

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.01.2020

DELIVERED ON: 20.02.2020

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

S.A.No.1189 of 2011

and

M.P.No.1 of 2012

Auroville Foundation, Auroville,
Rep.by its Secretary,
Having its Office at Town Hall,
Auroville, Vanur Taluk ... Appellant/Plaintiff

vs.

1.Mr.Alexander
2.Madhivanan
3.V.Ramachandran Respondents/Defendants
(R3 impleaded, vide order
of Court dated 22.01.2020
made in M.P.No.2 of 2012
in S.A.No.1189 of 2011)

Second Appeal is filed against the judgement and decree,
dated 28.03.2011, passed by the Principal Sub-Court, Tindivanam,
in A.S.No.7 of 2010, confirming the judgement and decree, dated
21.12.2009, passed by the District Munsif Court-cum-Judicial
Magistrate, Vanur, in O.S.No.1 of 2002.

For Appellants : Mr.V.Raghavachari

For Respondents : R1 No appearance
M/s.S.Kaithaimalai Kumaran for R2
Mr.M.Krishnappan, Sr.Counsel
for M/s.R.Swarnalatha for R3

JUDGEMENT

This second appeal is filed by the plaintiff in the
suit as against the judgement and decree, dated 28.03.2011,
passed by the Principal Sub-Court, Tindivanam, in A.S.No.7 of
2010, confirming the judgement and decree, dated 21.12.2009,

passed by the District Munsif Court-cum-Judicial Magistrate, Vanur, in O.S.No.1 of 2002, which was one for declaration of title and permanent injunction.

2.The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3.The facts, which gave rise to the filing of the suit, are briefly stated hereunder:

(a)The appellant herein is the plaintiff and the respondents are the defendants in the suit. The plaintiff is the Foundation, called 'Auroville Foundation', founded by its members. The suit property originally belonged to one Arul Devadoss Gandhi. He sold the suit property to one J.Dhayanand, under a Registered Sale Deed, dated 29.01.1976, for a cum Rs.17,500/- and delivered possession of the same. The Sale Deed, dated 29.01.1976, was marked as Ex.A1 in the suit proceedings.

(b)According to the plaintiff foundation, Dhayanand is the member of the Aurobindho Society, Pondicherry, as well as Auroville Foundation. He purchased the suit property for the objects relating to Auroville Foundation and has been in possession and enjoyment of the same. The suit property purchased by Dhayanand formed part of Auroville Foundation for all purposes.

(c)At some point of time, differences arose among the members of the Aurobindho Society, Pondicherry, over the administration of Auroville Foundation and its properties and the properties came to be vested with the Central Government, in view of severe dispute among the members. Ultimately, the disputes appeared to have been resolved and the assets were released from the Government control and vested all properties, including the suit schedule property, with the plaintiff Foundation. As per vesting of properties, the plaintiff Foundation has absolute title to the suit schedule property under the provisions of Auroville Foundations Act. The plaintiff, as on the date of institution of the suit, has been in absolute possession and exclusive enjoyment of the suit property.

(d)According to the plaintiff, patta was issued in the name of the Foundation for the suit schedule property and the suit property was also lying adjacent to various other properties belonging to the foundation. The Foundation has been raising crops like Cashew, eucalyptus and other trees in the suit property. It was also pleaded by the plaintiff Foundation

in the plaint that the plaintiff had been in open and continuous possession of the suit property for more than the statutory period. It was also pleaded that in view of the open and continuous possession for more than the statutory period, even otherwise, the plaintiff had perfected title by 'adverse possession'. Apprehending attempts by the defendants in encroaching upon their land, the suit was laid by the plaintiff for declaration of title over the suit property and for consequential permanent injunction.

