

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.NO.942 OF 2005

Renjitham

... Appellant/Plaintiff

Vs.

1.Jothilakshmi

2.Dr.R.Sampath

... Respondents/Defendants

PRAYER :

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.77 of 2003 on the file of the Principal Sub-Judge, Tindivanam dated 24.08.2004 reversing the judgment and decree made in O.S.No.227 of 1996 on the file of the Additional District Munsif, Tindivanam dated 30.07.2003.

For Appellant : Ms.N.Mala

For Respondents: Mr.P.Dinesh Kumar

for Mr.D.Ravichander (for R1)

For R2 - Set exparte

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the Principal Sub-Judge, Tindivanam in A.S.No.77 of 2003 dated 24.08.2004 reversing the judgment and decree passed by the Additional District Munsif, Tindivanam in O.S.No.227 of 1996 dated 30.07.2003.

2. The appellant herein had filed a suit in O.S.No.227 of 1996 on the file of the Additional District Munsif, Tindivanam to declare that the sale agreement entered into between the defendants 1 and 2 dated 11.12.1995 is not valid in law and no right conferred by the said agreement to the second defendant; to restrain the defendants by means of permanent injunction from interfering with her peaceful possession and enjoyment of the suit property; alternatively if

the court finds that the defendants are in possession of the suit property, to direct the defendants to deliver vacant possession of the suit property. The learned District Munsif by the judgment dated 30.07.2003 had decreed the suit as prayed for with costs and directed the defendants to deliver vacant possession of the suit property within a period of three months. Aggrieved by the same, the third defendant had filed an appeal in A.S.No.77 of 2003 on the file of the Principal Sub-Judge, Tindivanam. The learned Principal Sub-Judge, Tindivanam, by the judgment dated 24.08.2004 had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. However, she directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court

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

(a) The suit property originally belonged to the plaintiff's father Samikannu Gounder, by virtue of the sale deed dated 17.02.1954. The said Samikannu Gounder, after purchase, had put up a shed with zinc sheet and compound wall and enjoyed the same by himself and also leasing out to others. The said Samikannu Gounder died in the month of November, 1991. After his death, his wife Dhanabackiammal and his daughter (plaintiff) succeeded to his properties. The said Dhanabackiammal had bequeathed all the properties in favour of the sole legal heir/daughter (plaintiff) and thereafter she died in the year 1993. After the death of the said Dhanabackiammal, the plaintiff succeeded to the properties including the suit property and took possession and stored old articles in the shed which is situated in the suit property and locked the same.

(b) The first defendant is the close relative of the plaintiff. The second defendant is the brother-in-law of the first defendant. The first defendant is not having any right over the suit property and he is not in possession and enjoyment of the same. On the eastern side of the suit property, the first defendant got property and he sold the said property to one Nazimmunisa through a registered sale deed dated 16.07.1997 in which he has shown the suit property as western boundary and the same belongs to the plaintiff's father Samikannu Gounder. Hence, the first defendant is estopped from denying the plaintiff's title over the suit property. The fact remains so, with a view to defraud the plaintiff and also to cause a loss to her, the defendants 1 and 2 colluded together and created a sale agreement dated 11.12.1995. In the said sale agreement, the first defendant has stated that the suit property

belongs to him and hence, he entered sale agreement with the second defendant. Hence, there is a cloud on title of the plaintiff over the suit property. After knowing the said agreement, the plaintiff had issued a lawyer's notice to the defendants 1 and 2. The defendants 1 and 2 had received the said notice, but they did not send any reply and hence the plaintiff had filed a suit to declare the sale agreement dated 11.12.1995 entered into between the defendants 1 and 2 is not valid in law and under the said agreement, the second defendant did not get any right and for permanent injunction to restrain the defendants 1 and 2 from interfering with her peaceful possession and enjoyment of the suit property. Subsequently, the plaintiff amended the prayer that in case, the court finds that the defendants are in possession of the suit property, they should be directed to deliver vacant possession of the suit property.

(c) During pendency of the suit, the third defendant had filed an application in I.A.No.1296 of 2002 stating that the first defendant had executed a sale deed in her favour and hence, she should be added as a party. The said application was allowed. Accordingly, the third defendant was impleaded as party. Since the said transaction took place during pendency of the suit, the said transaction is hit by the principle of lis pendens. Further, during pendency of the suit, the first defendant died and since the third defendant claimed that she purchased the property from the first defendant, the other legal heirs of the first defendant were not impleaded. Accordingly, the plaintiff amended the plaint.

