

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 15.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.901 of 2005

1.Periannan (deceased)
2.Singaram
3.Panneerselvam
4.Natarajan
5.Thatchinamoorthy Appellants/Appellants/Defendants

(Appellants 2 to 5 are recorded
as LRs of the deceased 1st appellant
vide order of Court
dated 12.03.2019 made in S.A.No.901/2005
as per memo dated 12.03.2019 is recorded.)

Vs.

Saraswathi Respondent/Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 31.03.2005 passed in A.S.No.92 of 2004 on the file of the Subordinate Court, Mettur, confirming the judgement and decree dated 26.10.2004 passed in O.S.No.295 of 2000 on the file of the District Munsif's Court, Mettur.

For Appellants : Mr.Mr.R.Subramanian
for Ms.R.Meenal

For Respondent : Mr.J.Ramakrishnan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.03.2005 passed in A.S.No.92 of 2004 on the file of the Subordinate Court, Mettur, confirming the judgement and decree dated 26.10.2004 passed in O.S.No.295 of 2000 on the file of the District Munsif's Court, Mettur.

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

3.Suit for Permanent Injunction.

4.The case of the plaintiff, in brief, is that she had purchased the suit properties by virtue of the two registered sale deeds dated 20.03.1980 and 14.03.1984 and thence from, enjoying the suit properties by retaining the same in her possession and enjoyment and recognising her possession and enjoyment of the suit properties, the Government had also issued a patta in favour of the plaintiff on 24.06.1984 in patta No.208 and it is only the plaintiff, who is paying the kist for the suit properties and the adangal extract also depict the name of the plaintiff as the cultivator of the suit properties and thus, the suit properties are in her exclusive possession and enjoyment and other than the plaintiff, no one including the defendants have any right, title or interest in respect of the suit properties. While so, the defendants, who are having their lands nearby the suit properties, having got no manner of right and title to the suit properties, falling in their efforts to acquire the portion of the suit properties at a low price as the same was refused by the plaintiff and thereby, are attempting to trespass into the suit properties to form a pathway on the southern end of survey No.307/4D1, however, the plaintiff has prevented the abovesaid unlawful acts of the defendants with the help of the neighbours and elders of the village and the acts of the defendants continue to persist and thereby, they are attempting to disturb the possession and enjoyment of the plaintiff in respect of the suit properties, particularly, they are endeavouring to create a pathway in survey No.307/4D1, hence according to the plaintiff, she has been necessitated to lay the suit for the relief of permanent injunction.

5.The case of the defendants is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is false to state that the plaintiff has purchased the suit properties in entirety covered under patta No.208 as put forth in the plaint and according to them, one Valliammal wife of Soligounder is a joint pattadhar in respect of survey No.307/4D1 and Valliammal, after retaining 4 cents of land in the abovesaid survey number for the purpose of pathway, sold the remaining extent of the properties in the abovesaid survey number to the plaintiff and suppressing the abovesaid facts, the plaintiff had obtained the patta in respect of the entire extent available in survey No.307/4D1 by excluding Valliammal and Valliammal, thereby, preferred an application before the Tahsildar, Mettur for including her name in the patta and her name was subsequently jointly recorded in patta No.208, as per the order dated 27.07.1992 and accordingly, the revenue records also depict the name of Valliammal as the joint title holder in respect of survey No.307/4D1 and therefore, the claim of the plaintiff that she is in the exclusive possession and enjoyment of the properties comprised in survey No.307/4D1