4.The defendants filed a detailed written statement, resisting the prayer of the plaintiff Foundation. The first defendant claims to have acquired title under a Settlement Deed, dated 10.02.1970, executed by one Anthonysamy Mudaliar, his father, which document was marked as Ex.B5 in the suit proceedings. The second defendant is the Power of Attorney Holder of the first defendant, as per Power of Attorney Deed, dated 06.09.2001, executed by the first defendant, which was marked as Ex.B6. According to the defendants, by virtue of Settlement Deed, executed as early as 10.02.1970, the first defendant acquired absolute title to the suit schedule property and therefore, the claim of title to the property by the plaintiff was unsustainable. The defendants have also denied the exclusive possession and enjoyment of the suit property by the plaintiff Foundation. In the written statement, it was also denied that the so called Dhayanand stated to have bought the property on behalf of the plaintiff Foundation was a member of the Foundation. In fact, in Paragraph Nos.8 and 9 of the written statement, the details of transfer of the suit schedule property to various hands from 1924 have been mentioned and the final sale to Anthonysamy Mudaliar, in 1965, had been mentioned and after selling a portion of the larger extent of land, viz., 8.14 acres, the remaining part of 8 acres and 2.5 cents, including the suit property, was given in favour of the first defendant-Alexander, vide registered Settlement Deed (Ex.B5), dated 10.02.1970. According to the defendants, the property had been in possession of so many persons right from 1924 to until date and therefore, the claim of the plaintiff to the suit property was absolutely false and not maintainable.

5.The trial Court, after framing the issues and after advertng to various documents and the evidence placed on record, has found that the plaintiff did not establish continuous possession, as Exs.A2 and A3 filed by them were of the year 2007 i.e. Ex.A2 being patta, dated 27.06.2007 and Ex.A3, being ?A? Register, was also dated 27.06.2007. According to the trial Court, these documents were issued after the suit was laid in the year 2002. The trial Court has also found that the other documents relied on by the plaintiff, viz., Exs.A4 to A6 are tax receipts of the year 1990, 1993 and 1995. After

1995, no documents or receipts were filed in order to prove their continuous possession. The trial Court has also found that in P.W.1's evidence, given on behalf of the plaintiff Foundation, it is admitted that the Power to sue was given and the Power of Attorney Deed was not marked in the suit proceedings. The trial Court has also found that in P.W.1's evidence there was no mention about the suit property was being purchased for and on behalf of the Auroville Foundation in the Sale Deed executed in favour of Dhayanand, so as to prove that he had purchased the property for and on behalf of Aroville Foundation. Further, the trial Court found that P.W.1 admitted about the earlier transaction of sale executed by Anthonysamy Mudaliar in favour of Balasundara Mudaliar, in 1968. Therefore, finding that the plaintiff has not established its case, in terms of the settled legal principle, the trial Court had dismissed the suit, vide its judgment and decree, dated 21.12.2009. As against the dismissal of the suit, A.S.No.77 of 2010 was filed by the plaintiff on the file of the Principal Sub Court, Tindivanam.

6.The lower appellate Court, which dealt with the appeal, has found that merely because patta was given to the plaintiff Foundation, that by itself cannot establish the ownership of the plaintiff Foundation over the suit schedule property. Moreover, the appellate Court had also agreed with the findings of the trail Court that the documents relied on by the plaintiff, viz., Exs.A2 to A6, did not establish the factum of continuous possession of suit property by the plaintiff. Moreover, when the Settlement Deed was questioned by the plaintiff and a request was made for remanding the matter to the trial Court to examine the validity of the Settlement Deed-Ex.B5, dated 10.02.1970, the lower appellate Court itself has found that the signature of the first defendant found in Ex.B5 and the signature as found in Ex.B6, the Power of Attorney Deed, dated 06.09.2001, are one and the same and thereby concluded that Ex.B5 was in order. Moreover, the appellate Court has also held that the plaintiff failed to establish its ownership over the suit property and that the plaintiff failed to prove that Ex.B6-the Power of Attorney was fraudulently obtained. In the circumstances, the lower appellate Court dismissed the appeal, by confirming the judgment and decree passed by the trial Court. As against the said judgment and decree of the appellate Court, the present Second Appeal has been filed.

