**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 20.03.2019                     | 10/04/19                         |

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**CORAM****THE HONOURABLE MR. JUSTICE R.PONGIAPPAN****S.A(MD)No.176 of 2015****and****M.P(MD)No.1 of 2015**

B.Venkatesh

... Appellant/LR of Deceased Plaintiff/  
1<sup>st</sup> Respondent(Cause title accepted vide order dated  
28.09.2012 made in M.P(MD) No.1 of 2012)

Vs.

1. Seethalakshmi

... 1<sup>st</sup> Respondent/Appellant/  
2<sup>nd</sup> Defendant

2. S.Murugesan (Died)

... 2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent/  
1<sup>st</sup> Defendant(R2 died, memo recorded U.S.R.No.2771  
vide order dated 20.08.2014 made in  
M.P(MD) No.2 of 2012 in S.A.No.SR10135 of 2012)

**Prayer:** This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.11.2009 made in A.S.No.147 of 2008 on the file of the First Additional Subordinate Judge, Tiruchirappalli reversing the judgment and decree dated 05.04.2007 made in O.S.No.1958 of 1994 on the file of the First Additional District Munsif, Tiruchirappalli.

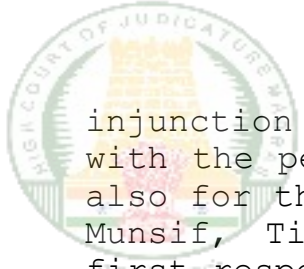
For Appellant : Mr.J.Maria Roseline  
For Respondents : Mr.S.Ramesh  
for Mr.V.Raghavachari

**J U D G M E N T**

This appeal is directed against the Judgment and Decree dated 10.11.2009 made in A.S.No.147 of 2008 on the file of the learned First Additional Subordinate Judge, Tiruchirappalli. The said appeal is preferred against the Judgment and Decree dated 05.04.2007 made in O.S.No.1958 of 1994 on the file of the learned First Additional District Munsif, Tiruchirappalli.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Before the trial Court, the father of the appellant filed a suit against the respondents/defendants seeking the relief of



injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit property and also for the relief of costs. The learned First Additional District Munsif, Tiruchirappali, decreed the suit and against which, the first respondent filed an appeal in A.S.No.147 of 2008 and the same was allowed and ultimately, the decree granted in favour of the plaintiff was set aside by the first Appellate Court. Feeling aggrieved by the same, the appellant/LR of the plaintiff, filed the second appeal.

3.For the sake of convenience, the parties are referred to as, as described by the trial Court.

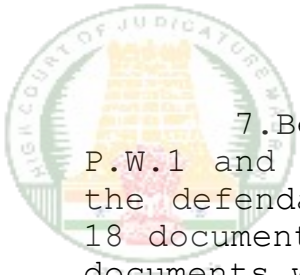
4.The averments made in the plaint, in brief, are as follows:-

By virtue of sale deed dated 08.01.1946, the mother of the plaintiff Nachar Ammal purchased the suit property from one Vaiyapuri Chettiar. Ever since from the date of purchase, the plaintiff and his mother were in possession and enjoyment of the suit property. Since the property is a vacant land, the same was not assessed to any tax. The plaintiff enjoyed the suit property by putting up the fence and stone pillars. The suit property is measuring to an extent of 30 cents and the same is comprised in total extent of 91 cents in S.F.No.8/8. Originally, the suit property belongs to one Paramasivanpillai. The said Paramasivanpillai executed a settlement deed in favour of his daughter one Pachaiammal, in turn on 01.03.1994, the said Pachaiammal executed a registered settlement deed in favour one Vaiyapuri Chettiar, Subbiah Chettiar and Kandasamy Chettiar for the entire extent of 91 cents. From the above 91 cents the plaintiff's mother purchased the undivided 1/3<sup>rd</sup> share vide sale deed dated 08.01.1946. Though the documents stand in the name of the plaintiff predecessor read as the mother of the plaintiff purchased an undivided share, the plaintiff and his predecessor have enjoyed the said property by metes and bounds. As of now, the second defendant has purchased the remaining extent of 61 cents from other co-owners and planned to put up construction. The second defendant also attempted to remove the fence put up by the plaintiff and interfered with their possession and enjoyment of the suit property. Hence, the suit.

5.The averments made in the written statement filed by the second defendant read as follows:-

The description of the property found in the plaint is incorrect. The second defendant is unnecessarily brought into the suit without any relief or means. The defendant does not admit the claim made by the plaintiff in the suit. There is no cause of action in the suit.

