

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.10.2019

Delivered on: 21.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.Nos.598 and 599 of 2001

- 1.Gunabooshanam(Deceased)
- 2.Violet
- 3.Jersi
- 4.Ravi
- 5.Ruban Soundararajan
- 6.Appsalo Anbalagan
- 7.Rita
- 8.Sampath
- 9.Chandrasekar
- 10.Elizabeth

... Appellants in both
S.As./Defendants
in OS.No.913/16 and
Plaintiff in OS.No.1143/95
and CMP.Nos.3555 to 3557/07
in SA.No.599/2011.

(Appellants 2 to 10 brought on record
as LR's of the deceased sole appellant
vide order of Court dated 11.12.2014
made in CMP.Nos.3553 & 3554/2007
in S.A.No.598 of 2001)

Vs.

- 1.Rathinam(Deceased)
- 2.Darling
- 3.Martin Yesudoss
- 4.R.Bushanam
- 5.Jaya Vishwanath
- 6.Bhavani Rani
- 7.Raja Mohandas
- 8.Abraham Bose Kennady
- 9.Thamayanthi Gnanmani
- 10.Priskilal
- 11.Immanuvel Raja
- 12.Franklin Rathinam Kumar
- 13.Solomon Raja

... Respondents in SA.No.598/2001/
Plaintiffs in OS.No.913/96

(RR4 to 13 brought on record as
LR's of the deceased R1 vide order

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of Court dated 04.09.2018 made
in CMP.Nos.13373 to 13375/2018
SA.No.598/2001)

- 1.Rathinam(Deceased)
- 2.Darling
- 3.Martin Yesudoss
- 4.R.Bushanam
- 5.Jaya Vishwanath
- 6.Bhavani Rani
- 7.Raja Mohandas
- 8.Abraham Bose Kennady
- 9.Thamayanthi Gnanmani
- 10.Priskilal
- 11.Immanuvel Raja
- 12.Franklin Rathinam Kumar
- 13.Solomon Raja

... Respondents in SA.No.599/2001
Defendants in OS.No.1143/95

(RR4 to 13 brought on record as
LRs of the deceased R1 vide order
of Court dated 09.11.2018 made
in CMP.Nos.13378/2018
SA.No.599/2001)

PRAYER in SA.No.598 of 2001: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.02.2001 and made in A.S.No.136 of 2000 on the file of the Principal District Judge, Tiruvannamalai, reversing the judgment and decree dated 26.09.2000 and made in O.S.No.913 of 1996 on the file of the Additional District Munsif, Tiruvannamalai.

PRAYER in SA.No.599 of 2001: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.02.2001 and made in A.S.No.127 of 2000 on the file of the Principal District Judge, Tiruvannamalai, reversing the judgment and decree dated 26.09.2000 and made in O.S.No.1143 of 1995 on the file of the Additional District Munsif, Tiruvannamalai.

For Appellants in
both SAs

: Mr.T.R.Rajaraman

For Respondents in
both SAs

: Mr.R.Agilesh for R2 to R13

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COMMON JUDGMENT

S.A.No.598 of 2001 has been filed by one Gunabooshanam, who was the defendant in O.S.No.913 of 1996 on the file of the Additional District Munsif, Tiruvannamalai, against the judgment and decree passed by the Principal District Judge, Tiruvannamalai, in A.S.No.136 of 2000 dated 28.02.2001 reversing the judgment and decree passed by the Additional District Munsif, Tiruvannamalai, in O.S.No.913 of 1996 dated 26.09.2000.

2. S.A.No.599 of 2001 has been filed by the same Gunabooshanam, who was the plaintiff in O.S.No.1143 of 1995 on the file of the Additional District Munsif, Tiruvannamalai, against the judgment and decree passed by the Principal District Judge, Tiruvannamalai in A.S.No.127 of 2000 dated 28.02.2001 reversing the judgment and decree passed by the Additional District Munsif, Tiruvannamalai in O.S.No.1143 of 1995 dated 26.09.2000.