7.While admitting the Second Appeal, the following Substantial Questions of Law were framed:

"(a)Are the Courts below right in not drawing adverse inference as against the first defendant for his non-examination?

(2)Is the Power of Attorney agent

capable of tendering evidence in respect of matters that are to the special knowledge of the first defendant?

(3)When the plaintiff is in possession of the property continuously and uninterruptedly, are the Courts below justified in denying title to it?"

8.Shri.V.Raghavachari, learned counsel appearing for the appellant/plaintiff would submit that the title to the suit property was clearly established through Ex.A1, the Sale Deed, dated 29.01.1976, executed in favour of one Dhayanand. The learned counsel would submit that the said Dhayanand did not question the claim of Auroville Foundation as to its ownership. Moreover, the very fact that Ex.A2, dated 27.06.2007, patta issued in the name of the plaintiff Foundation, Ex.A6- 'A' Register, which reflects the name of the plaintiff Foundation and so are the tax receipts, viz., Exs.A4 to A6, would clearly establish that the property in fact belonged to the plaintiff Foundation and was in possession of the foundation.

9.The learned counsel would submit that as far as the anterior documents relied on by the defendants, viz., Exs.B1 to B4 are concerned, the Courts below miserably failed to appreciate the relevance of such documents with reference to the actual claim of the defendants, which originated from the date of execution of Ex.A1 dated 29.01.1976. The learned counsel also would submit that the Courts below failed to appreciate as to whether the so called Settlement Deed-Ex.B5, dated 10.02.1970, was acted upon by the parties. The learned counsel would also submit that the original Settlement Deed was not admittedly marked and only a copy of the same was produced. According to the learned counsel, before the secondary evidence is admitted, viz., certified copy of the Settlement Deed, the Courts below did not take any steps to ascertain as to what happened to the original document. The failure to ascertain as to the whereabouts of the original Settlement Deed is in violation of Section 68 of the Evidence Act. The learned counsel would refer to Section 68 of the Evidence Act, which reads as under:-

"68. Proof of execution of document required by law to be attested-If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence."

10.The learned counsel would also submit that the first defendant, who was the beneficiary under the Settlement Deed-Ex.B5, dated 10/02/1970 did not give any evidence at all. The evidence was given only by D2, who was admittedly a Power of Attorney holder under Ex.B6, which was executed as late as 06.09.2001. In matters of this nature, where certain facts fall, particularly within the exclusive domain of the actual beneficiary concerned, such facts can be spoken to only by that person concerned and not by a Power of Attorney.

11.In this connection, the learned counsel for the plaintiff would submit that at the time when the Settlement Deed was executed in 1970 (Ex.B5), the age of the second defendant, viz., Power of Attorney holder, was only 3 years and at that time when the Sale Deed was executed in favour of Dhayanand in 1976, he was only 9 years old. Therefore, in the absence of evidence from the first defendant in regard to the circumstances under which both Ex.A1 and Ex.B5 were executed, the entire case set up by the defendants had to necessarily fail.

12.The learned counsel would draw the attention of this Court to the evidence tendered by three defence witnesses, viz., D.W.1, D.W.2 and D.W.3, particularly, the evidence of D.W.1. In all the documents put to him during examination, which were most relevant to the case, the answer of D.W.1, who was the second defendant in the suit, was that he was not aware of the same. The learned counsel would submit that D.W.1-the second defendant has completely pleaded ignorance about the circumstances under which the Settlement Deed was executed in 1970 and the Sale Deed in 1976. D.W.1 would depose that he was not aware of the patta issued in the name of plaintiff Foundation and he was not aware of the purchase of suit property by Dhayanand in the year 1970 and he was not aware of how the property changed several hands in the past. On the whole, it appears that D.W.1 was not aware of any of the facts, which were the immediate and surrounding circumstances to the execution of documents relied on by the plaintiff as well as the defendants.