is false. On the other hand, on the southern extremity of the abovesaid survey, there is already a cart track in existence over an extent of 4 cents of land and therefore, the claim of the plaintiff that the defendants are attempting to create a new pathway in the southern extremity of survey No.307/4D1 is false and put forth for inventing a cause of action falsely and the plaintiff's vendor Valliammal possessed 2.73 acres in Old survey No.307/4 as per the sale deed of the year 1959 and after selling the lands to the plaintiff in survey No.307/4D1, she had retained 4 cents of land and subsequently, Valliammal and her legal heirs had executed a General Power of Attorney dated 13.03.1996 in favour of one Somasundaram in respect of 4 cents of land and the power of attorney holder on 19.06.2000 alienated the 4 cents of land in survey No.307/4D1 to the second defendant within the specific boundaries and since then, it is only the second defendant, who is in possession and enjoyment of the 4 cents of land in the abovesaid survey number and therefore, the plaintiff is not entitled to seek the relief of permanent injunction with reference to the extent of 4 cents in survey No.307/4D1, which is in the possession and enjoyment of the second defendant and furthermore, the plaintiff, without seeking the relief of declaration of title, is not entitled to lay the suit simplicitor for permanent injunction and on the above ground alone, the plaintiff's suit is not maintainable and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWS1 & 2 were examined and Exs.A1 to A24 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B6 were marked.

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

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

1. Whether in law have not the Courts below erred in overlooking that suit for bare injunction based on title is not maintainable when the title is disputed by the defendants?

2. Whether in law are not the courts below wrong in decreeing the suit in spite of plaintiff's admission in evidence that she was not in possession of only 0.48 cents?

3. Whether in law have not the courts below omitted to see that Ex.B5 joint patta stands in the name of plaintiff and defendants' vendor and no injunction can be granted against co-owner?"

9. Though the plaintiff has laid the suit against the defendants claiming the relief of permanent injunction in respect of the suit properties as described in the plaint, on a perusal of the plaint averments and the averments contained in the written statement, it is found that the dispute between the parties is only as regards the survey No.307/4D1 and not in respect of the other items of the suit properties. Now, according to the plaintiff, inclusive of an extent of 0.44.0 Hectares in survey No.307/4D1, she had purchased the other suit properties also by way of the registered sale deeds dated 20.03.1980 and 14.03.1984 and the abovesaid documents have been marked as Exs.A1 & A2. On a perusal of the abovesaid sale deeds, it is found that the plaintiff has acquired the suit properties, in particular, the extent of 0.44.0 hectares in survey No.307/4D1 from Valliammal. The defendants resisted the plaintiff's suit contending that Valliammal, after retaining the extent of 4 cents in the southern extremity of survey No.307/4D1, had sold only the remaining extent in the said survey number to the plaintiff and further, according to the defendants, the abovesaid 4 cents of land has been used by Valliammal as a cart track/pathway for reaching her other lands nearby and accordingly, she had retained the said extent of 4 cents land in survey No.307/4D1 and using the same as cart track/pathway and therefore, it is put forth by the defendants that the plaintiff cannot be allowed to lay a claim of title and thereby, the possession and enjoyment of the entire extent covered under survey No.307/4D1 and in such view of the matter, according to the defendants, the plaintiff is not entitled to seek the relief prayed for in respect of the abovesaid 4 cents of land lying in the southern extremity of survey No.307/4D1, which had been retained by Valliammal for using the same as cart track/pathway for having access to the other lands.

10. From the above defence put forth by the defendants, it is seen that as rightly found by the Courts below, they had put forth the plea that the Cart track / pathway is already in existence in the southern extremity of survey No.307/4D1 i.e. covering an extent of 4 cents of land and on the other hand, according to the plaintiff, the defendants, without any manner of right or title in respect of survey No.307/4D1, taking advantage of their lands nearby, attempted to trespass into the abovesaid property belonging to the plaintiff and create a new pathway without any authority and hence, it is stated by

the plaintiff that she has been necessitated to institute the suit against the defendants for appropriate reliefs.

11.The further case of the defendants is that Valliammal had executed a power of attorney deed in respect of the property of the extent of 4 cents of land in survey No.307/4D1 in favour of one Somasundaram for the purpose of selling the same and in turn, the power holder Somasundaram had alienated the said 4 cents of land in survey No.307/4D1 to the second defendant by way of a registered sale deed dated 19.06.2000 and since then, it is only the second defendant, who has been in the possession and enjoyment of the said extent of 4 cents in survey No.307/4D1 and the plaintiff cannot seek any claim of title, possession and enjoyment with reference to the said extent of 4 cents of land. Furthermore, it is also put forth by the defendants that the plaintiff had suppressed the retention of 4 cents of land by Valliammal in survey No.307/4D1 and obtained patta for the entire extent in the abovesaid survey number in her own name and thereafter, on the application preferred by Valliammal to the Thasildar, her name was also included as the joint patta holder in respect of survey No.307/4D1 as per the proceedings of the Thasildar dated 27.07.1992 and hence, according to the defendants, the plaintiff is not entitled to seek the relief in respect of the abovesaid 4 cents of land as prayed for lying in survey No.307/4D1.