5. The averments made in the written statement filed by the first defendant are in brief as follows:

It is true that the suit property originally belonged to one Samikannu Gounder but the defendants 1 and 2 denied the allegation that after the death of the said Samikannu Gounder, his wife Dhanabackiammal and his daughter (plaintiff) succeeded to his property and the said Dhanabackiammal executed a Will in favour of the plaintiff bequeathing the properties including the suit properties. The plaintiff was never in possession of the suit property at any point of time. The plaintiff's father Samikannu Gounder, when he was alive, agreed to sell the suit properties to the first defendant's father Venkatachala Gounder for Rs.20,000/- and received a sum of Rs.17,000/- as advance and handedover the possession of the suit property as a vacant site and thereafter, the first defendant's father constructed a compound wall and a building therein and has been in possession and enjoyment of the same. Considering the fact that both of them are close relatives, the first defendant's father did not insist the said Samikannu Gounder to execute the sale deed, but he orally sold the property. Subsequently, the first defendant's

father Venkatachala Gounder died and thereafter the plaintiff's father Samikannu Gounder executed a written agreement on 05.05.1991 in favour of the first defendant admitting the earlier sale transaction and in pursuance of the said agreement, the first defendant has been in possession and enjoyment of the suit property. The said Samikannu Gounder promised that he will execute the proper sale deed in favour of the first defendant whenever the first defendant made a request, but suddenly the said Samikannu Gounder passed away. Considering the relationship, the first defendant did not insist the legal heirs of the said Samikannu Gounder to execute the sale deed. Taking advantage of the fact that the first defendant did not obtain registered sale deed, the plaintiff with a view to grab the suit property, she filed the above suit with false averments. In pursuance of the sale agreement, the first defendant has been enjoying the suit property by leasing out to the third parties. The allegation that on 11.12.1995, the first defendant entered into an agreement with the second defendant to sell the suit property is false. The second defendant has been unnecessarily dragged to the court. Since the first defendant is in possession of the suit property for more than 12 years, he perfected title by adverse possession also. The allegation that the defendant's 1 and 2 tried to encroach the suit property is false and therefore, the defendants 1 and 2 prayed to dismiss the suit.

6. The averments made in the written statement filed by the third defendant are in brief as follows:

The plaintiff's father Samikannu Gounder had agreed to sell the suit property to the first defendant's father Venkatachala Gounder for Rs.20,000/- and received a sum of Rs.17,000/- and handed over the possession of the suit property as vacant site to the said Venkatachala Gounder. Thereafter the said Venkatachala Gounder had constructed the building and also compound wall. Subsequently, the said Samikannu Gounder died without executing the sale deed. The first defendant and the third defendant are brother and sister and hence, they are having equal right over the suit property. Accordingly, on 11.04.2002, the first defendant executed a registered release deed relinquishing his rights over the suit property in favour of the third defendant and hence she is in exclusive possession and enjoyment of the suit property and therefore, she prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried the suit. During trial on the side of the plaintiff, plaintiff examined herself as PW1 and also examined two more witnesses as P.Ws 2 and 3. She marked Exs.A1 to A8 as exhibits on her side. On the side of the defendants, the third defendant examined herself as

DW1 and 3 more witnesses were examined as D.Ws 2 to 4. They marked Exs.B1 to 10 as exhibits on their side.

8. The learned District Munsif after considering the materials placed before her, found that the defendants failed to prove that they perfected title by adverse possession. She further found that since the first defendant did not file a suit for specific performance within the limitation, he lost the right to file a suit and hence, he cannot claim protection under Section 53-A of the Transfer of Property Act. She further found that as per the alleged agreement dated 05.05.1991, no title passed on the first defendant and that being so, he cannot execute release deed in favour of the third defendant. She further found that the first defendant failed to prove the alleged oral sale. Accordingly, she decreed the suit as prayed for with costs and directed the defendants to deliver vacant possession of the suit property within three months. Aggrieved by the same, the third defendant had filed an appeal in A.S.No.77 of 2003 on the file of the Principal, Sub-Judge, Tindivanam. The learned Principal Sub-Judge, Tindivanam by the judgment dated 24.08.2004 had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. Further, she directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present second appeal.

