



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD) Nos. 72 and 73 of 2009

WEB COPY

Vijayalakshmi Ammal

.. Appellant/Appellant/Plaintiff in
SA (MD) No. 72 of 2009

.. Appellant/1st Respondent/Plaintiff in
SA (MD) No. 73 of 2009

Vs.

1. Narayanan

... 1st Respondent/1st Respondent/
1st Defendant in SA (MD) No. 72 of 2009

... 1st Respondent/Appellant/
1st Defendant in SA (MD) No. 73 of 2009

2. State of Tamil Nadu,
Rep. By District Collector,
Virudhunagar.

3. The President,
Mandapasalai Village Panchayat,
At. M. Reddiapatti,
Aruppukottai Taluk.

4. The Commissioner,
Thiruchuli Panchayat Union,
At Reddiapatti.

.. Respondents 2 to 4/
Respondents 2 to 4/Defendants 2 to 4
in both the Appeals.

Common Prayer : Second Appeals filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S. Nos. 30 and 43 of 2007 dated 02.01.2008 on the file of the learned Subordinate Judge, Aruppukoottai confirming the judgment and decree made in O.S. No. 287 of 2004 dated 09.02.2007 on the file of the learned District Munsif, Aruppukkottai.

For Appellant (in both S.As.): Mr. Natarajan
For Respondent No. 1 : Mr. S. Parthasarathy
(in both S.As.)
For Respondent No. 2 : Mr. J. Gunaseelan Muthaiah, AGP
(in both S.As.)
For Respondents 3 and 4 : No Appearance
(in both S.As.)



JUDGMENT

Heard the learned counsel appearing on both the side.

2. These appeals are filed against the Judgment and Decree passed in A.S.Nos.30 and 43 of 2007 dated 02.01.2008 on the file of the learned Subordinate Judge, Aruppukottai confirming the judgment and decree made in O.S.No.287 of 2004 dated 09.02.2007 on the file of the learned District Munsif, Aruppukottai.

3. The appellant herein is the plaintiff, the respondents 1 to 4 are the defendants in the suit. The appellant herein has filed a suit in O.S.No.287 of 2004 on the file of learned District Munsif, Aruppukottai seeking a prayer of declaration that there is no public pathway in the suit property and for injunction. The first defendant filed a written statement with a counter claim to declare the suit property as a public pathway and for injunction. The trial Court dismissed the suit. Against which, the appellant herein has preferred an appeal in A.S.No.30 of 2007 before the learned Sub Judge, Aruppukottai and the first respondent herein has preferred an appeal in A.S.No.43 of 2007 before the learned Sub Judge, Aruppukottai. After hearing both sides, the first appellate Court dismissed the appeal filed by the appellant herein and allowed the counter claim of the first respondent. Against the Judgment and decree, the appellant herein has preferred these second appeals before this Court.

4. The case of the plaintiff is as follows:-

The suit property situated in Mandapasalai Village in survey Nos.42 and 39. The plaintiff is having a land on the northern side in survey No.40/8A1. The suit property and the northern property in Survey No.40/8A1 was purchased on 03.10.1932 from one Muthusamy Nayakar. Muthusamy Nayakar pledged the property on 23.06.1916 and redeemed the mortgage. In both the documents, the southern boundary is mentioned as 'Urani'. The plaintiff and his predecessor in title were enjoying the suit property along with their patta land for more than 60 years and the plaintiff was under the impression that the suit property is a part and parcel of survey No.40/8A1.

The plaintiff filed a suit in O.S.No.285 of 1999 against the defendants 3 and 4 and he got a decree. But The President of Mandapasalai Village Panchayat stated that the suit property was not situated in survey No.40/8A1 and that the suit property is situated in survey No.39 and 42 and he is trying to lay a pathway in the suit property.