12.Inasmuch as the defendants had taken the plea that the cart track / pathway had already been in existence in survey No.307/4D1 and therefore, there is no need on their part to create a new pathway in the said property, the burden of establishing that such a cart track is in existence in respect of 4 cents of land in survey No.307/4D1 lies only upon the defendants. When it is found that the plaintiff had acquired the title of an extent of 0.44.0 hectares of land in survey No.307/4D1 from Valliammal by way of Exs.A1 & A2 title deeds, when the defendants have projected the plea that Valliammal had not conveyed the entire extent in survey No.307/4D1 and on the other hand, she had retained the extent of 4 cents of land in survey No.307/4D1, which had been used by her as cart track, it is for the defendants to establish that Valliammal still retained the ownership of 4 cents of land in survey No.307/4D1, after the alienation made by her in favour of the plaintiff under Exs.A1 & A2.

13.On a perusal of the title deeds projected by the plaintiff marked as Exs.A1 & A2, particularly, Ex.A1, the property conveyed thereunder in survey No.307/4D1 is found to be described as located to the north of Valliammal's land and there is no reference in the abovesaid sale deed that Valliammal had retained any extent of land in survey No.307/4D1 and using the same as the cart track to have access

to her other lands. If really, Valliammal had retained the extent of 4 cents, while conveying the property to the plaintiff under Ex.A1, she would have made necessary mention in the said document itself that she is retaining the extent of 4 cents of land for using the same as cart track and on the other hand, the property conveyed under Ex.A1 would go to show that the same is lying only to the north of Valliammal's land and not to the north of the cart track portion retained by Valliammal in survey No.307/4D1. In such view of the matter, on a perusal of Ex.A1 in particular, when there is no reference in the same that Valliammal had retained the extent of 4 cents of land in survey No.307/4D1 for the purpose of using the same as cart track for having access to her other lands nearby, on the other hand, Valliammal had described the property covered under Ex.A1 as lying to the north of her lands and not as lying to the north of cart track as such, in such view of the matter, it is highly doubtful whether at all Valliammal would have retained the extent of 4 cents of land in survey No.307/4D1 for the purpose of using the same as cart track.

14. In the light of the abovesaid contentions put forth by the respective parties and as rightly found by the Courts below, the best person to establish that even after Exs.A1 & A2, she had retained the extent of 4 cents of land in survey No.307/4D1 for the purpose of using the same as cart track, would be Valliammal and as to why the defendants had not endeavoured to examine Valliammal to sustain their case, there is no material or reason forthcoming on the part of the defendants. On the other hand, the defendants would only put forth the case that Valliammal had executed a power of attorney deed in favour of one Somasundaram, which document has come to be marked as Ex.B2 and the said power holder had conveyed the 4 cents of land to the second defendant on 19.06.2000, which sale deed has come to be marked as Ex.B3. On a perusal of Ex.B1 sale deed, it is found that the second defendant had purchased certain lands from Valliammal and others in survey No.307/4D3, when the same is not pertaining to the extent of 4 cents of land in dispute lying in survey No.307/4D1 and therefore, Ex.B1 would serve no purpose to determine the issues involved in the matter. Ex.B2 is the power of attorney deed said to have been executed by Valliammal in favour of Somasundaram. On a perusal of the description of the property mentioned in the said document, though it is found to have been executed with reference to the extent of 4 cents of land in survey No.307/4D1, nothing has been mentioned therein in specific that there is already a cart track/pathway in the abovesaid extent of 4 cents of land and on the other hand, the recitals are found in Ex.B2, as if the said extent of 4 cents of land have the mamool pathway/cart track for access and accordingly, inclusive the said mamool right with reference to the said 4 cents of land, Valliammal had executed the power of