9. This court at the time of admitting the second appeal has formulated the following substantial question of law:

"Whether the reversing judgment and decree of the lower appellate court in pronouncing a judgment on merits contrary to the provisions of Order 41 Rule 17 CPC read with Order 41 Rule 11 (2) and Order 41 Rule 21 CPC is valid in law?"

10. Subsequently, after hearing both sides, the following additional substantial questions of law were formulated:

"1) Whether the first defendant is entitled to execute Ex.B2 Release Deed in favour of the third defendant?"

2) Whether the third defendant is entitled to invoke the provisions of Section 53-A of the Transfer of Property Act?"

11. Heard Mrs.N. Mala, learned counsel for the appellant and Mr.P.Dinesh Kumar for Mr.D.Ravichander, learned counsel for the first respondent.

12. The main substantial questions of law:

The learned counsel for the appellant/plaintiff submitted that when the appeal came up for hearing before the first appellate court, both side counsel not appeared and also not advanced their arguments and in such a case, as per Order 41 Rule 17 CPC, the first appellate court ought to have dismissed the appeal for non-prosecution, but it had allowed the appeal on merits and hence, she prayed to set aside the judgment and decree passed by the first appellate court.

13. In support of the aforesaid contention, the learned counsel for the appellant has relied upon the following decisions:

1) Abdur Rahman & Others vs Athifa Begum & Others (1996) 6 SCC 62;

2) Ghanshyam Dass Gupta v. Makhan Lal, (2012) 8 SCC 745

14. Per contra, the learned counsel for the first respondent/third defendant has submitted that as per Order 41 Rule 17 (1) of CPC, if the appellant not appeared when the appeal is called for hearing, the court has to dismiss the appeal for default and should not dismiss the appeal on merit, but in this case, the first appellate court has not dismissed the appeal. On the contrary, it has allowed the appeal and hence, the first appellate court has not committed any irregularity or illegality in following the procedure.

15. In Abdur Rahman & Others vs Athifa Begum & Others (cited supra), and also in Ghanshyam Dass Gupta v. Makhan Lal, (cited supra), the Hon'ble Supreme Court has held that if the appellant does not appear when the appeal is called for, the court has to dismiss the appeal for default, but the court should not dismiss the appeal on merit. In this case, admittedly, the first appellate court has not dismissed the appeal. On the contrary, it has allowed the appeal and therefore the aforesaid decisions will not help the appellant/plaintiff.

16. The appellant herein was the first respondent before the first appellate court. If on the date of hearing, her counsel not appeared and argued on merit, the first appellate court should have set her exparte as per Order 41 Rule 17 (2) of CPC., but the first appellate court, without setting her exparte, had passed judgment on merit. In such a case, it is open to the first respondent/plaintiff to file an application under Order 41 Rule 21 CPC to re-hear the appeal and if she satisfies the court that the notice was not duly served or that she was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-admit/re-

hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him. But in this case, the appellant has not filed any such application before the first appellate court to set aside the exparte order and therefore, it is not open to the appellant to content before this court that the first appellate court has passed judgment in her absence. In the second appeal, she can argue with regard to the merits of the judgment but she cannot contend that the first appellate court should not have passed judgment in her absence. Hence, this substantial question of law is answered against the appellant/plaintiff.