There is no pathway in reality and it was wrongly mentioned as pathway in the revenue records. The first defendant is having a



property in survey no.14/7. Only with the motive to convert the property into house sites, the first respondent with the help of his daughter-in-law who is the municipal chairman is trying to convert the suit property into pathway. Though in the village map survey Nos.39 and 38 which are on the western side of survey Nos.42 and survey Nos.51, 52 which are on the eastern side of survey No.42 are mentioned as pathways in reality there is no such pathway on ground. The first respondent is not trying to lay a pathway on the western side and on the eastern side of the property and they are concentrating only on the suit property. For more than 60 years, the plaintiff and his predecessor in title are under an impression that it is the part and parcel of the patta land in survey No.52. So many other persons constructed house and they are in enjoyment of the property. Hence, the suit property is not to be declared as a pathway and the order of injunction has to be passed against the respondents not to convert the suit property into a pathway.

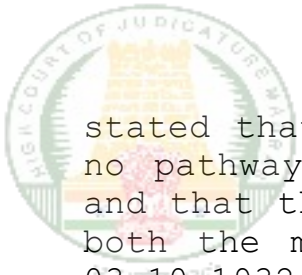
5.The brief substance of the written statement/counter claim filed by the first respondent is as follows:

The description of the suit property stated on the plaint is wrong. The suit is barred under 34 of Specific Relief Act. Survey Nos.39 and 42 are public cart track and it is wrong to state that the suit property is included in the sale deed dated 03.10.1932. Even if it is stated in the sale deed it would not affect the Government or the public. The suit property is not included in the mortgage deed dated 23.06.1961. The suit property is a cart track from time immemorial and the cart track is used by the villagers and the agriculturist. The suit property is not included in O.S.No.285 of 1992. Even in the previous suit, the plaintiff has accepted that the suit property is a public cart track. The plaintiff is estopped and the suit is bad under resjudicata and the suit is barred by limitation. cart track on the western and eastern side of the suit property is in use by the public. There is no encroachment in the suit property. The temporary encroachments were removed on 29.08.2003. After filing the suit the plaintiff is trying to erect pillars on the suit property on 26.03.2004 and the same was prevented by the first respondent and prayed to declare the suit property as public cart track and for injunction as the counter claim.

6.The brief substance of written statement of the second defendant is as follows:

The suit property in survey nos.39 and 42 were described as public cart track in the revenue records. The suit property belong to the Government and private persons have no right over the suit property.

<https://hcservices.ecourts.gov.in/hcservices/> reply statement filed by the plaintiff, it is



stated that there is no pathway in the suit property and there is no pathway on the western and eastern side of the suit property and that the plaintiff is enjoying the property upto the Urani. In both the mortgage deed dated 26.06.2016 and the sale deed dated 03.10.1932, the southern boundary was stated as "Urani". The plaintiff and his predecessor are in enjoyment of the property for the past 65 years without any interruption. Notice under Section 80 was not given to the Government. While filing the counter claim no permission under Section 92 was sought for and the counter claim is not valid.

8. On the basis of the pleadings, the trial Court framed the following issues:

"(i) பிராதிற் கோரியுள்ள விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கக் கூடியதா ?

(ii) அதன் தொடர்ச்சியாக நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக் கூடியதா ?

(iii) வாதிக்கு கிடைக்கக் கூடிய வேறு பரிகாரங்கள் என்ன ?"

9. The following issues were framed in the counter claim:-

"(i) எதிர்கோரிக்கையில் கோரியுள்ளவாறு விளம்புகை பரிகாரம் எதிர் கோரிக்கையாளருக்கு கிடைக்கக் கூடியதா ?

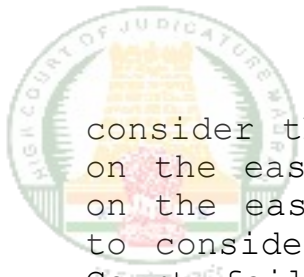
(ii) அதன் தொடர்ச்சியாக நிரந்தர உறுத்துக்கட்டளை பரிகாரம் எதிர் கோரிக்கையாளருக்கு கிடைக்கக் கூடியதா ?

