR1 & 2 are declared majors
and their mother was discharged
from Guardianship as per order
in memo dated 07.02.19)

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.12.2004 passed in A.S.No.10 of 2004 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 24.06.2002 passed in O.S.No.140 of 2001 on the file of the Principal District Munsif Court, Tirukovilur.

For Appellants : Mr.S.Parthasarathy, Senior counsel
for M/s.Sarvabhauman Associates

For Respondents: Mrs.V.Srimathi

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 30.12.2004 passed in A.S.No.10 of 2004 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 24.06.2002 passed in O.S.No.140 of 2001 on the file of the Principal District Munsif Court, Tirukovilur.



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2. The second appeal has been admitted on the following substantial questions of law:

"(i) When the respondents had not established their right regarding the suit 'C' schedule by oral and documentary evidence, whether decree for declaration and injunction can be granted in their favour?

(ii) When the admissions of Pws.1 to 4 would clearly defeat their claim, regarding the suit properties, whether the Courts below are correct in law in not considering the same, especially when it is well settled that the admission of the opposite party is the best evidence in law?

(iii) Whether the Courts below are justified in granting decree in favour of the respondents by picking holes in the defence raised by the appellants in contravention of the axiomatic principles in law?"

3. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

4. Considering the scope of the issues involved between the parties in the second appeal as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

5. The suit has been laid by the plaintiffs for the reliefs of declaration and permanent injunction in respect of the plaint 'C' Schedule property. To show the relationship between the parties, the plaintiffs have furnished the genealogy in the plaint 'A' Schedule and from the same, it is seen that Narayanasamy Udayar had five sons namely Arunachala Udayar, Motayyapa Udayar, Ramasamy Udayar, Rangappa Udayar and Velaiyappa Udayar. Arunachala Udayar died leaving behind his son Ramalinga Udayar. Motayyapa Udayar died leaving behind his son Gopal Udayar. Ramasamy Udayar died leaving behind his son Vengadesan Udayar. Velaiyappa Udayar died leaving behind his son Natraja Udayar. Rangappa Udayar died leaving behind his three sons namely Chockalingam Udayar, Venugopal Udayar and Appavu Udayar. The plaintiffs 1 and 2 are the sons of the abovesaid Chockalingam. The first defendant Jeyavel is the son of Natraja Udayar and the second defendant Settu is the son of the first defendant and the third defendant Thanusuammal is the wife of the first defendant. Claiming that Arunachala Udayar and his four brothers own various ancestral properties including the extent of 9 acres and 42 cents in Resurvey No.53/3 of Kolapparai



village, according to the plaintiffs, the parties had effected partition by way of a partition deed dated 24.01.1962 and thereby according to the plaintiffs, the plaint 'A' Schedule property described in the abovesaid partition deed and the other properties not covered in the present suit had been allotted to Ramalinga Udayar son of Arunachala Udayar, Gopal Udayar son of Motayyapa Udayar and minor Venkatesan represented by his mother Neelambal, son of Ramasamy Udayar and the plaint 'B' Schedule property described therein and the other properties not covered in the suit had been allotted to Rangappa Udayar son of Narayanasamy Udayar and Natraja Udayar son of Velaiyappa Udayar. Accordingly, it is pleaded by the plaintiffs that the plaint 'B' Schedule property comprising of an extent of 9 acres and 42 cents in Resurvey No.53/3 had been equally allotted to Rangappa Udayar and Natraja Udayar and it is stated that though by way of partition deed, they had divided the extent of 9 acres and 42 cents, in the partition deed, instead of writing the abovesaid extent, it has been erroneously written as 6 acres and 42 cents and thereafter, according to the plaintiffs, Rangappa Udayar and Natraja Udayar had been enjoying the extent of 9 acres and 42 cents and subsequently, effected the oral partition with reference to the same and in the said oral partition, the northern half share of the abovesaid extent had been allotted to Rangappa Udayar and the southern half share in the abovesaid extent had been allotted to Natraja Udayar and the respective shares had been described as plaint 'C' and 'D' Schedule properties and it is the further case of the plaintiffs that Natraja Udayar had been enjoying his share described in the plaint 'D' Schedule and thereafter, settled the same by way of settlement deed dated 29.03.1993, in favour of his grand son, the second defendant and also stated that in the abovesaid settlement deed, instead of describing the property as lying in the southern side of the total extent of 9 acres and 42 cents, it has been wrongly described as lying in the eastern side comprising of an extent of 4 acres and 61 cents. However, Natraja Udayar only had been enjoying the southern extent and Rangappa Udayar had been enjoying the northern extent described in the plaint 'C' Schedule and after the demise of Rangappa Udayar, his three sons inherited the same and after enjoyment, in the oral partition effected amongst them, the plaint 'C' Schedule had been allotted to the share of Chockalingam Udayar and thereafter, Chockalingam Udayar had executed a settlement deed dated 03.12.1989 in favour of his sons namely the plaintiffs 1 and 2 settling the plaint 'C' Schedule property in their favour and thus, according to the plaintiffs they had derived the title to the plaint 'C' Schedule property and also perfected the title to the same by way of adverse possession on account of long and continuous enjoyment beyond the statutory period to the knowledge of the defendants. Thus, it is pleaded by the plaintiffs that the defendants have no right, title or