3. The appellant in both the Second Appeals viz., Gunabooshanam had filed a suit in O.S.No.1143 of 1995 on the file of the Additional District Munsif, Tiruvannamalai, to declare his title over the suit properties and for permanent injunction restraining the defendants, their men etc., from interfering with his peaceful possession and enjoyment of the suit properties. The defendants in O.S.No.1143 of 1995 had filed a suit in O.S.No.913 of 1996 on the file of the Additional District Munsif, Tiruvannamalai, to restrain the said Gunabooshanam, his men, etc., by means of permanent injunction from interfering with their joint peaceful possession and enjoyment of the suit properties along with the said Gunabooshanam.

4. The learned Additional District Munsif, Tiruvannmalai by the common judgment dated 26.09.2000 had decreed the suit with costs in O.S.No.1143 of 1995, however he dismissed the suit in O.S.No.913 of 1996 with costs. Aggrieved by the same, the defendants in O.S.No.1143 of 1995 viz., 1) Rathinam, 2) Darling and 3) Martin Yesudoss had filed an appeal in A.S.No.127 of 2000 on the file of the Principal District Judge, Tiruvannamalai, against the judgment and decree passed in O.S.No.1143 of 1995 and they also filed an appeal in A.S.No.136 of 2000 against the dismissal of their suit in O.S.No.913 of 1996. The learned Principal District Judge, Tiruvannamalai, by the common judgment dated 28.02.2001 had allowed both the appeals and set aside the judgments and decrees passed in O.S.No.1143 of 1995 and 913 of 1996 and dismissed the suit in O.S.No.1143 of 1995 and decreed the suit in O.S.No.913 of 1996. However, he directed the parties to bear their respective costs. Feeling aggrieved, the said

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Gunabooshanam had filed the Second Appeals in S.A.Nos.598 and 599 of 2001.

5. For the sake of convenience, the parties are referred to as described in O.S.No.1143 of 1995 on the file of the Additional District Munsif, Tiruvannamalai.

(a) The plaintiff's father Mottai @ Ponnurangam had purchased 2.02 acres, in S.No.43/4 of Kothanthavadi Village, for a sum of Rs.190/- under a registered sale deed dated 07.07.1929. In or about 1935, the said Mottai @ Ponnurangam and his brothers Jayavelu and Chinnamoonji, orally partitioned the aforesaid property and in the said partition, the plaintiff's father Mottai @ Ponnurangam got only 0.70 acre. The said land has not been cultivated for the past 50 years and lying fallow.

(b) The said Mottai @ Ponnurangam married one Esther according to Christian rites and customs long ago after having converted himself as Christian. Out of the said lawful wedlock, the said Mottai @ Ponnurangam begot 1) Gunabooshanam (plaintiff), 2) Rathinam (D1), 3) Yesudoss (father of D3) and 4) Darling (D2) through his first wife. In or about 1935, the aforesaid Mottai @ Ponnurangam married one Angammal as his second wife through whom he begot 3 sons viz., 1) Sadananthan, 2) Paul Raj and 3) Devan.

(c) The plaintiff joined in the Indian Armed Forces in the year 1950 and he was continuously serving in the Army till 11.08.1960. He married one Panchavarnam in the year 1952. Soon after marriage, the plaintiff got himself separated from his father and brothers, in 1953 and since then he has been living separately. The plaintiff from out of his own hard earned money purchased the suit properties. He purchased the second item of the suit properties measuring 97 cents for a sum of Rs.700/- under a registered sale deed dated 24.11.1958. From the date of purchase of the said property, the plaintiff has been in possession and enjoyment of the same. The plaintiff met with an accident and sustained grievous injuries on his back and consequently, he was discharged from Military service on 11.08.1960. He was also paid a sum of Rs.3,000/- as compensation. From and out of the said compensation amount, the plaintiff had purchased item No.1 of the suit properties admeasuring 1.67 acres for a sum of Rs.2,500/- under a registered sale deed dated 09.08.1961. The plaintiff had raised a loan of Rs.19,700/- from the Indian Bank, Mangalam by depositing the original sale deed dated 09.08.1961 pertaining to item No.1 of suit properties. So, except the plaintiff, no one have any right or title or interest over the suit properties.