(iii) எதிர் கோரிக்கையாளருக்கு கிடைக்கக் கூடிய வேறு பரிகாரங்கள் என்ன ?"

10. Five witnesses were examined as P.W.1 to P.W.5 and 9 documents were marked as Exs.A1 to A9 on the side of the plaintiff and four witnesses were examined as D.W.1 to D.W.4 and 19 documents were marked as Exs.B1 to B19 on the side of the defendants. Two Court documents were marked as Exs.C1 and C2.

11. After examination of witness and on perusing the documents on record, the learned District Munsif dismissed the suit. Against the dismissal of the suit, the appellant preferred an appeal in A.S.Nos.30 of 2007 before the Sub Court, Aruppukottai. The first respondent preferred another appeal in A.S.No.43 of 2007 before the Sub Court, Aruppukottai.

12. In the grounds of appeal in A.S.No.30 of 2007, it is stated that Exs.A1 to A3 were old documents and the trial Court failed to consider the old documents. The trial Court has decided that there is no pathway and dismissed the counter claim but wrongly dismissed the suit also. The trial Court failed to



consider that in the Commissioner report, there are constructions on the eastern side of the suit property and there is no pathway on the eastern side of the suit property. The trial Court failed to consider that the revenue records are not reliable. The trial Court failed to consider that there is no necessity for a cart track in the suit property, when there is another road on the eastern side of the suit property. The trial Court failed to consider the evidence of P.W.1 to P.W.3.

13. In the grounds of appeal in A.S.No.43 of 2007, it is stated that the trial Court failed to frame issues in the main suit and has decided that there was a pathway. The trial Court dismissed the main suit. The trial Court is having power to declare a public property and has wrongly decided that counter claim is not maintainable under Section 92 of CPC. Hence, it is prayed that counter claim is to be allowed.

14. On the basis of the grounds of appeals, the first Appellate Court has framed the following issues:

"(i) Whether the appeals are to be allowed ?"

15. After hearing both the sides, the first appellate Court dismissed the appeal filed by the appellant herein and allowed the counter claim of the first respondent. Against which, the appellants have come forward with the second appeal.

16. In the grounds of second appeals, it is stated that the findings in O.S.No.285 of 1999 is in favour of the plaintiff and not against the plaintiff but the Courts below fail to consider the same. Without considering the entire deposition as a whole, the Courts below have wrongly decided that the land belong to the Government. The deposition in another suit cannot be relied upon as an admission in this case. The findings of the Courts below that the plaintiff is in enjoyment of a portion of 40/8A is contrary to its decision in the previous suit in O.S.No.285 of 1999.

17. The portion covered in survey Nos.39 and 42 are covered under Exs.A1 and A2 and those documents were not appreciated by the first respondent and the Courts below. In the deposition of P.W.4, it is clear that no notice was given before the alleged sub division. As no notice was given to the plaintiff, the sub division is not binding upon the plaintiff. The trial Court has decided that the defendants have not established the existence of the cart track and give a findings that the property was not used as the pathway at the time of trial. No petition under the representative capacity under Order 1 Rule 8 and Section 92 of CPC was filed along with the counter claim. The father-in-law of the



motive to convert the property in survey No.44/7 into house sites, the first respondent is trying to convert the suit property into a pathway.

18. This Court by its order dated 13.06.2019, has admitted the second appeal and has framed the following substantial questions of law, which are as follows:

"(i) When the finding in the previous suit in O.S.No.285 of 1999 between the plaintiff and the first defendant is in favour of the plaintiff herein and the suit is decreed in favour of the plaintiff, whether the findings of the Courts below which are contrary to the findings in O.S.No.285 of 1999, could be sustained under law ?

(ii) Whether the deposition in another suit by the plaintiff can be taken as admission in the suit for deciding the point involved in this suit ?