interest in respect of the plaint 'C' Schedule property and on the other hand, on account of enmity, inasmuch as the defendants attempted to interfere with their possession and enjoyment of the plaint 'C' Schedule property it is stated by the plaintiffs that they had been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiffs' suit denying all the allegations contained in the plaint in toto other than admitting the genealogy table described in the plaint 'A' Schedule and according to the defendants, the total extent of 9 acres and 42 cents in Resurvey No.53/3 originally belonged to Ponnumudi Udayar son of Ramasamy Udayar ancestrally and the same has been in possession and enjoyment and stated that Resurvey no.53/3 corresponds to old Survey No. 51 D, E, F1, F2, 52 and stated that Ponnumudi Udayar executed a mortgage deed dated 29.04.1913 of an extent of 2.14 cents in Survey No.52 in favour of Arunachala Udayar, son of Narayanasamy Udayar and after the demise of Ponnumudi Udayar, his properties had been inherited by his two wives namely Ammani Ammal and Amaravati Amal and with a view to discharge the mortgage debt effected by Ponnumudi Udayar, they had alienated the extent of 2 acres 42 cents in Survey No.52 to Arunachala Udayar by way of a sale deed dated 16.05.1919 and by way of the abovesaid sale transaction Arunachala Udayar had acquired an extent of 2 acres 14 cents in Survey No.52 of the suit village and further according to the defendants Arunachala Udayar had purchased an extent of 2 acres and 91 cents in Survey No.51 and an extent of 1 acre and 18 cents in Survey No.51 by way of a sale deed executed by Lakshmana Chettiyar on 26.04.1919 and thus, according to the defendants, within the total extent of 9 acres and 42 cents in Resurvey No.53/3, Arunachala Udayar had entitlement only to an extent of 6 acres and 28 cents through the abovesaid sale transactions and the remaining extent of 3 acres and 14 cents belonged to Ponnumudi Udayar and after the demise of Ponnumudi Udayar, his wives inherited the same and it is stated that after the demise of Ammani Ammal, his daughter Periyammal inherited the abovesaid extent of 3 acres and 14 cents and Periyammal is the wife of Velaiyappa Udayar and therefore, according to the defendants, with reference to the abovesaid extent of 3 acres and 14 cents in Resurvey No.53/3, Arunachala Udayar and his brothers cannot claim any right on the footing that the same belonged to them ancestrally and thus, according to them, the case built up by the plaintiffs that the total extent of 9 acres and 42 cents in Resurvey No.53/3 belonged to Arunachala Udayar ancestrally is false and also disputed that Rangappa Udayar and Natraja Udayar had been enjoying the northern half share and southern half share of the extent of 9 acres and 42 cents in Resurvey No.53/3 as put forth by the plaintiffs and disputed the case of the



plaintiffs that in the subsequent settlement deed effected by Natraja Udayar, the lie of the property is said to have been wrongly described as located on the eastern side. Furthermore, according to the defendants, when Arunachala Udayar had derived an extent of only 6 acres and 28 cents through the sale transactions as abovestated, the extent shown in the partition deed dated 24.01.1962 as 6 acres and 42 cents is also not correct and according to the defendants in the abovesaid partition deed, the excess extent of 0.14 cents had been included without any basis or title and thereby, disputed the claim of the plaintiffs that they had title to the plaint 'C' Schedule property having derived the same by way of a settlement deed said to have been executed by their father Chockalingam and challenged their case of title, possession and enjoyment of the said property and hence, according to the defendants, the plaintiffs are not entitled to seek the reliefs prayed for.