attorney in favour of Somasundaram. Therefore, on a reading of Ex.B2 power deed, it is found that the extent of 4 cents of land has not been used as cart track /pathway as such. On the other hand, the said extent of land has the mamool pathway/cart track for gaining access to the same. In such view of the matter, on the strength of Ex.B2, we cannot hold that the said extent of 4 cents of land had been used by Valliammal as the cart track for the purpose of gaining access to her other lands. When the defendants have failed to establish that Valliammal had retained the extent of 4 cents of land in survey No.307/4D1, after the alienation made in favour of the plaintiff under Ex.A1, as rightly put forth by the plaintiff, thereafter, Valliammal would not be competent to claim ownership of any extent of land in survey No.307/4D1 and in such view of the matter, the general power of attorney said to have been executed by Valliammal in favour of Somasundaram marked as Ex.B2 will not carry any legal acceptance for upholding the alleged claim of title to the said extent of 4 cents of land in survey No.307/4D1 on the part of Valliammal. As abovenoted, the best person to speak about the same would be Valliammal, however, for the reasons best known to them, the defendants have not examined Valliammal or for the matter, the defendants have also not endeavoured to examine the power of attorney holder Somasundaram, who is stated to have conveyed the 4 cents of land to the second defendant under Ex.B3 sale deed, on the strength of Ex.B2 power of attorney deed. When Valliammal herself is found to be not having the ownership or title in respect of 4 cents of land in survey No.307/4D1, after the alienation made in favour of the plaintiff, in such view of the matter, the alleged power of attorney deed executed by her and marked as Ex.B2 cannot have any legal sanctity and consequently, the sale deed executed by the power of attorney holder in favour of the second defendant by way of Ex.B3 sale deed also will not have any legal force and in such view of the matter, as rightly found by the Courts below, based on Exs.B2 & B3, it cannot be held that the second defendant, in particular, had obtained the legal ownership, possession and enjoyment in respect of 4 cents of land in survey No.307/4D1.

15.To establish that Valliammal had been retaining the ownership of 4 cents of land in survey No.307/4D1 and thereafter, continue to enjoy the same as cart track etc., till the alienation made in favour of the second defendant under Ex.B3, absolutely, there is no material on the part of the defendants with reference to the same. On the other hand, as could be seen from the patta document projected by the plaintiff marked as Ex.A3, it is found that on the strength of the sale deeds Exs.A1 & A2, recognising the plaintiff's entitlement to the properties covered under the same, the patta had been issued in favour of the plaintiff by the revenue authority in respect of the suit properties under

Ex.A3 in patta No.208. Following the same, it is found that it is only the plaintiff, who had been enjoying the suit properties inclusive of the property in dispute by paying kist and the kist receipts had been projected by the plaintiff as Exs.A4 to A22. That apart, the plaintiff has also produced the adangal extract marked as Ex.A24 ranging for the faslis 1400 to 1410, the same would go to show that it is only the plaintiff, who is in the possession and enjoyment of the suit properties inclusive of an extent of 0.44.0 hectares of land in survey No.307/4D1 by cultivating the same and as rightly determined by the Courts below, the plaintiff has placed abundant materials evidencing her possession and enjoyment of the suit properties, particularly, the property in dispute and despite the same, no contra material has been placed on the part of the defendants to establish that either Valliammal or the second defendant, in particular, had been retaining the possession and enjoyment of the 4 cents of land in survey No.307/4D1 on the strength of Exs.B2 & B3.