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(d) While so, the defendants who, being the brothers of the plaintiff issued a lawyer's notice dated 25.08.1994 stating that the suit properties were purchased jointly by the plaintiff and the defendants and patta also has been granted jointly in the name of both the parties. They also stated in the said notice that a Panchayat was held on 21.07.1994 and in the said Panchayat, the plaintiff had agreed to divide the suit properties and accordingly, the properties were divided among the plaintiff and the defendants and to evident the same, a Koorchit was executed in which the plaintiff also signed. The allegations made in the said notice are all false and hence, denying the allegations made in the said notice, the plaintiff had sent a reply notice dated 08.09.1994.

(e) In fact, the defendants also have purchased the properties separately either in their names or in their wives' names. Hence, the allegations that the plaintiff and the defendants have jointly purchased the suit properties are all false. After receipt of the reply notice by the defendants on 20.08.1995, the defendants attempted to trespass into the suit properties and the same was thwarted by the plaintiff and his sons with great difficulty. The defendants are powerful persons and they may again trespass into the suit properties. Hence, the plaintiff was constrained to file a suit for the relief of declaration and permanent injunction.

6. The averments made in the written statement filed by the first defendant and adopted by the second defendant in O.S.No.1143 of 1995 are, in brief, as follows:-

(a)
The allegations in para 1 of the plaint are true, except the allegation that the land in question mentioned in para 1 of the plaint is lying fallow for the past 50 years. The allegations that the said Mottai @ Ponnurangam married one Esthar according to Christian rites and customs long back is totally false. It is true that the said Mottai @ Ponnurangam begot the plaintiff herein as well as defendants 1 and 2 and one Yesudass through his first wife. It is true that the said Esthar is his first wife. In fact Mottai @ Ponnurangan married his first wife according to Hindu rites and caste custom and the Hindu name of the first wife is Muthammal. In fact, all the children born to the said Mottai @ Ponnurangam through Muthammal originally had different Hindu names. The plaintiff was originally called as Padappan, the first defendant was called as Renu and the second defendant was called as Arumugam and the deceased Yesudass was called as Jagannathan. In fact, long after their birth only they converted to Christianity and the mother Muthammal was the last person to embrace Christianity. It is true that the said Mottai

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@ Ponnurangam married one Angammal as his second wife and through her three sons were born.

(b) it is true that the plaintiff had joined in the Indian Army Force in the year 1950 and he was continuously serving in the Army till 11.08.1960. It is true that he married one Panchavarnam in 1952. It is false to allege that after his marriage, he got himself separated from his father and brothers in 1953. It is false to allege that out of his own hard earned money, he purchased item No.2 of the suit properties on 24.11.1958 and thereafter he met with an accident and sustained grievous injuries and for that a sum of Rs.3,000/- was paid to him as a compensation and because of the said injury, he was discharged from his service. It is also false to state that he purchased item No.1 of the suit properties out of the compensation amount paid to him. It is also false to state that the plaintiff had raised a loan of Rs.19,700/- from the Indian Bank, Mangalam by depositing the original sale deed dated 09.08.1961 pertaining to item No.1 of the suit properties. It is also false to state that from the date of purchasing the aforesaid properties, the plaintiff alone has been in possession and enjoyment of the same. It is also false to state that the said properties are the self acquired properties of the plaintiff and patta also has been transferred to his name.