7. In support of the plaintiffs' case PWs.1 to 4 were examined and Exs.A1 to A14 were marked and on the side of the defendants, Dws.1 to 3 were examined and Exs.B1 to B18 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiffs' case and thereby granted the reliefs in their favour as prayed for. Impugning the same, the present second appeal had been preferred.

9. As abovenoted, the relationship between the parties is not in dispute. It is found that the plaintiffs had mainly come forward with the case seeking the reliefs of declaration and permanent injunction as regards the plaint 'C' Schedule property on the footing that the plaint 'C' Schedule and the plaint 'B' Schedule property totally comprising of an extent of 9 acres and 42 cents in Resurvey No.53/3 belonged to Arunachala Udayar and his four brothers ancestrally. This is how the plaintiffs had traced the title to the abovesaid property from Arunachala Udayar and his brothers. Even in the partition deed dated 24.01.1962 marked as Ex-A1, the extent of 9 acres and 42 cents in Resurvey No.53/3 has been described as belonging to Arunachala Udayar and his brothers ancestrally. However, the plaintiffs had not come forward with the clear case as to on what basis or through which ancestors Arunachala Udayar and his brothers had derived the title to the abovesaid extent of 9 acres and 42 cents in Resurvey No.53/3 ancestrally. Other than vaguely pleading that the above said extent belonged to them ancestrally, the plaintiffs have not endeavoured to trace the title of Arunachala Udayar's ancestors with reference to the same. In this connection, the plaintiffs mother Cheetai Ammal



was examined as PW1. During the course of her evidence and in the course of the cross-examination she has clearly admitted that she does not know Arunachala Udayar and his brothers directly and also admitted that she does not know how the plaint 'B' Schedule property belonged to Arunachala Udayar and others and such being the evidence of PW1, it is found that her evidence would not be the basis for holding that Arunachala Udayar and his brothers had the title to an extent of 9 acres and 42 cents in Resurvey No.53/3. To evidence that the abovesaid extent of 9 acres and 42 cents in Resurvey No.53/3 had been enjoyed by Arunachala Udayar and his brothers, absolutely there is no proof placed on the part of the plaintiffs. The plaintiffs have examined their paternal uncle Venugopal as PW2. PW2, during the course of the cross-examination, would admit that the extent of 9 acres and 42 cents in Resurvey No.53/3 originally belonged to Ponnumudi Udayar and out of the same, he does not know the extent of the property purchased by Arunachala Udayar in the said survey number and he has not seen the sale deeds and according to him, he has specifically stated that the plaint 'B' Schedule property belonged to Arunachala Udayar only by way of purchase through the sale deed. Therefore, PW2 has given up the case projected by the plaintiffs in the plaint that the abovesaid extent of 9 acres and 42 cents had been owned by Arunachala Udayar and others ancestrally. According to him the plaint 'B' Schedule property is owned by Arunachala Udayar only by way of purchase. However, he has not come out with the clear case as to what is the actual extent of the property acquired by Arunachala Udayar in Resurvey No.53/3. He has only pleaded ignorance with reference to the said case and therefore, from the evidence of PW2, we cannot safely conclude that Arunachala Udayar and others had owned the total extent of 9 acres and 42 cents in Resurvey No.53/3 ancestrally. The plaintiffs' father Chockalingam Udayar had been examined as PW3 and during the course of the cross-examination, he has clearly admitted that the plaint 'B' Schedule property belonged to his grandfather Arunachala Udayar only by way of purchase. However, admitted that he had not seen the sale deeds in the name of Arunachala Udayar and also admitted that he does not know the extent of properties purchased by Arunachala Udayar. He has further admitted that Periyammal is the daughter of Ammani ammal and Periyammal married his paternal uncle Velaiyappa Udayar and also admitted that after the demise of Periyammal, her property would devolve upon her son Natraja Udayar. During the course of his further evidence, he has also admitted that he does not know as to how the plaint 'B' Schedule property had been derived by Arunachala Udayar. However, he would assert that the said property belonged to by Arunachala Udayar only by way of purchase. In the light of the abovesaid evidence of PW3, it is seen that he has also given go by to the plaintiffs case that the extent of 9 acres and 42 cents in Resurvey No.53/3 belonged



to Arunachala Udayar and his brothers ancestrally.