16.However, the defendants would rely upon the proceeding issued in favour of Valliammal by the Zonal Deputy Tahsildar, Mettur on 27.07.1992 marked as Ex.B4. According to the defendants, inasmuch as Valliammal had retained the ownership of 4 cents of land in survey No.307/4D1 and suppressing the same, the plaintiff had obtained the patta for the entire extent of the abovesaid survey number under Ex.A3 patta, it is put forth that on the representation made by Valliammal and determining that she is also having ownership of the extent of 4 cents of land in the abovesaid survey number, the Thashidar concerned had ordered the inclusion of her name as the joint pattadar in respect of survey No.307/4D1 and on the basis of the said proceeding and the subsequent chitta extract projected by them marked as Ex.B5, the defendants would put forth the case that Valliammal had the ownership of 4 cents of land in survey No.307/4D1 and thereby, had conveyed the same through her power of attorney in favour of the second defendant under Ex.B3 sale transaction. However, when as per Exs.A1 & A2 put together Valliammal is found to have conveyed the entire properties available with her in survey No.307/4D1 in favour of the plaintiff and there is no material placed on the part of the defendants evidencing that she had retained ownership of 4 cents of land in dispute and using the same as cart track/pathway, accordingly, it is found that the plaintiff had been issued patta in respect of an extent of 0.44.0 hectares of land in survey No.307/4D1 under Ex.A3 patta and subsequent thereto, Valliammal's name has been included as joint pattadar by way of Ex.B4 proceedings. When the patta had been already issued in favour of the plaintiff in respect of the entire extent in survey No.307/4D1 by issuing a valid patta marked as Ex.A3, even assuming for the sake of arguments that the Tahsildar felt that Valliammal's name should have been

included as joint pattadar, before passing any order with reference to the same, the Tahsildar concerned should have invited the plaintiff's objections to the same and thereafter, should have endeavoured to pass appropriate order for including the name of Valliammal as the joint pattadar. On the other hand, on a perusal of Ex.B4 proceedings, when there is nothing contained therein to indicate that the plaintiff had been issued a due notice with reference to the said proceeding and when no material has also been placed by the defendants to show that due notice had been sent to the plaintiff in connection with the said proceedings and on the other hand, DW1 has admitted that no such notice had been sent to the plaintiff with reference to the same, in such view of the matter, when the proceedings issued in favour of Valliammal under Ex.B4 had come to be passed behind the back of the plaintiff and without her knowledge, in such view of the matter, as rightly put forth by the plaintiff's counsel and as rightly determined by the Courts below, no credence at all could be attached to Ex.B4 proceedings. For evidencing that Valliammal had retained the ownership of 4 cents of land in survey No.307/4D1, the revenue proceedings /records cannot be a substitute for title documents and all the more, when Ex.B4 and the consequent chitta extract marked as Ex.B5 are found to have been passed or issued in favour of Valliammal without putting the plaintiff on notice as per law, the said documents would not bind the plaintiff in any manner and in such view of the matter, on the strength of Exs.B4 & B5, the defendants cannot be allowed to contend that Valliammal had retained the ownership of the 4 cents of land in survey No.307/4D1 and thereby, entitled to convey the same in favour of the second defendant as put forth by them. Exs.B4 & B5 having been excluded, there is no other material placed on the part of the defendants to hold that Valliammal had the ownership of 4 cents of land in survey No.307/4D1 and in such view of the matter, the claim of the defendants, particularly, the second defendant that she had acquired valid title to the extent of 4 cents of land in survey No.307/4D1 from Valliammal cannot be legally countenanced in any manner and in such view of the matter, her further case that the 4 cents of land had been used as cart track/pathway for having access to her other lands by Valliammal and by her cannot at all be accepted in any manner, particularly, sans any proof pointing to the same.

17.Furthermore, when it is the specific case of the defendants that the cart track had been in existence in the extent of 4 cents of land in survey No.307/4D1, even prior to the purchase of the property by the plaintiff from Valliammal and only on that reasoning, Valliammal had retained the 4 cents of land for using the same to gain access to other lands nearby, in such view of the matter, as rightly found by the Courts below, the defendants should have placed materials to establish that the cart track/pathway had been in existence in