(c) The defendants 1 and 2 have also got a share in the suit properties. The various kist receipts said to have been filed by the plaintiff were paid by him in his capacity as the eldest member of the family and the defendants 1 and 2 have also contributed equally for the same. It is false to allege that the defendants never enjoyed the suit properties and never paid kist for the suit properties. Hence, apprising the real facts, the defendants had sent a lawyer's notice dated 25.08.1994 but the plaintiff had sent a reply notice denying the fact that no panchayat was convened on 21.07.1994. In fact the said panchayat was convened by the plaintiff and the mediators are the friends of the plaintiff. In fact under U.D.R. Scheme also patta for the suit properties have been granted jointly in the name of the plaintiff and the defendants 1 and 2 as well as the father of the third defendant. Before granting patta, notice was issued to all the persons who are interested in the land including the plaintiff and only on the basis of the consent given by him joint patta was granted. The allegation that the defendants had purchased the properties separately is false. In fact the second defendant had mortgaged the suit property to the Mangalam Co-operative Society for purchasing power spray and obtained a loan of Rs.1,000/-. The defendants are co-owners and hence no

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injunction can be granted against them. The plaintiff has not come to the Court with clean hands and therefore, the defendants 1 and 2 prayed to dismiss the suit.

7. The defendants in O.S.No.1143 of 1995 had filed a suit in O.S.No.913 of 1996 on the file of the Additional District Munsif, Tiruvannamalai for the relief of permanent injunction to restrain the said Gunabooshanam from interfering with their joint possession of the suit properties by reiterating the allegations made in their written statement filed in O.S.No.1143 of 1995. The said Gunabooshanam had defended the said suit in O.S.No.913 of 1996, by filing written statement. In the said written statement, he reiterated the allegations made in his plaint in O.S.No.1143 of 1995 and claimed that he is the absolute owner of the suit properties and he is in exclusive possession of the same.

8. Based on the aforesaid pleadings, the learned Additional District Munsif, Tiruvannamalai, had framed necessary issues and tried both the suits jointly. Evidence was recorded in O.S.No.1143 of 1995 and the same was treated as evidence in O.S.No.913 of 1996. The plaintiff in O.S.No.1143 of 1995 viz., Gunabooshanam was examined as PW1 and Exs.A1 to A27 were marked as exhibits on the side of the plaintiff. On the side of the defendants, the defendants 1 and 2 in O.S.No.1143 of 1995 were examined as DWs 1 and 2 respectively. They also examined one more witness as DW3. They had marked Exs.B1 to B11 as exhibits on their side.

9. The learned Additional District Munsif, Tiruvannamalai, after considering the materials placed before him, found that the plaintiff in O.S.No.1143 of 1995 viz., Gunabooshanam had purchased the suit properties from and out of his own earnings and hence, the said properties are his separate properties in which, the defendants cannot claim any right. He further found that since both the parties are Christians by religion, the concept of joint family system will not apply to this case. He further found that the plaintiff Gunabooshanam has proved that he is in exclusive possession and enjoyment of the suit properties and as such, he is entitled for the relief of declaration and permanent injunction. Accordingly, he decreed the suit in O.S.No.1143 of 1995 as prayed for and dismissed the suit in O.S.No.913 of 1996.

10. Aggrieved by the same, the defendants in O.S.No.1143 of 1995 had filed an appeal in A.S.No.127 of 2000 and the plaintiff in

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O.S.No.913 of 1996 had filed an appeal in A.S.No.136 of 2000 on the file of the Principal District Judge, Tiruvannamalai. The learned Principal District Judge, Tiruvannamalai, by the common judgment dated 28.02.2001 had allowed both the appeals and set aside the judgments and decrees passed by the trial Court and dismissed the suit in O.S.No.1143 of 1995 and decreed the suit in O.S.No.913 of 1996 as prayed for. Feeling aggrieved, the plaintiff in O.S.No.1143 of 1995 and the defendant in O.S.No.913 of 1996 viz., Gunabooshanam has filed the present Second Appeal.

11. This Court, at the time of admitting both the second appeals had formulated the following substantial questions of law:-

"1) Is the learned Principal District Judge correct in decreeing the suit when the parties are Christians and hence it is not possible to enjoy the properties where the principle of joint family will not apply for the Christians?