17. Additional substantial questions of law 1 and 2:

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. She further submitted that since the first defendant claimed that she has been in possession and enjoyment of the suit property only in pursuance of the sale agreement said to have been entered between the plaintiff's father Samikannu Gounder and the first defendant dated 05.05.1991 (Ex.B1), he cannot claim adverse possession. She further submitted that the case of the defendants is that the plaintiff's father Samikannu Gounder had orally sold the suit property to the first defendant's father but they failed to prove the same. She further submitted that as per Section 54 of the Transfer of Property Act, in respect of the immovable property having the value of Rs.100/- and more, sale can be effected only through a registered sale deed and hence, the defendants cannot claim title by oral sale. She further submitted that Ex.B1 shows that it is only a sale agreement and that will not create any title to the first defendant and that being so, he cannot execute Ex.B2 release deed in favour of the third defendant. She further submitted that even as per the Ex.B1 sale agreement, the plaintiff's father entered sale agreement only with the first defendant and that being so, he cannot execute release deed in favour of the third defendant and the third defendant being a third party, she cannot claim protection under Section 53-A of the Transfer of Property Act. She further submitted that the defendants failed to prove the execution of Ex.B1 sale agreement and even assuming that the said sale agreement is true, when the defendants have not filed suit for specific performance of the said sale agreement, they cannot seek protection under Section 53-A of the Transfer of Property Act. She further submitted that the trial court taking into consideration of the aforesaid facts, had rightly declared the title of the plaintiff over the suit property and consequently, granted the relief of permanent injunction and also delivery of possession, but the first appellate court without taking into consideration of the evidence in a proper

perspective had mechanically allowed the appeal and set aside the judgment and decree passed by the trial court and dismissed the suit and hence, she prayed to allow the second appeal and restore the judgment and decree passed by the trial court.

18. In support of the aforesaid contentions, the learned counsel for the appellant/plaintiff has relied upon the following decisions:

1. Achal Reddi Vs. Ramakrishna Reddiar and Others (1990) 4 SCC 706;
2. Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (dead) through LRs 2004 SAR (Civil) 764 ;
3. Kumar Gonsusab and Ors. vs. Sri Mohammed Miyan Urf Baban and Others (2009) 2 MLJ 73 SC

19. Per contra, the learned counsel for the first respondent/third defendant has submitted that initially the plaintiff had filed a suit to declare that the sale agreement entered into between the defendants 1 and 2 dated 11.12.1995 is not valid in law and the said agreement has not confer any right to the second defendant and for permanent injunction to restrain the defendants 1 and 2 from interfering with her peaceful possession and enjoyment of the suit property, but subsequently, during pendency of the suit, she amended the plaint that in case, the court finds that the defendants are in possession of the suit property, they should be directed to deliver possession of the same. He further submitted that since the plaintiff herself is not sure that whether she is in possession of the suit property or the defendants are in possession of the suit property, the suit as framed is not maintainable. He further submitted that Ex.B1 would clearly show that the father of the plaintiff Samikannu Gounder had already sold the suit property to the first defendant's father Venkatachala Gounder orally for Rs.20,000/- and received a sum of Rs.17,000/- and possession also handed over to the first defendant's father. Confirming the said transaction, the said Samikannu Gounder had executed Ex.B1 sale agreement in favour of the first defendant and only in pursuance of the said agreement, the first defendant is in possession and enjoyment of the suit property. He further submitted that since the plaintiff has not specifically pleaded in the plaint that under what circumstances the defendants came into the possession of the suit property and shows that she suppressed the fact that the defendants are in possession of the suit property only in pursuance of Ex.B1 sale agreement. He further submitted that since the plaintiff's father orally sold the property to the first defendant's father and subsequently confirming the said sale transaction, the plaintiff's father executed Ex.B1 sale agreement, the third defendant being the sister of the first defendant, she is entitled to the right

whatever derived under Ex.B1 sale agreement and as such, she is also entitled to enforce the Ex.B1 sale agreement. He further submitted that after the death of the said Venkatachala Gounder, his legal heirs namely the defendants 1 and 3 are having equal right to enforce Ex.B1 sale agreement and hence the first defendant executed a release deed in favour of the third defendant and after execution of the said release deed and in pursuance of the said release deed, the third defendant alone is entitled to claim any right under Ex.B1 sale agreement and therefore, she is entitled to protect her possession by virtue of Section 53-A of the Transfer of the Property Act. He further submitted that if a person obtained possession of the property in part performance of the agreement, he can defend his possession in a suit for recovery of possession filed by the transferer, even if suit for specific performance of agreement of sale has become barred by limitation. He further submitted that the trial court without taking into consideration of the aforesaid facts and evidence in a proper perspective had mechanically decreed the suit, but the first appellate court after considering the aforesaid facts in a proper perspective had rightly allowed the appeal and dismissed the suit and in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

20. In support of the aforesaid contentions, the learned counsel for the first respondent/third defendant has relied upon the following decisions:

1. Alam Gangadhara Vs. Pappapalli Ganagarra AIR 1968 AP 291;
2. Shyam Singh Vs. Daryao Singh(dead) By LRs and Others (2003) 12 SCC 160