the said extent of 4 cents of land in survey No.307/4D1. However, with reference to the said case of the defendants, absolutely, there is no proof placed. If really, a cart track/pathway had been in existence over a considerable period of time as put forth by the defendants in the property in dispute, FMB pertaining to the suit property would have disclosed the existence of cart track/pathway on the same and the defendants should have established the said factor by summoning the revenue records in respect of the said extent of land. On the other hand, the defendants had not placed any material to hold that the cart track had been already in existence in respect of 4 cents of land in survey No.307/4D1 and as abovenoted, when the defendants had failed to establish that Valliammal had retained the ownership of the 4 cents of land in survey No.307/4D1 after the alienation in favour of the plaintiff and as abovenoted, the defendants having failed to establish that the said piece of land had been in the possession and enjoyment of Valliammal or by the defendants as the case may be and when pointing to the same, the defendants have not placed any acceptable material and the documents projected by them marked as Exs.B4 & B5 not having legal credence for accepting the same, as above discussed, in all, it is found that the defendants have put forth the false case claiming title, possession and enjoyment of the extent of 4 cents of land in survey No.301/4D1 with a view to create a new cart track/pathway in the said property as put forth by the plaintiff and accordingly, the plaintiff being the owner of the entire extent of land in survey No.307/4D1, as such, had been necessitated to institute the suit for the relief of permanent injunction against the defendants to safeguard her possession with reference to the same.

18. In addition to that, the defendants have also not endeavoured to take out a commission to establish that the cart track had been in existence in the extent of 4 cents of land in dispute as put forth by them and with reference to the same, no proper explanation is adduced on the part of the defendants. If really, the cart track had been in existence as alleged by the defendants, the same could have been easily brought out by taking out a commission and the truth would have come out whether the cart track had been in existence in the said property in dispute or as put forth by the plaintiff, the defendants are attempting to create a new contract/pathway in the said property. The failure of the defendants in taking out a commission also would only reveal that inasmuch as no such cart track/pathway had been in existence in the abovesaid property as put forth by the defendants, they had not endeavoured to take out a commission and thus, the same has also been considered by the Courts below rightly and thereby, also rejected the defendants' version.

19.The defendants' counsel would strenuously put forth the contention that the plaintiff, during the course of her cross examination, has only stated that she is in the enjoyment of 48 cents of land in survey No.307/4D1 and on that position alone, according to him, the Court should hold that it is only Valliammal, who has been having the ownership, possession and enjoyment of 4 cents of land in survey No.307/4D1. No doubt, on the abovesaid lines, the plaintiff has tendered evidence during the course of cross examination. However, as rightly put forth by the plaintiff's counsel when the evidence of the plaintiff as adduced by her both during chief examination as well as cross examination, it is found that in toto, the plaintiff has asserted her possession and enjoyment of the entire extent in survey No.307/4D1 and disputed the claim of ownership, possession and enjoyment on the part of Valliammal as well as the defendants in respect of the extent of 4 cents of land in dispute and in such view of the matter, when the law postulates that the evidence of a party/witnesses should be viewed in toto and not in isolation and in the light of the abovesaid position of law, accordingly, on the abovesaid stray admission of the plaintiff made during the course of cross examination, we cannot hold that the plaintiff has accepted the ownership of Valliammal in respect of 4 cents of land in dispute and also accepted the possession and enjoyment of Valliammal with reference to the same. If that be so, as to why the defendants are unable to place any material pointing to the same, there is no acceptable material forthcoming on the part of the defendants. As abovenoted, the abovesaid case of the defendants could have been easily established by examining Valliammal or the power of attorney holder Somasundaram but the attitude of the defendants in not examining them would only go to show that as Valliammal had no title, possession and enjoyment of the 4 cents of land, they had been deliberately avoided from examining her in the matter and in such view of the matter, the Courts below are found to have rightly drawn adverse inference against the defendants and in my considered opinion, there is no reason to interfere with the same. Therefore, the so called admission said to have been made by the plaintiff in her evidence that she is only in the possession of 48 cents of land in survey No.307/4D1 and not the entire extent could not be taken advantage by the defendants for sustaining their case without there being any material pointing to the same as such.