2) Is the learned Principal District Judge correct in dismissing the suit relying on the patta when it is established that patta will not grant title over the property?"

12. Heard, Mr.T.R.Rajaraman, the learned counsel for the appellants and Mr.R.Agilesh, the learned counsel for respondents 4 to 13 in both the Second Appeals.

13. Substantial Questions of law in both S.As:

The learned counsel for the appellant has submitted that the first Appellate Court erred in reversing the well considered judgment and decree of the trial Court. He further submitted that admittedly, the sale deeds for the suit properties stand in the name of the plaintiff and in such a case, it has to be presumed that the plaintiff is the owner of the suit properties. He further submitted that since the sale deeds stand in the name of the plaintiff, the burden is upon the defendants to prove that they also contributed the sale consideration for purchasing the suit properties, but the defendants miserably failed to discharge the burden that they also contributed the sale consideration. He further submitted that according to the defendants there was a Panchayat and in the said Panchayat, the properties were divided between the plaintiff and the defendants and to evident the same, a koorchit was executed on 21.07.1994 but they have not produced the said koorchit before the Court. He further submitted that if really already the properties were divided between the parties, the defendants should not have filed a suit in O.S.No.913 of 1996 to restrain the plaintiff

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viz., Gunabooshanam from interfering with their joint possession.

14. He further submitted that if really already the properties were divided, they should have asked permanent injunction against the plaintiff from interfering with their separate possession and enjoyment of their respective shares and instead of that they should not have asked the relief against the plaintiff from interfering with their joint possession. He further submitted that admittedly both the parties belong to Christian religion and in Christianity, the concept of joint family will not apply and hence, the defendants cannot contend that the plaintiff and themselves constituted a joint family and the suit properties were purchased from and out of the joint family income. He further submitted that since the plaintiff was serving in the Army from the year 1950, he purchased item No.2 for a sum of Rs.700/- in the year 1958 from and out of his own earnings.

15. He further submitted that the oral evidence of the plaintiff coupled with Ex.A27 (discharge certificate from Army) would show that he met with an accident while he was in service and only on that account, he was discharged from the service and by utilizing the amount which was given to him by way of compensation, he purchased item No.1 of the suit properties under Ex.A2 on 09.08.1961. He further submitted that Exs.A3 to A10 would show that patta for the suit properties stood only in the name of the plaintiff and he only paid kist. He further submitted that without knowledge of the plaintiff, the defendants got joint patta and after knowing the same, the plaintiff filed an application before the Thasildar and on considering the same, the joint patta was cancelled. He further submitted that the patta and other revenue records, chitta and adangal would not confer title and hence, based on the said revenue records the first Appellate Court ought not to have held that the defendants are also co-owners of the suit properties.

16. He further submitted that taking into consideration of the aforesaid facts, the trial Court has rightly decreed the suit in O.S.No.1143 of 1995 and dismissed the suit in O.S.No.913 of 1996 but the first Appellate Court had erroneously reversed the said findings and dismissed the suit in O.S.No.1143 of 1995 and decreed the suit in O.S.No.913 of 1996 and therefore, he prayed to allow the Second Appeals and set aside the judgments and decrees passed by the first Appellate Court and restore the judgments and decrees passed by the trial Court.

17. The learned counsel for the appellant in support of the aforesaid contentions, relied upon the decision in Municipal

Corporation, Aurangabad Vs. State of Maharashtra and another,
(2015) 16 SCC 689.

18. Per contra, the learned counsel for the respondents has submitted that admittedly the plaintiff and the defendants were Hindu by birth and only subsequently, they converted to Christianity and hence, the principle of joint family system will apply to this case. He further submitted that the oral evidence of DW1 to DW3 and Exs.B2 to B4 would show that the joint patta has been issued in the name of the plaintiff and also the defendants. He further submitted that the joint patta was issued only after hearing both sides but subsequently without notice to the defendants, the plaintiff got transfer of patta in his name alone and knowing the same, the defendants submitted an application before the Thasildar and based on the same, the Thasildar by the proceedings dated 30.05.1995 (Ex.B1) cancelled the patta transfer order and hence, the original order restored.