10. PW2 and PW3's specific admission is that the plaint 'B' Schedule property had been derived by Arunachala Udayar only by way of purchase and though both PW2 and PW3 have clearly admitted that the plaint 'B' Schedule property had been acquired by Arunachala Udayar only by way of purchase, however, would plead ignorance about the sale transactions through which Arunachala Udayar acquired the same, in such view of the matter, the case built up by the plaintiffs for tracing their title to the plaint 'B' Schedule property as belonging to Arunachala Udayar and others ancestrally goes out and on the other hand it is seen that Arunachala Udayar had acquired title to the extent of 9 acres and 42 cents in Resurvey No.53/3 only by way of purchase and in such view of the matter, the plaintiffs should have come forward with necessary proof as to what extent was acquired by Arunachala Udayar in the abovesaid survey number for showing his actual entitlement of property in the abovesaid suit survey number. On the other hand, as above noted PWs.1 to 3 have pleaded total ignorance about the sale transactions through which Arunachala Udayar had acquired the properties comprised in Resurvey No.53/3 and on the other hand, from the documents projected by the defendants as Exs-B1 to B3, it is found that of the total extent of 9 acres and 42 cents in Resurvey No.53/3, Arunachala Udayar acquired only an extent of 6.28 cents and not more than that.

11. It is the specific case of the defendants that the total extent of 9 acres and 42 cents in Resurvey No.53/3 originally belonged to Ponnumudi Udayar and the parties are not in issue that the old Survey Nos.51 D, E, F1, F2 and 52 correspond to Resurvey No.53/3. Accordingly, it is seen that Ponnumudi Udayar who owns the extent of 9 acres and 42 cents in Resurvey No.53/3 had mortgaged an extent of 2.14 cents in old Survey No.52 in favour of Arunachala Udayar by way of a mortgage deed dated 29.04.1913, which document has come to be marked as Ex-B1 and by way of the same, it is made out by the defendants that inasmuch as the property comprised in Resurvey No.53/3 had been owned by Ponnumudi Udayar and he had by way of Ex-B1 mortgage deed, mortgaged an extent of 2.14 cents in favour of Arunachala Udayar. According to the defendants, Ponnumudi Udayar had two wives namely Ammaniammal and Amaravathi Ammal. It is their further case that after the demise of Ponnumudi Udayar, his properties had been derived by his abovesaid two wives. From the materials placed on record, it is seen that his abovesaid two wives with a view to discharge the mortgage debt, had alienated an extent of 2.14 cents in old Survey No.52 in favour of Arunachala Udayar by way a sale deed dated 16.04.1919 which document has come to be marked as Ex-B2. On a perusal of the recitals contained in Ex-B2, it is seen that with a view to



discharge the mortgage debt made by way of Ex-B1 transaction, they had chosen to alienate the abovesaid extent in favour of Arunachala Udayar and thus, it is found that by way of Ex-B2 sale deed Arunachala Udayar had acquired the extent of 2.14 cents in old Survey No.52 which corresponds to Resurvey No.53/3.

12. Further, according to the defendants, Arunachala Udayar had acquired an extent of 2.96 cents and 1.18 cents in old Survey No.51D,E by way of the sale transaction dated 26.04.1919 and thus, it is seen that by way of Exs-B1 to B3 transactions, particularly Exs-B2 and B3 sale transactions, Arunachala Udayar had acquired the total extent of 6.28 cents in old Survey Nos.51 and 52 which correspond to Resurvey No.53/3. As above noted as per the admission of PW2 and PW3, the plaint 'B' Schedule property is derived by Arunachala Udayar only by way of purchase. The plaint 'B' Schedule property comprised of the total extent of 9 acres and 42 cents in Resurvey No.53/3. When the plaintiffs have failed to establish that Arunachala Udayar had acquired the plaint 'B' Schedule property ancestrally as above pointed out and on the other hand, the plaintiffs' witnesses PW2 and PW3 have clearly admitted that the plaint 'B' Schedule property had been acquired by Arunachala Udayar only by way of purchase and when as could be seen from the materials placed on record, particularly, Exs-B2 and B3 sale transactions, Arunachala Udayar had in toto acquired an extent of only 6 acres and 28 cents in Resurvey No.53/3 and not more than that and with reference to the remaining extent of 3 acres and 14 cents, there is no proof placed on the part of the plaintiffs that the same belonged to Arunachala Udayar either ancestrally or by way of purchase and also no proof placed on the part of the plaintiffs that the said extent of 3 acres and 14 cents had been enjoyed by Arunachala Udayar and others in any manner, in such view of the matter, as rightly putforth by the defendants' counsel other than the extent of 6 acres and 28 cents in Resurvey No.53/3, the plaintiffs or their ancestors would not be entitled to lay any claim of title to the remaining extent of 3 acres and 14 cents in the said Survey Number. Accordingly, it is seen that in the partition deed dated 24.01.1962, which has been marked as Ex-A1 inasmuch as Arunachala Udayar had owned only an extent of 6 acres and 28 cents in Resurvey No.53/3 while allotting the said property to Rangappa Udayar and Natraja Udayar son of Velaiyappa Udayar, the said extent only should have been allotted to them and on the other hand, therein the extent had been wrongly mentioned as 6 acres and 42 cents instead of 6 acres and 28 cents. Therefore, as rightly putforth by the defendants counsel in Ex-A1 partition deed, the excess extent of 0.14 cents had been wrongly included without any proof that the same is owned by Arunachala Udayar and others ancestrally or by way of purchase.