13.The other witness, viz., D.W.2 was the person, who is holding the adjacent land to the suit property. He would clearly depose that he was not aware of the property details and in whose name the Patta was issued. In fact, he would state that he was not aware of anything about the suit property. D.W.3 was the President of the Local Panchayat. He, in fact deposed that he was not living in that village at all where the property was located and he was not aware of the earlier history of the property as to how the property changed several hands. Therefore, the learned counsel for the plaintiff would submit that the evidence tendered on behalf of the defendants was of no

significance at all in advancing the case of the defendants.

14.The learned counsel would submit that in the light of the above, the non-examination of the first defendant was fatal to the contra case pleaded by him through Ex.B5-the Settlement Deed. The learned counsel would also submit that DW.1 had admitted that he was involved in the real estate business and the 1st defendant executed the Power of Attorney Deed in his favour only in 2001 and all the transactions, which were relied on by the parties were relating to the period 1976 and earlier and therefore, the second defendant had no knowledge at all regarding the earlier transactions. The learned counsel further submitted that the secondary evidence should not have been admitted in the absence of any explanation for non-production of the original. He would finally submit that Section 27 of the Limitation Act would come into operation in the circumstances of the case, since, even otherwise, the plaintiff has been in possession from 1976 till date. Unfortunately, according to the learned counsel, both the Courts below have needlessly and incorrectly relied on the inconsequential evidence of the defendants as against the valid claim put up by the plaintiff and dismissed the claim of the plaintiff. The learned counsel, in the cumulative circumstances, as elucidated above, would submit that both the Courts below committed fundamental error in dismissing the case of the plaintiff and accepted the case of the defendants and therefore, the judgments and decrees of both the Courts below are liable to be interfered with.

15.Shri.M.Krishnappan, learned Senior counsel appeared for the 3rd defendant, who was impleaded in the Second Appeal, as he was a subsequent purchaser of the suit Schedule property. The third defendant appeared to have purchased the property pendente lite, on 27.09.2012, after disposal of the First Appeal, on 28.03.2011 and after admission of the Second Appeal, on 12.11.2011. The learned Senior counsel would submit that the trial Court has formulated correct issues as found in the judgment and thereafter, proceeded to dismiss the claim of the plaintiff, after appreciating all the facts and circumstances in proper perspective. The learned Senior counsel would also submit that the plea of the plaintiff claiming title by 'adverse possession' is inconsistent, since it is not open to the plaintiff to claim title to the property under document Ex.A1 and also simultaneously claim title by 'adverse possession'.

16.The learned Senior counsel would further submit that there was a clear finding of fact by the trial Court that the plaintiff failed to establish their case of open and continuous possession, since the documents relied on by them, viz., Exs.A2 to A6 were of the year 2007, 1990, 1993 and 1995, much after the Sale Deed in 1976 and also did not establish the factum of

continuous possession of the plaintiff. Therefore, both the Courts below have rightly held that the plaintiff did not establish its continuous possession and enjoyment of the suit property and therefore, the learned Senior counsel would implore this Court to uphold the judgments and decrees of the Courts below.

17. On behalf of the first defendant, there is no appearance and on behalf of the second defendant, Mr.S.Kaithamalaikumaran, learned counsel appeared and adopted the arguments of the learned Senior counsel for the 3rd defendant.

18. Considered the submissions of Mr.V.Raghavachari, learned counsel appearing for the appellant/plaintiff and Mr.M.Krishnappan, learned Senior counsel appearing for the third defendant and Mr.Kaithamalai Kumaran, learned counsel appearing for the second defendant and also perused the materials and pleadings placed on record.

19. The case of the plaintiff Foundation was that the Foundation derived title over the suit schedule property under Ex.A1, executed on 29.01.1976 in favour of one Dhayanand, who, according to the plaintiff Foundation, was a member of the Foundation. The Sale Deed was relied on by the plaintiff in order to establish its title. Although the Sale Deed was in favour of Dhayanand and not in favour of Auroville Foundation directly, yet, the plaintiff relied on other documents, viz., Exs.A2 to A6, in order to demonstrate the fact that de jure, the plaintiff Foundation alone can exercise title over the subject property. Moreover, the said Dhayanand, in whose favour Ex.A1 was executed, had never questioned the claim of Auroville Foundation, claiming title to the property.