19. He further submitted that the oral evidence of DW3, who is the Village Administrative Officer the concerned Authority coupled with Exs.B2 and B3 would show that the plaintiff and the defendants have been jointly enjoying the suit properties. He further submitted that Ex.B1 would show that it was only the plaintiff who produced the koorchit dated 21.07.1994 before the Thasildar and hence, no adverse inference can be drawn against the defendants for not producing the said koorchit before the Court. He further submitted that Exs.B5 to B8 would show that the second respondent had obtained loan in the Co-operative Society by showing the suit properties and the said fact also would show that the defendants also co-owners of the suit properties. He further submitted that Ex.B9 would show that the plaintiff had sent a letter to the second defendant admitting that the defendants also got right in the suit properties.

20. He further submitted that the plaintiff has not produced any evidence to show that while he was in Military service, he met with an accident and a sum of Rs.3,000/- was paid to him as compensation and only by utilizing the said amount, he purchased item No.1 of the suit properties. He further submitted that the trial Court without considering the aforesaid facts and evidence in a proper perspective had erroneously held that the plaintiff is the absolute owner of the suit properties and he is in exclusive possession of the suit properties and hence, the first Appellate Court had rightly interfered with the said findings of the trial Court and reversed the same and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeals.

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21. Admittedly, the plaintiff is the eldest son in the family and he joined the Army in the year 1950. Recitals in Ex.A1 (sale deed dated 24.11.1958) shows that the plaintiff Gunabooshanam had purchased 44 cents (item No.2 of the suit properties) for a sum of Rs.700/- on 24.11.1958. The recitals in Ex.A2 (sale deed dated 09.08.1961) would show that the plaintiff Gunabooshanam had purchased item No.1 of the suit properties admeasuring 1.67 acres for a sum of Rs.2,500/- on 09.08.1961. Since both the sale deeds stood in the name of the plaintiff, the burden is upon the defendants to prove that they also contributed sale consideration for purchasing the suit properties.

22. In O.S.No.1143 of 1995, the first defendant had filed written statement and the same has been adopted by the second defendant. The third defendant remained absent and was set exparte in that suit but all the three defendants had jointly filed the suit in O.S.No.913 of 1996 claiming that all of them are in joint possession of the suit properties along with the plaintiff.

23. In the written statement filed by the first defendant and adopted by the second defendant in O.S.No.1143 of 1995, it is stated that the plaintiff is not the exclusive owner of the suit properties and the defendants 1 and 2 have also got a share in the suit properties but they have not stated that they have also contributed sale consideration for purchasing the suit properties. In the said written statement, it has been stated that item No.2 of the suit properties was purchased in the name of the plaintiff by the first defendant out of deference towards the plaintiff as he is the eldest brother and for the benefit of both the plaintiff and the defendants. It is also stated that item No.1 of the suit properties was purchased out of the income derived from the second item of the suit properties. So, from the aforesaid averments it is clear that the case of the defendants 1 and 2 is that item No.2 of the suit properties was purchased by the first defendant alone in the name of the plaintiff out of deference towards the plaintiff as he is the eldest brother.

24. In the plaint filed in O.S.No.913 of 1996 also it is stated that the second item of the suit properties was purchased by the first plaintiff therein i.e., the first defendant in O.S.No.1143 of 1995 in the name of the plaintiff. Further it was averred that the entire consideration was paid by the first plaintiff therein i.e., the first defendant in O.S.No.1143 of 1995. But the first defendant namely, Rathinam while examining himself as DW1 has deposed in his evidence that the second item of the suit properties was purchased by the second defendant.