13. In the light of the above position, the claim of the plaintiffs that the extent in Ex-A1 partition deed had been wrongly mentioned as 6 acres and 42 cents instead of 9 acres and 42 cents, as such cannot be believed or accepted. Particularly when the plaintiffs have failed to establish that Arunachala Udayar had the entitlement to the extent of 3 acres and 14 cents in Resurvey No.53/3 as above noted and furthermore, as rightly put forth by the defendants counsel, the extent which should have been mentioned in the Ex-A1 partition deed should be only 6 acres and 28 cents and not 6 acres and 42 cents, therefore, the case projected by the plaintiffs that following Ex-A1 partition deed dated 24.01.1962, Rangappa Udayar and Natraja Udayar had been enjoying the extent of 9 acres and 42 cents in Resurvey No.53/3 and in the oral partition effected amongst themselves subsequently Rangappa Udayar had been allotted the northern half share described in the plaint 'C' Schedule property and Natraja Udayar had been allotted to the southern half share described in the plaint 'D' Schedule property, as such, cannot be accepted. When Rangappa Udayar and Natraja Udayar together are not shown to be entitled to the extent of 9 acres and 42 cents by way of Ex-A1 partition deed, it is seen that the abovesaid case of oral partition put forth by the plaintiffs as regards the division of the total extent of 9 acres and 42 cents between Rangappa Udayar and Natraja Udayar cannot be believed and accepted and in such view of the matter, the further case projected by the plaintiffs that their father had settled the plaint 'C' Schedule property in their favour by way of settlement deed dated 03.12.1999 also cannot be accepted in any manner.

14. As above noted, according to the defendants, the extent of 3 acres and 14 cents in Resurvey No.53/3 belonged only to Ponnumudi Udayar and the same had been derived by his two wives, after his demise and after the death of Ammaniammal, her daughter Periyammal had derived the same. It is not in dispute that Periyammal is the wife of Velaiyappa Udayar and thus, it is seen that the property of Periyammal would devolve upon her son Natraja Udayar, the father of the first defendant and accordingly, it is seen that as put forth by the defendants, in the preponderance of probabilities, out of the total extent of 6 acres and 28 cents belonging to Arunachala Udayar and others, by way of Ex-A1 partition deed, it is found that Rangappa Udayar would have derived only an extent of 3 acres and 14 cents and Natraja Udayar would have derived an extent of 3 acres and 14 cents, the remaining 3 acres and 14 cents owned by Ponnumudi Udayar and derived by Periyammal Udayar and Natraja Udayar through him, accordingly, it is seen that it is only Natraja Udayar who would acquire the said extent of 3 acres and 14 cents along with the other extent of 3 acres and 14 cents derived by him by way of Ex-A1 partition deed and thus, it is seen that it



is only Arunachala Udayar and Natraja Udayar who would be the owners of the total extent of 9 acres and 42 cents in Resurvey No.53/3. This could also be gathered from the patta projected in the matter marked as Ex-B7.