20. In contrast, the defendants resisted the suit by relying on the anterior documents, viz., Ex.B1, dated 13.12.1924, Ex.B2, dated 31.07.1947, Ex.B3-dated 15.10.1958, Ex.B4-dated 19.05.1965 and Ex.B5-dated 10.02.1970. These documents would show that the property in question had changed hands from various owners and finally devolved on the first defendant, as per Ex.B5-the Settlement Deed, dated 10.02.1970. D1/Alexander happened to be the son of Anthonysamy Mudaliar, who had purchased the same through a Sale Deed-Ex.B4, dated 19.05.1965. Thereafter, it appeared that the second defendant, who had nothing to do with the property, had entered the picture by obtaining a Power of Attorney from the first defendant under Ex.B6, dated 06.09.2001. The counter claim put up by the defendants is on the basis of these documents and also on the basis of the oral evidence let in on their behalf through three witnesses, viz., D.W.1 to D.W.3. D.W.1 happened to be the

second defendant, who was merely a Power of Attorney Holder, entered the picture only in 2001. D.W.2 was a person owning a land adjacent to the suit schedule property and D.W.3 was a local Panchayat President.

21.From the above, this Court has to take a call as to whose claim should prevail and whose claim appears to be more plausible and acceptable both in terms of the settled legal principles as well as the materials and evidence placed on record. This Court also has to take a call in regard to the approach of the Courts below in appreciating the inter se claims of the parties, through evidence relied on by them, respectively.

22.As regards the evidence relied on by the plaintiff is concerned, the plaintiff examined himself as P.W.1 and he is the member of the Foundation. Ex.A1, is a Sale Deed, executed as early as in 29.01.1976, which shows that the suit property was subjected to registered sale in favour of one Dhayanand. The transaction in favour of Dhayanand in 1976 is not questioned at all. Therefore, the validity of the Sale Deed in favour of Dhayanand is beyond the pale of contest and therefore, the sale effected on 29.01.976 is staring at the face of the defendants.

23.However, the only main question arises for consideration is as whether the sale in favour of the said Dhayanand can be construed as one in favour of the plaintiff Foundation. Although the evidence of P.W.1 and the document Ex.A1 do not establish the factum of the property having been purchased for and on behalf of the plaintiff Foundation, yet, the Courts can pierce the veil of transaction in order to find out as to in whose benefit the property was actually purchased and whose enjoyment and possession the purchase was meant to. If this exercise is to be undertaken, in order to probe the claim of the plaintiff Foundation, the Courts have to necessarily look for other documents, which could possibly substantiate the claim of the Foundation.

24.As far as the case on hand is concerned, the plaintiff relied on Exs.A2 to A6. Ex.A2, dated 27.06.2007, is the Patta in the name of the Foundation and Ex.A3 is the ?A? Register, which shows the name of the Foundation as the owner of the property. Both the Courts below discredited the documents Exs.A2 and A3 on the ground that the documents were of the year 2007. While discrediting the documents, both the Courts below have lost sight of the fact that the claim of the Auroville Foundation that the property was purchased in 1976 for the benefit of the Foundation stood established, as Revenue Records, viz., Exs.A2 to A6, did show that the plaintiff Foundation was in possession of the suit property. In the absence of any challenge by Dhayanand, the link between the Sale Deed-Ex.A1,

dated 29.01.1976, and the other documents, viz., Exs.A2 to A6, stood established and the same cannot be discountenanced merely because Ex.A2 and Ex.A3 were found to be of the year 2007.