6.Based on the above said pleadings, the learned First Additional District Munsif, Tiruchirappalli, had framed necessary issues and tried the suit.



7. Before the trial Court, the plaintiff himself examined as P.W.1 and marked three documents as Exs.A1 to A3. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and 18 documents were marked as Ex.B1 to Ex.B18. Apart from that, four documents were marked as Exs.C1, C2, X1 and X2.

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8. Having considered all the above materials placed before him, the learned First Additional District Munsif, Tiruchirappalli, allowed the suit with costs and ultimately, decreed the suit.

9. In the appeal, the learned First Additional Subordinate Judge, Tiruchirappalli, allowed the appeal and set aside the Judgment and Decree passed by the trial Court. Feeling aggrieved by the same, the present second appeal has been filed.

10. While at the time of admitting the Second Appeal, this Court has formulated the following Substantial Questions of Law, for consideration:-

a) *Whether the 1<sup>st</sup> appellate Court is right in dismissing the suit filed by the appellant herein on the ground that the description of property in the plaint does not tally with description of the property as described under the sale deed of the appellant when it is the admitted case of the parties that both of them derive their title under Ex.A3 settlement deed?*

b) *Whether the 1<sup>st</sup> appellate Court is right in non suiting the appellant on the ground of non filing of documents to prove possession in respect of a vacant land?*

11. First of all since the plaintiff filed a suit for the relief of permanent injunction, he has to prove his title and possession and at least he has to prove his settled possession in the suit property.

12. It is the definite case of the plaintiff that in earlier the survey number to the suit schedule property is 8/8. Further, the total extent to the said property is 0.91 cents. Further, the said property belongs to one Paramasivampillai. Before made purchase by the plaintiff and defendants the said Paramasivampillai executed the settlement deed in favour of his daughter Pachai Ammal and handed over the possession. Thereafter, in 1944 the said Pachai Ammal executed the settlement deed in favour of his three cuisine namely, Vaiyapuri Chettiar, Subbiah Chettiar and Kandasamy Chettiar. From the above three persons, the said Vaiyapuri Chettiar in the year of 1946 sold his 1/3<sup>rd</sup> share in favour of Nachiar Ammal, who is the mother of plaintiff Balaraman. The said sale deed was marked before the trial Court as Ex.A.3. Now on go through the Ex.A.3 in the said sale deed, the description of the property, which was sold by the Vaiyapuri Chettiar, was mentioned as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> பிரிவினை இல்லாத 3ல் 1க்கு 120 அயன் புஞ்செய் சர்வே 8/8ல்  
ஒரடி 28ல் தென் புறம் வடவென் கிடகோணார் புஞ்செய்க்கு கிழக்கு அயனன்  
புஞ்செய்க்கு மேற்க்கு குட்ட ஒண்டமுத்து புஞ்செய்க்கும் தெற்க்கு அயனன்

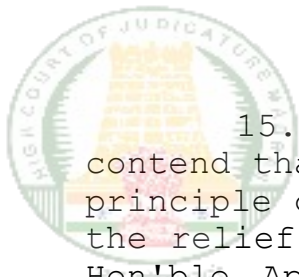


புஞ்சேய்க்கு வடக்கு இதற்கு உள்பட்டது 1980ல் பிரிவினை இல்லாத 3ல் 1க்கு 127 மேற்படி நம்பரில் ஆவன்குளத்து பாறைக்கும் கிழக்கு குளத்துக்கு மேற்கு வடவெங்கிட கோனார் புஞ்சேய்க்கு வடக்கு கிருஷ்ணசாமி நாயுடு புஞ்சேய்க்கு தெற்கு இதற்கு உள்பட்டது தென்புரம் 1980ல் 11ல் பிரிவினை இல்லாத 3 ல் க்கு 4.