(iii) When the trial Court has rightly dismissed the counter claim as not maintainable without the petition under Order 1 Rule 8 read with Section 92 whether the lower appellate Court is right in allowing the counter claim ?

(iv) When there is no notice before the alleged subdivision, whether the same could be taken against the plaintiff and whether it is binding on the plaintiff ?

(v) When the finding of the Courts below is that the defendant himself admits that at the time of filing the suit there was no pathway, whether the Courts below are right in dismissing the suit ? "

Issue Nos.(i) and (ii):

19. On the side of the appellant, it is stated that the previous suit in O.S.No.258 of 1999 between the plaintiff and the first defendant is decreed in favour of the plaintiff and the trial Court is wrong in deciding the issue contrary to the findings in O.S.No.258 of 1999.

20. On the side of the appellant, it is stated that the defendants 3 and 4 are bound by the earlier judgment and they are estopped from claiming the suit property as pathway. The stand of the respondents in O.S.No.285 of 1999 was already rejected by the Court and survey Nos.38, 39, 42 cannot be a pathway and the first defendant instigated the defendants 3 and 4 to claim the suit property as alleged pathway and the earlier suit stands as an estoppel against the defendants.

21. The learned counsel appearing for the appellant relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Ranganayakamma and another v. K.S.Prakash (Dead) by lrs. And others** reported in (2008) 15 Supreme Court Cases 673, which reads



as follows:

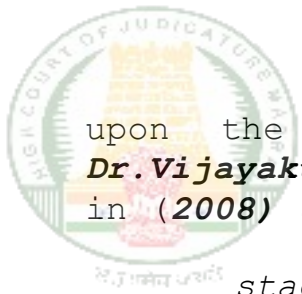
"The basis of the entire suit being commission of fraud in obtaining the said consent decree, it was obligatory on the part of the plaintiff's to pray for setting aside the said decree. The pleadings of the appellants in the said suit in which they were parties are binding on them in the subsequent proceedings proprio vigore. Unless fraud was proved, they could not have got rid of the same. The said decree has been acted upon. Pursuant to or in furtherance of the said decree, ten sale deeds have been executed."

22. On the side of the respondents, it is stated that the appellant was examined as P.W.1 in the earlier suit and she has admitted that survey Nos.38, 39 and 42 were pathways and she has no objection in removal of any encroachment made in both the survey numbers. In Ex.A4, the judgment of the earlier suit in O.S.No.285 of 1999, the deposition of the appellant is extracted. The plaintiff is estopped from her evidence under Section 11 Explanation IV of CPC.

23. The learned counsel appearing for the respondents relied upon the judgment passed by this Court in the case of **G.Ramaraj and others v. Gnanammal and others** reported in (2003)1 M.L.J. 326, which reads as follows:

"34. It remains to be stated that the fourth defendant filed a suit in O.S.No.59 of 1985 for recovery of possession against the second defendant and others in respect of the properties alleged to have been settled in her favour by the second defendant under Ex.B45 settlement deed dated 18.04.1983 and the said was also tried along with the instant suit. In the said suit, the second defendant has filed a detailed written statement stated that the properties covered under the settlement deed belonged to the joint family and not her self acquisitions, and thus, she was not competent to execute a settlement deed as found under Ex.B45. Under the aforesaid situation, the admissions made by the second defendant in her evidence as D.W.1 can be taken as a substantive piece of evidence to the fact that the above mentioned properties in respect of which now the appellants have brought forth the appeal in A.S.No.112 of 1986, belonged to the joint family and not her acquisitions."