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The second defendant while examining himself as DW2 in his chief examination has stated that all the three defendants and their father had purchased item No.2 of the suit properties in the name of the plaintiff. But in his cross examination he has stated that their father along with others collected the entire sale consideration for purchasing item No.2 of the suit properties. Further, except the contradictory statement, no other material produced before the Court to show that they also contributed the sale consideration for purchasing item No.2 of the suit properties.

25. As per Ex.A1 sale deed, item No.2 of the suit properties measuring 44 cents of dry land Adangal extract produced by the defendants (B3 and B10) shows no crop was raised in the suit properties and therefore, the contention that out of the income derived from item No.2 of the suit properties, item No.1 of the suit properties was purchased cannot be accepted.

26. DW1 has stated in his evidence that baptism was held in a church on the same date for himself and his brothers. At the time of the said baptism, he was aged about 7 years, the plaintiff was aged about 10 years, the second defendant was aged about 2 years and the third defendant was aged about 4 years. Further in Ex.A1 sale deed itself the plaintiff has been described as Harijan Christian. So, it is clear that on the date of purchase of item No.2 of the suit properties, the parties were Christians. Since the concept of joint family system is foreign to the Christianity, the defendants cannot contend that the suit properties were purchased in the name of one of the joint family members for the benefit of all the members of the joint family.

27. It is also to be pointed out that the defendants have taken a stand that a Panchayat was held on 21.07.1994 and the properties were divided orally in the said Panchayat and to evidence the same, a koorchit was executed and the said koorchit is only with the plaintiff. The learned First Appellate Court Judge also recorded a finding that Ex.B1 would show that a koorchit was executed between the parties on 21.07.1994 to evident the oral partition and the plaintiff himself had produced the said koorchit before the Thasildar. But a perusal of Ex.B1 orders shows that the plaintiff had submitted an application before the Thasildar, Tiruvannamalai, to cancel the joint patta and issue a patta in his name alone. Subsequently, the defendants submitted an application on 04.04.1995 enclosing the koorchit dated 21.07.1994 stating that already partition took place between them and hence, they prayed to cancel the patta which was issued in the name of the plaintiff alone. Therefore, the finding of the first Appellate Court that it was

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only the plaintiff who produced the koorchit dated 21.07.1994 before the Thasildar is not correct.

28. Since the defendants claim that there was a Panchayat and in the said Panchayat the properties were divided and to evident the same, a koorchit was executed on 21.07.1994, the burden is upon them to prove the same. But they have not produced the said koorchit before the Court. Further, as rightly observed by the trial Court no steps have been taken to examine any of the Panchayatars as witnesses before the Court. It is also to be pointed out that in Ex.B10 it is stated that the parties are enjoying specific extent of property separately and the properties are in their exclusive possession with sub division. Further, DW1 and DW2 also stated in their evidence that in pursuance of the Panchayat the properties were divided and they are in exclusive possession of their respective share and they also stated the extent and boundaries for their respective share. If the said fact is true, they should have filed a suit for permanent injunction restraining the plaintiff from interfering with their respective shares but on the contrary, they have filed a suit in O.S.No.913 of 1996 claiming that they are in joint possession of the suit properties with the plaintiff and the defendants/plaintiff should be restrained by means of permanent injunction from disturbing the said joint possession.

29. No party can compel the other parties to enjoy the properties jointly. If there is no possibility to enjoy the properties jointly among the co-owners, they have to file a suit for partition. But in this case, the defendants have taken a stand that they are enjoying the suit properties along with the plaintiff jointly and also taken a stand that already the properties were divided and they are in separate possession and enjoyment of the specific extent with specific boundaries. Therefore, the defence of the defendants is not a definite one. It appears that they have taken defence according to their whims and fancies without any basis. On the contrary, the case set up by the plaintiff would clearly show that he has purchased the property out of his own funds. The first Appellate Court relying upon the patta and other revenue records held that the defendants are also co-owners.