21. A perusal of the records shows that originally the plaintiff had filed a suit to declare that the sale agreement entered between the defendants 1 and 2 dated 11.12.1995 is not valid in law and the said agreement has not conferred any right to the second defendant and to restrain the defendants 1 and 2 by means of permanent injunction from interfering with her peaceful possession and enjoyment of the suit property. She has pleaded in her plaint that she inherited to the suit property and other properties as legal heir of her father Samikannu Gounder and also by virtue of the Will executed by her mother Dhanabackiammal. She further averred that she stored old articles in the shed which is situated in the suit property and locked the same and she is keeping in her possession. She further averred that she came to know that the first defendant had entered into a sale agreement with the second defendant on 11.12.1995 stating that he is the owner of the suit property and

hence there is a cloud on title over the suit property and therefore, it has become necessary to file suit for declaration and permanent injunction. If there is a cloud on title over the suit property, the plaintiff should have filed the suit for declaration of her title over the suit property but she has not asked any such relief. On the contrary, she asked a relief to declare that the sale agreement entered by the defendants 1 and 2 dated 11.12.1995 is not valid in law and the said agreement has not conferred any right to the second defendant. The trial court proceeded on the promise that the plaintiff has asked the relief of declaration of her title and finally held that the plaintiff has proved her title over the suit property and hence, she is entitled for the relief of declaration of her title over the suit property. The said finding is against the prayer made in the plaint.

22. At this juncture, it would be relevant to refer to the decision in paragraph No.8 in Marimuthu Vs. Savarimuthu and Others, 1991 1 MLJ 480, wherein this court has observed as follows:

8. In this case, plaintiffs does not seek relief for themselves and what they claim is only a relief to declare that defendant is a member of back-ward community and revenue authorities should not issue community certificate to the petitioner that he belongs to scheduled caste. Plaintiffs did not claim right for themselves, they seek only declaration for defendant. In view of the decision of the Honourable Supreme Court and also due to the fact that plaintiffs are not claiming relief for themselves, but only claiming relief for defendant, such a suit is not maintainable and the same is liable to be rejected. In a suit, relief should be claimed for plaintiff showing cause of action. For granting relief to defendant, there cannot be any cause of action. The suit is misconceived and the plaint is struck off from the file. ''

23. From the aforesaid decision, it is clear that a suit relief should be claimed for plaintiff showing cause of action. For granting relief to defendants, there cannot be any cause of action. In this case, as already pointed out that the plaintiff has not asked relief to declare her title over the suit property. On the contrary, she asked to grant relief to declare the agreement said to have been entered by the defendants 1 and 2 dated 11.12.1995 is not valid in law. So, it appears that the plaintiff has not asked relief for herself. Merely because the sale agreement dated 11.12.1995 entered into between the defendants 1 and 2 declared as not valid in law that would not

confer any title to the plaintiff. She has to ask to declare her title based on her pleadings, but she has not asked to declare her title over the suit property. So, on that ground, the suit has to be dismissed.

24. As already pointed out, originally the plaintiff has filed the suit to declare the sale agreement entered by the defendants 1 and 2 dated 11.12.1995 is not valid in law and the said agreement has not conferred any right to the second defendant and also for permanent injunction to restrain the defendants from interfering with her peaceful possession and enjoyment of the suit property. Subsequently, she amended the plaint and added a prayer that in case, the court finds that the defendants are in possession of the suit property, the defendant should be directed to deliver vacant possession of the suit property. The plaintiff while examining herself as PW1 has deposed that on 01.04.2002, i.e., three years ago, the defendants broken the lock and took possession of the suit property but there is no averment to that effect in the plaint. If really the defendants took possession of the suit property during pendency of the suit, she should have pleaded in the plaint while amending the prayer seeking delivery of possession but she has not at all averred that when the defendants took possession of the suit property. She simply amended the plaint prayer by saying that in case, the court finds that the defendants are in possession of the suit property, they should be directed to deliver possession. Even in the said amendment, she has not admitted that the defendants took possession of the suit property. She simply made an evasive prayer leaving the court to decide the issue whether she is in possession or the defendants are in possession of the suit property. She should have pleaded in the original plaint or she should have at least averred while seeking amendment of the prayer that when the defendants took possession of the suit property. The conduct of the plaintiff would show that even at the time of filing of the suit, she was not in possession of the property, but suppressing the said fact, she filed the suit stating that as if she was in possession of the suit property and asked the relief of permanent injunction to restrain the defendants from interfering with her peaceful possession and enjoyment. But subsequently, though she amended the plaint to add the prayer for delivery of possession, at that time also, she was not prepared to admit that the defendants are in possession of the suit property and that is why she asked the prayer that if the court finds that the defendants are in possession they should be directed to deliver possession.