24. The learned counsel appearing for the respondents relied



upon the judgment passed by this Court in the case of **Dr. Vijayakumar Rau v. Dr. B. Manohar Rama Rau and another** reported in (2008) 8 MLJ 1052, which reads as follows:

"Court can pass judgment on admission at any stage either on its own motion or on the basis of an application in that regard such admission may be in the form of pleadings, evidence, letters, other correspondence, etc. It can also be oral. However, a judgment on admission shall not be passed, unless such admission is clear, unambiguous and unconditional"

25. On the side of the appellant, it is stated that the trial Court proceed with the case with an impression that the deposition of the appellant in the earlier suit amount to admission and the deposition of P.W.1 was not marked as a document in the present suit and that without filing a certified copy of the deposition and without giving an opportunity to the plaintiff, this Court cannot relied upon the alleged admission and that the admission should be clear and that in the deposition, it is stated that "if at all there is an encroachment, the plaintiff has no objection" and that wordings cannot be taken as as admission on the part of the appellant.

26. The learned counsel appearing for the appellant relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin and another** reported in (2012) 8 Supreme Court Cases 148, which reads as follows:

"The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross examination to tender his explanation and clear the point on the question of admission."

27. The learned counsel appearing for the appellant relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Vathsala Manickavasagam and others v. N. Ganesan and another** reported in (2013) 9 Supreme Court Cases 152, which reads as follows:

"It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion."



28. The judgment in the earlier suit in O.S.No.285 of 1999 was marked as Ex.A4 and the decree was marked as Ex.A5. The suit property stated in O.S.No.285 of 1999 is survey No.40/8A1. That suit property did not include survey Nos.39 and 42. The evidence of P.W.1 in O.S.No.285 of 1999 is clear. There is no ambiguity. Hence, the judgment and decree in O.S.No.285 of 1999 cannot be an estoppel for this case. But the deposition of the plaintiff regarding the survey No.42 can be treated as an estoppel against the appellant.

Issue No.(iii) :

29. On the side of the appellant, it is stated that the counter claim is not maintainable under Order 1 Rule 8 r/w. Section 92 of CPC. On the side of the appellant, it is stated that the first respondent did not file the counter claim in the representative capacity and he did not get the permission under Order 1 Rule 8 r/w. Section 92 of CPC. The first respondent cannot sought for a relief of declaration for a common property without getting permission of the Court.

30. On the side of the respondents, it is stated that only individual who is affected can file a counter claim and Section 91 of CPC is not a bar.

31. The learned counsel appearing for the respondents relied upon the judgment passed by this Court in the case of **Perumal Naicker v. Rathina Naicker and others** reported in **2004-4-L.W. 670**, which reads as follows:

"Public nuisance -Suit for declaration and permanent injunction, etc to demolish wall constructed on the common pathway - Section does not limit or affect any rights which may exist independently of its provisions - if individual gets affected by such public nuisance being caused, would have same right to file a suit for declaration and injunction and for mandatory injunction - Section 91 is no bar to individuals from resorting to Court for relief in such matters."

32. The learned counsel appearing for the respondents relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Hari Ram v. Jyoti Prasad and another** reported in **2011-4-L.W. 510**, which reads as follows:

"Representative suit, since affected person himself has filed a suit, the suit cannot be dismissed on the ground of alleged non-compliance of the provisions of Order 1 Rule 8 of the CPC."



33. The learned counsel appearing for the appellant relied upon the judgment passed by this Court in the case of **Thambaiya Naidu v. State of Tamil Nadu** reported in (2008) 4 MLJ 41, which reads as follows:

“In the absence of any compliance of the provisions of Section 91(1)(b) CPC by the plaintiff/appellant, the lower appellate Court is right in holding that without the leave of the Court, the plaintiff is not entitled to file a suit for mandatory injunction in his individual capacity.”

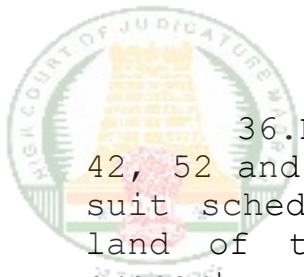
34. The claim of the respondents is not against the Government. When already a case is pending, there is no necessity for the respondents to file a separate case. Filing a counter claim supporting the Government will not be affected under Order 1 Rule 8 r/w. Section 92 of CPC.