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13.From the above description Ex.A.3 reveals that the plaintiff Balaraman purchased two items of property, in which one is undivided 1/3<sup>rd</sup> share of 27 cents and another one is undivided 1/3<sup>rd</sup> share of four cents. Further, in the said sale deed, the four boundaries are clearly mentioned without any dispute. More over on the side of the defendants, the sale made in favour of the plaintiff, is not disputed. Before the trial Court the plaintiff has proved his possession by producing three documents as Ex.A.1 to Ex.A.3. Ex.A.1 is the certified copy of the judgment in respect to O.S.No.1895 of 1994 on the file of the learned First Additional District Munsif, Tiruchirappalli. Ex.A.2 is the copy of the decree passed in the above suit. In fact, the said suit has been filed by the second defendant herein for the relief of injunction in respect to the property he purchased in Survey No.8/8. Before the trial Court the said suit was dismissed. Thereby the said suit is not relevant to the property purchased by the plaintiff. Further it cannot be held that the said documents are relevant to consider the issue arises in this case, however the copy of the sale deed, executed in favour of the plaintiff was marked as Ex.A.3. The said document was executed in the year of 1946. It is an admitted fact after the purchase made by the plaintiff in Survey No.8/8, some extent of the land was acquired by the Government and thereafter the said survey number is subdivided as so many survey numbers.

14.In this regard, D.W.2, who is Village Administrative Officer has stated that the plaint schedule property is now sub divided as 8/8 A1 to 8/8 A3 and 8/8 Ab. So it is the duty cast upon the plaintiff to show which sub division is his property, in order to establish the same no document was produced on the side of the plaintiff. Since the appellant being the plaintiff, he has to prove his case before the trial Court, picking the holes from the case of the defendant, is not a ground for granting the relief to the plaintiff. Moreover before the trial Court 'A' register pertaining to the suit property was marked as Ex.X.2, which would reveal that the name of the plaintiff found not appeared. So only the way for getting the relief of injunction, the plaintiff has to file a partition suit against the person, who is having title to an extent of 2/3 of the total property. In spite of filing the suit for partition the plaintiff has approached the learned District Munsif, Tiruchirappalli for the relief of injunction alone. The sale deed executed in favour of Nachiar Ammal is in the year of 1946. If the case of the plaintiff is a true one, it is very easy for him to obtain the separate patta in his name. In this case before the trial Court absolutely except the oral evidence, no documents have been produced on the side of the plaintiff to show that he is in possession of the suit property.



15.The learned counsel appearing for the appellant would contend that since the title of the plaintiff is proved based on the principle of title follows possession, the plaintiff is entitled for the relief of injunction. Further he relied on the judgment of our Hon'ble Apex Court in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others reported in 2008 (6) CTC 237**. Applying the principle laid down by the Hon'ble Apex Court, here, it is the case admitted by either side that some portion of the property situated in Survey No.8/8 was acquired by the Government.

16.Further, it is the case of the second defendant that he purchased some property through four sale deeds. In this regard D.W.1 had admitted that his mother Seethalakshmi purchased only the portion of the share with the specific boundary. Ultimately the entire circumstances will show that filing the suit for partition alone, will give the sufficient relief and thereby the principle of possession follows title, does not apply to the case in our hand. More than that, the issue in respect to the identification of possession and title does not create any question of law. The non-proving of possession by the plaintiff is not question of law.

17.The appellate Court, while at the time of disposing the appeal, in paragraph No.15, specifically stated that the plaintiff has not proved his possession, further, in Paragraph No.17, held that the plaintiff is not entitled to the relief of permanent injunction. On the other hand, the learned trial Judge in his judgment, stated that even though the plaintiff has not proved the possession on the date of the suit, but considering the title of the suit property, it is decided that the plaintiff is in possession of the suit property on the date of suit. The findings arrived at by the trial Court reveal that in the confused state of mind, without seeing any document in respect to the possession, decree is granted in favour of the plaintiff. The first appellate Court correctly appreciating the evidence and set aside the findings of the trial Court. From the above said discussion, this Court held there is no substantial question of law arise and thereby the second appeal filed by the plaintiff is liable for dismissal.

18.In the result, this Second Appeal is dismissed, by confirming the Judgment and Decree, dated 10.11.2009, passed in A.S.No.147 of 2008, by the learned First Additional Subordinate Judge, Tiruchirappalli reversing the Judgment and Decree, dated 05.04.2007 in O.S.No.1958 of 1994 on the file of the learned First Additional District Munsif, Tiruchirappalli. No costs. Consequently, connected miscellaneous petition is closed.

sd/  
Assistant Registrar

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To

1. The First Additional Subordinate Judge,  
Tiruchirappalli.

2. The First Additional District Munsif,  
Tiruchirappalli

copy to:

The Section Officer,  
Vernacular Records, (2 copies)  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.V.RAGHAVACHARI, Advocate ( SR-60232[F] dated  
10/04/2019 )

**Judgment Made in**  
**S.A(MD)No.176 of 2015**  
**and**  
**M.P(MD)No.1 of 2015**  
**10.04.2019**  
**(2/2)**

cp/ogy

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