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15. No doubt, the defendants have not clearly established that the remaining extent of 3 acres and 14 cents in Resurvey No.53/3 belonged to Ponnumudi Udayar and through him, the first defendant's father Natraja Udayar had acquired the said extent but that would not in any manner entitle the plaintiffs to claim that the plaint 'B' Schedule property originally belonged to Arunachala Udayar and others ancestrally. When the plaintiffs have laid the suit against the defendants seeking the specific reliefs on a certain set of facts and when the same had been repudiated by the defendants by one way or the other, particularly, challenging the entitlement of Arunachala Udayar to the entire extent of 9 acres and 42 cents described in the plaint 'B' Schedule and when the plaintiffs' witnesses have given go by to the case of the plaintiffs that the extent of 9 acres and 42 cents described in the plaint 'B' Schedule property belonged to Arunachala Udayar ancestrally and on the other hand, they would admit that only by way of purchase, Arunachala Udayar had acquired the same, however, the plaintiffs having failed to place the sale deeds in the name of Arunachala Udayar pertaining to the same and on the other hand from the sale transactions projected by the defendants and marked as Exs-B2 and B3 when it is found that out of the total extent of 9 acres and 42 cents, Arunachala Udayar had acquired only an extent of 6 acres and 28 cents and not more than that, even on the footing that the defendants had failed to establish that the remaining extent of 3 acres and 14 cents belonged to Ponnumudi Udayar, that would not automatically lead to the conclusion that it is only Arunachala Udayar who had owned the said extent also ancestrally and thereby, the plaintiffs cannot be allowed to seek the reliefs as prayed for as regards the plaint 'C' Schedule property as putforth by them in the plaint. When the plaintiffs seek title to the plaint 'C' Schedule property by tracing the title to the same through Arunachala Udayar and others and as above discussed, when the plaintiffs have failed to establish their case as having traced their title to the plaint 'C' Schedule property through Arunachala Udayar by one way or the other, in such view of the matter, as rightly putforth by the defendants' counsel, the plaintiffs cannot be allowed to pick holes in the defence version and thereby endeavour to succeed in their case without establishing the entitlement of their ancestors to the extent of 9 acres and 42 cents in Resurvey No.53/3. Therefore, as rightly putforth by the defendants' counsel when the plaintiffs have failed to establish their right regarding the plaint 'B' Schedule property by acceptable oral and documentary evidence as well as their possession and



enjoyment of the same, the Courts below are found to have erred in granting the reliefs of declaration and permanent injunction in respect of the suit property in favour of the plaintiffs. From the evidence of PW1 to PW3 in particular, when it is seen that they had given a go by to the plaintiffs' case regarding their trace of title to the plaint 'B' schedule property from Arunachala Udayar and also not established the same by placing acceptable and reliable materials, the Courts below are found to have not appreciated the same in the proper perspective particularly, failing to note that only an extent of 6 acres and 28 cents had been derived by Arunachala Udayar in Resurvey No.53/3 by way of purchase and he does not have the entitlement to the entire extent of 9 acres and 42 cents in the abovesaid survey number. As rightly pointed out by the defendants' counsel, the Courts below instead of assessing the plaintiffs' case based on the materials projected by them and particularly when the materials placed on record would go to show that Arunachala Udayar does not have title to the entire extent of 9 acres and 42 cents in Resurvey No.53/3 and instead of drawing adverse inference against the plaintiffs with reference to the same, endeavoured to pick holes in the defence version and on that footing, proceeded to uphold the plaintiffs' case without there being any proof placed on the part of the plaintiffs to establish their valid claim of title to the plaint 'C' Schedule property as put forth by them.

16. In the light of the abovesaid discussions, the judgment and decree of the Courts below upholding the plaintiffs claim of title, possession and enjoyment of the plaint 'C' Schedule property cannot be sustained in the eyes of law.

17. The defendants' counsel in support of his contentions placed reliance upon the decisions reported in (2014) 2 SCC 269, Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others and the judgment of this Court dated 01.08.2018 passed in S.A.No.321 of 2005. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

18. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

For the reasons aforesaid, the judgment and decree dated 30.12.2004 passed in A.S.No.10 of 2004 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 24.06.2002 passed in O.S.No.140 of 2001 on the file of the Principal District Munsif Court, Tirukovilur are set aside and resultantly, the suit laid by the



plaintiffs in O.S.No.140 of 2001 is dismissed with costs. Consequently the second appeal is allowed with costs. Connected miscellaneous petition, if any, is closed.

nsd/mfa

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge,
Villupuram.

2. The Principal District Munsif Judge,
Tirukovilur.

+1cc to M/s.Sarvabhauman Associates, Advocate, SR.No.24268

+1cc to Mr.V.Raghavachari, Advocate, SR.No.22828

S.A.No.801 of 2005

Kak(06/08/2019)