25. It is also to be pointed out that the plaintiff claimed right as legal heir of her father Samikannu Gounder and also by virtue of a Will said to have been executed by her

mother Dhanabackiammal (Ex.A2). In Ex.A2, Will, the said Dhanabackiammal has stated that the properties mentioned in the said Will were obtained by her husband Samikannu Gounder through partition, but admittedly, the suit property was purchased by the said Samikannu Gounder under Ex.A1 sale deed dated 17.02.1954. So, it is clear that under Ex.A2, only the ancestral properties of Samikannu Gounder were bequeathed to the plaintiff. Since the suit property was purchased by the said Samikannu Gounder under Ex.A1, the said property not covered under Ex.A2 Will. Further, the description of the property given in Ex.A2 also would show that the suit property was not specifically mentioned in the said document. After giving description to other properties, a recital has been added as the other properties which are left in the said Will also covered under the said Will. The said recital also would show that at the time of executing the Ex.A2 Will, the suit property was not in possession of the plaintiff's family. If really the said property was also in possession of her family, her mother would have specifically mentioned the suit property also in the Ex.A2 Will. It is also to be pointed out that the plaintiff while examining herself as PW1 in one place, she has deposed that the suit property is situated at Konari Kuppam. In another place, she deposed that the suit property is situated at Kadoor village, but actually as per the plaint schedule, and also as per Ex.A1 sale deed, the suit property is situated at Nallathur village. The aforesaid facts also would show that the plaintiff does not know where the suit property is really situated and that being so, the contention of the plaintiff that she was in possession of the suit property before filing of the suit and only during pendency of the suit, the defendants took possession cannot be accepted.

26. The trial court without taking into consideration of the aforesaid facts had mechanically granted decree for the declaration of title and also for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff. It is pertinent to note that the trial court has granted the relief of delivery of possession also. If the plaintiff proves that she is in possession of the property, then only injunction can be granted restraining the defendants from interfering with the plaintiff's possession. If the trial court comes to the conclusion that the defendants are in possession of the property, it should not have granted injunction. In this case, both the reliefs i.e., injunction as well as possession ordered. Further, as already pointed out that the plaintiff herself has not asked the relief of declaration of title but the trial court has granted the said relief also. Hence, the suit as framed is not maintainable and the same is liable to be dismissed. The plaintiff conducted the suit on the premise that she asked the relief for the declaration of her

title. The trial court also decreed the suit on the same premise. In the appeal memorandum filed before this court also, the plaintiff has stated in ground No.7 that "The lower Appellate Court ought to have seen and held that the appellant is entitled to declaration of her title and other reliefs prayed for in the suit". So, it is clear that the plaintiff has conducted the case throughout that she prayed for the relief of declaration of her title. Therefore, this court is of the view that liberty has to be given to the plaintiff to file a fresh suit for the declaration of her title and for delivery of possession. If she filed any such suit, it is open to the defendants to put forth their defence in accordance with law. Hence, the decisions cited by both sides are not taken into consideration at this stage.

27. For the aforesaid reasons, the additional substantial questions of law are answered against the appellant/plaintiff. Accordingly, the second appeal is liable to be dismissed.

28. In the result, second appeal is dismissed confirming the judgment and decree passed by the first appellate court. It is open to the plaintiff to file a fresh suit for the relief of declaration of her title and delivery of possession, if she is advised to do so. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Principal Sub-Judge, Tindivanam.
2. The Additional District Munsif, Tindivanam
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to Ms.N.Mala, Advocate, S.R.No.1477

+1cc to Mr.D.Ravichander, Advocate, S.R.No.397

S.A.No.942 of 2005

GP(CO)

CS/06/01/2021