30. In Municipal Corporation, Aurangabad, Vs. State of Maharashtra and another (cited supra) the Hon'ble Supreme Court in para No.13 has observed as follows:-

"13. It is settled that mutation does not confer any right and title in favour of any one or other, nor cancellation of mutation extinguishes the right and title of the rightful

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owner. Normally, the mutation is recorded on the basis of the possession of the land for the purposes of collecting revenue."

31. From the aforesaid decision, it is clear that mutation does not confer any right and title in favour of any one or other, nor cancellation of mutation extinguishes the right and title of the rightful owner.

32. In this case, the sale deeds stand in the name of the plaintiff. As already pointed out that the defendants failed to prove that they have also contributed money for purchasing the suit properties. Under the said circumstances, it has to be presumed that the plaintiff is the absolute owner of the suit properties. Merely because patta, chitta and adangal stand in the name of the defendants also, in the light of the aforesaid decision of the Hon'ble Supreme Court, it would not confer any right or title over the suit properties for the defendants. The trial Court taking into consideration of all the aforesaid facts rightly held that the plaintiff is the absolute owner and he is in possession of the suit properties. But the first Appellate Court erroneously interfered with the said finding. Hence, the findings of the first Appellate Court have to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellants.

33. In the result, these Second Appeals are allowed. The judgments and decrees passed by the first Appellate Court are set aside and the judgments and decrees passed by the trial Court are restored. Considering the facts and circumstances of the case, the parties are directed bear their respective costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1. The Principal District Judge,
Tiruvannamalai.
2. The Additional District Munsif,
Tiruvannamalai.

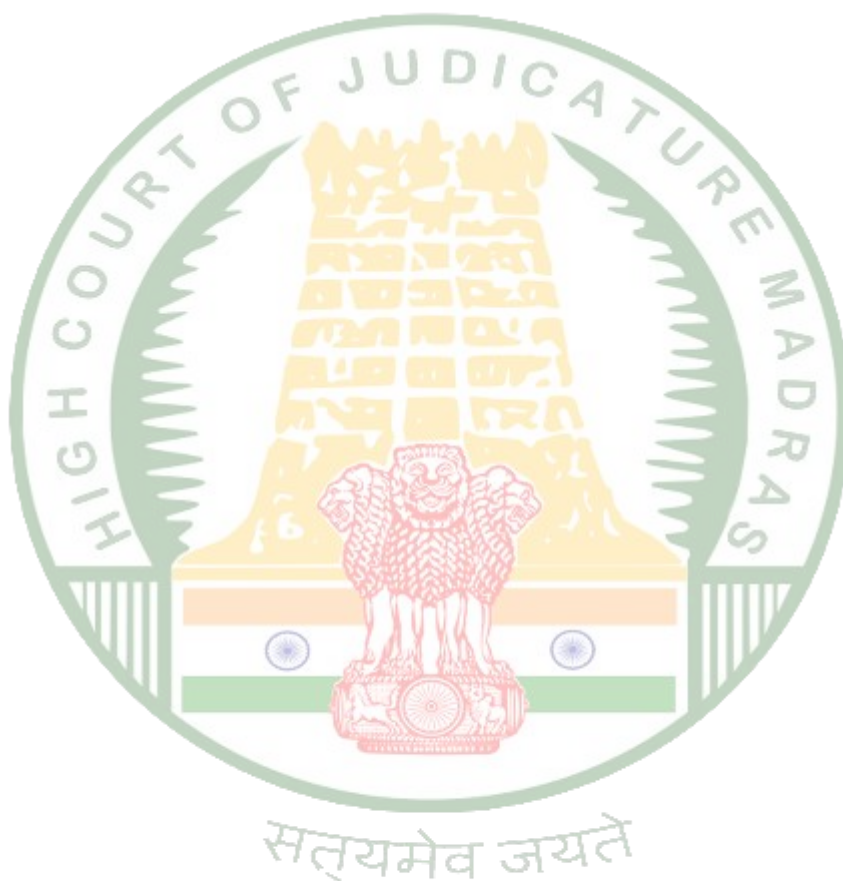
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