Issue No.(iv) :

35. On the side of the appellant, it is stated that no notice was given to the appellant for subdividing the property and the subdivision will not be binding on the plaintiff. On the side of the respondents, it is stated that the appellant has not objected to the subdivision within the time limit. Even in the plaint, the plaintiff has admitted that the suit property formed part of survey Nos. 39 and 42 which are classified as “Pathai” during the survey and settlement. Ex.A8 clearly proves subdivision. The appellant, plaintiff has not taken any steps to set right the wrong classification regarding the survey nos. 39 and 42. Section 14 of Tamil Nadu Survey and Boundaries Act it is stated as follows:

“Any person deeming himself aggrieved by the determination of any boundary under Section 9, 10, 11, 12-A or 12-B may, subject to the provisions of Parts II and III of the Indian Limitation Act, 1963 (Central Act 36 of 1963) institute a suit within three years from the date of the notification under Section 13 to set aside or modify the said determination and the survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration if any, shall be noted in the record.

The plaintiff in such suit shall join as parties to it all persons whom he has reason to believe to be interested in the boundary which is the subject of the suit.”



36.Ex.A1 clearly reveals that the land in survey Nos.39, 42, 52 and survey No.40/8A1 were different properties. Even in the suit schedule property, survey No.40/8A1 is stated as the patta land of the plaintiff. Mere pleading in the plaint that the property was enjoyed by the plaintiff is not sufficient. The earlier suit was a suit for bare injunction in respect of the patta land of the plaintiff that is Survey No.40/8A1.

37.On the side of the appellant, it is stated that the defendant cannot raise a new plea at the stage of second appeal, when the same was not pleaded earlier. It is stated that the defendants 3 and 4 who are the defendants 1 and 2 in the earlier suit cannot raise a new point at this second appellate stage and that without mentioning the date of the said notification, limitation period of three years stated in the Section cannot be invoked in the absense of proof of date of notification.

38.The learned counsel appearing for the appellant relied upon the judgment passed by this Court in the case of **State of Tamil Nadu v. Mohamed Nagib and others** reported in **2003 - 1 - L.W. 258**, which reads as follows:

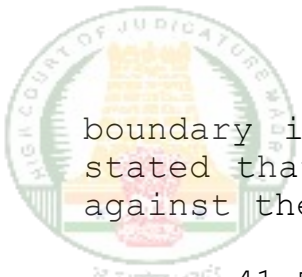
"Held, plaintiffs cannot come forward with a new case and attempting to encroach the forest area.

Boundaries will prevail over the extent alone, but not the survey number also - said principle is applicable only in a transaction agreed and entered into between the parties, but not in a case of unilateral approach."

39.Even in the earlier suit in O.S.No.285 of 1999, the suit property was mentioned as survey No.40/8A1. The plaintiff is aware of the sub division of the suit property even in the year 1999. Under Section 14 of the Tamil Nadu Survey and Boundaries Act, the plaintiff has to take steps within three years from the date of sub division. Even if no notice is issued, the plaintiff is well aware of the sub division stated in the patta, Ex.A8. Even in this case, the plaintiff has not chosen to question the sub division. Hence, this issue raised by the appellant is not maintainable.

Issue No. (v) :

40.On the side of the appellant, it is stated that in view of the findings of the earlier suit, there was no cart track in survey Nos.38, 39 and 42 and the defendants were estopped from taking the stand in the suit. Even in this suit, the trial Court came to the conclusion that the existence of the cart track was not proved and dismissed the counter claim. The burden of proof is with the first defendant. Whereas the first defendant failed to prove the existence of the pathway. In Exs.A1 and A2, the southern



boundary is shown as Urani and not a cart track. It is further stated that the revenue records do not have any evidentiary value against the title deeds.

41. The learned counsel appearing for the appellant relied upon the judgment passed by this Court in the case of **M.E.A. Mohammed Ali and others v. The District Revenue Officer and others** reported in **2005 (4) CTC 9**, which reads as follows:

"Evidentiary value of entries in Revenue records - entries in revenue records do not create or extinguish title nor have any presumptive value - such entries are only for purpose of payment of land revenue - aggrieved party should get their rights adjudicated in a civil suit."