20.In the light of the abovesaid factual matrix, when the defendants have failed to establish their claim of title, possession and enjoyment of the extent of 4 cents of land in survey No.307/4D1 in any manner and on the other hand, when the plaintiff has placed overwhelming evidence worth acceptance pointing to her ownership, possession and enjoyment of the suit properties inclusive of the property in dispute and only on the apprehension that the defendants are

attempting to create a pathway in the property in dispute, the plaintiff had been necessitated to lay the suit against the defendants, in such view of the matter, on a whole, particularly, the defendants not throwing any challenge to the plaintiff's title, possession and enjoyment of the other suit properties involved in the matter, in all, it is found that there is no need on the part of the plaintiff to seek the relief of declaration of title in respect of an extent of 4 cents of land in survey No.307/4D1 and therefore, the argument put forth by the defendants' counsel that the suit laid by the plaintiff simplicitor for the relief of permanent injunction without seeking the relief of declaration of title as such and on that ground, the plaintiff's suit is not maintainable, as such, cannot be accepted considering the facts and circumstances of the case. When the defendants have failed to establish the ownership of Valliammal in respect of an extent of 4 cents of land in dispute and in such view of the matter, the contention that the second defendant's vendor is the co-owner in respect of the property covered in survey No.307/4D1 as such cannot be accepted and rightly rejected by the Courts below. In view of the above discussions, the substantial questions of law formulated in the second appeal are accordingly, answered against the defendants and in favour of the plaintiff.

21.The defendants' counsel, in support of his contentions, placed reliance upon the decision reported in (2008) 4 Supreme Court Cases 594 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By LRs. And others). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

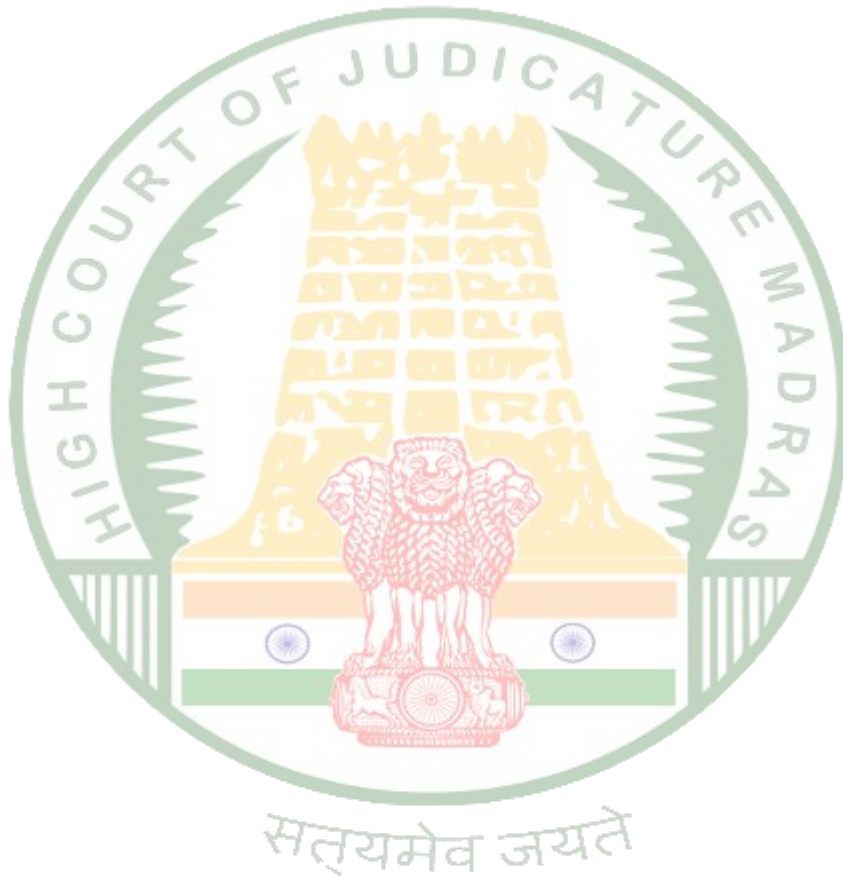
To

- 1.The Subordinate Court, Mettur.
- 2.The District Munsif's Court, Mettur.
- 3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.R.Subramanian, Advocate SR.37993
+1cc to Mr.J.Ramakrishnan, Advocate SR.37296

S.A.No.901 of 2005

PM (CO)
CB (24/01/2020)



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