42. On the side of the respondents, it is stated that though the defendants challenged the title of the plaintiff, declaration of title is not sought for by the plaintiff. Even according to the plaintiff neither the plaintiff nor the predecessor in title were issued with the patta for the suit property.

43. The boundaries recitals in Exs. A1 and A2 cannot confer any title. The learned counsel appearing for the respondents relied upon the judgment passed by this Court in the case of **M. Marimuthu v. Kuppayammal and others** reported in **2013 (3) M.W.N (Civil) 683**, which reads as follows:

"Suit for declaration of title and permanent injunction - plaintiff not raised dispute regarding Boundary description ever since 1992 - it is not uncommon on part of villagers to ignore insignificant boundaries being specified as boundaries, but to specify distant property as significant boundary - document has to be read in entirety - demarcation in field measurement book lends support to ancient title deeds - Second appeal dismissed."

44. On the side of the respondents, it is stated that the plaintiff failed to get into the witness box to give evidence and subjected herself to cross examination. It is stated that the plaintiff was not examined as P.W.1 and that no permission was sought for by the plaintiff under Section 120 of the Evidence Act and that adverse inference can be taken under Section 120 of Evidence Act.

45. The learned counsel appearing for the respondents relied upon the judgment passed by this Court in the case of **Ramuthai and others v. Mookkayee alias Pappammal (Died) and others** reported in



2013-1-L.W. 72, which reads as follows:

"If a party intends to examine any other witness other than the person who is also party to the proceedings, he has to get permission from the Court - it is incumbent upon the Court to record reasons for permitting the party to the suit to examine other witness on his behalf before he was examined."

46. On the side of the appellant, it is stated that the evidence of P.W.1 was not contrary to the pleadings. The evidence of P.W.2 reveals that he had encroached the pathway by putting up a construction and that the encroachment was removed by the local body. P.W.2 is an interested witness. The Commissioner had visited the property and he had filed a report regarding the existence of pathway in Survey Nos. 38, 39 and 42. and Exs. C1 and C2 clearly reveals the existence of the pathway.

47. It is seen that it is the duty of the appellant to prove that she is entitled to survey Nos. 39, 42 and 38. The earlier suit was with regard to survey No. 40/8A1 and not the suit properties. Mere boundary recitals cannot confer any title. The plaintiff has not taken any steps to set right the alleged wrong classification in the revenue records. The revenue records as well as the evidence of P.W.4 and Exs. C1 and C2 clearly reveals the existence of the pathway. Even in the plaint it is stated that the plaintiff was only under the impression that survey Nos. 38, 39 and 42 form part of survey No. 40/8A1. From the Commissioner report, it is clear that the pathway continues on the western and on the eastern side also. All the questions raised by the appellant are only question of facts not questions of law. Hence, there is nothing sufficient enough to interfere in the judgment and decree of the first appellate Court.

48. Hence, both the **second appeals** are **dismissed** by confirming the judgment and decree passed in A.S. Nos. 30 and 43 of 2007 dated 02.01.2008 on the file of the learned Subordinate Judge, Aruppukottai confirming the judgment and decree made in O.S. No. 287 of 2004 dated 09.02.2007 on the file of the learned District Munsif, Aruppukottai. No Costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



S.A. (MD) Nos. 72 and 73 of 2009

Mrn

To

1. The Subordinate Judge, Aruppukkottai.

2. The District Munsif, Aruppukkottai.

Copy to

The V.R. Section, -2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr. S. PARTHASARATHY, Advocate (SR-84123[F] dated 29/08/2019)

+2 CC to Mr. S. NATARAJAN, Advocate (SR-84389, 84388[F] dated 30/08/2019)

+1 CC to SPL GP (SR-84508[F] dated 30/08/2019)

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