25.The other documents, viz., Exs.A4 to A6 were of the year 1990, 1993 and 1995. Even these documents came to be discredited by the Courts below on the ground that the same did not establish the open and continuous possession of the suit property by the plaintiff Foundation. Even here, both the Courts below have not correctly appreciated the facts and circumstances of the case, which formed the substratum of the claim by the plaintiff Foundation. When the defendants denied the continuous possession in the face of these documents, viz., Exs.A2 to A6, the burden shifted on the defendants to establish their case under Ex.B5-the Settlement Deed, dated 10.02.1970. Whether the Settlement Deed was acted upon by the first defendant, in whose favour Ex.B5 was executed, could be easily decided from the evidence and materials placed on record before the Courts below. Although the defendant No.2, who was actually the active participant in the suit proceedings, who was claiming right through defendant No.1, has failed to establish that the Settlement Deed-Ex.B5 was acted upon. Admittedly, the second defendant had barged into the picture only in 2001, after Power of Attorney Deed executed under Ex.B6, on 06.01.2001 in his favour. In his evidence, he clearly admitted his ignorance in no uncertain terms regarding the earlier transactions relied on by both the plaintiff Foundation and the first defendant and also regarding Patta, ?A? Register etc., In the absence of any credit worthy evidence from defendant No.2, who was examined as D.W.1, the entire counter claim put forth on behalf of the defendants has to be discountenanced outright. If only such appreciation had been resorted to by the Courts below, then, in the opinion of this Court, the result or decision of both the Courts below would have been different. But unfortunately, both the Courts below have perfunctorily accepted the case of the defendants, despite gaping holes in the evidence let in on their behalf and also the absence of examination of first defendant. The evidence of D.W.2 and D.W.3 were absolutely no significance or consequence at all and therefore, their evidence had to be ignored, along with the evidence of D.W.1.

26.When a counter case was set up by the defendants on the basis of Settlement Deed-Ex.B5, the beneficiary of the Settlement Deed, viz., D1, ought to have been examined in order to explain as to the background and circumstances in which the Settlement Deed was executed and the same was acted upon or not. When certain facts fall exclusively within the personal domain of the beneficiary under the Settlement Deed, such facts and circumstances cannot be explained by a third party, who invited himself into picture by anointing himself as Power Agent

through Power of Attorney dated 6.9.2001 for serving his own end after a period of 31 years from the date of the Settlement in 1970. In fact, the learned counsel for the appellant/plaintiff would submit that at the time when the Settlement Deed was said to have been executed, the second defendant was three years old and he was 9 years old when Ex.A1 was executed in favour of Dhayanand in 1976. Obviously, the second defendant cannot have any say at all in regard to the execution of those documents. Therefore, as rightly contended by the learned counsel for the appellant/plaintiff that the non-examination of the first defendant is fatal to the case of the defendants and, if only the Courts below had appreciated the gamut underlying the plaintiff's claim in proper perspective, more credence could have been found favour with the plaintiff's plea for claiming ownership over the suit schedule property.

27.Further, the Courts below have not adopted a proper approach in placing reliance on Ex.B5-Settlement Deed, dated 10.02.1970, when the original of the same was not produced. As rightly contended by the learned counsel for the appellant/plaintiff, the Courts below never took any efforts to ascertain as to what happened to the original and in the absence of any explanation for non-production of the original, the Courts below ought to have rejected the document Ex.B5. Unfortunately, once again the Courts below have committed fundamental error in attaching undue credibility to the evidence of the defendants, at the expense of the documents relied on by the plaintiff. Although it is trite in law that the plaintiff has to succeed on its own or fall and cannot be allowed to take advantage of the weakness of the defendants, yet, when ultimately the Court is called upon to evaluate the rival materials and evidence, in order to find the truthfulness and correctness of the claim between two rival parties, the Courts have to necessarily take the best evidence and to render justice between the parties.

28.As far as the case on hand is concerned, both the Courts below appeared to have focused more on the missing links in the evidence of plaintiff than the complete absence of the credibility of the defendants case. Although the plaintiff is under an obligation to prove their case to the hilt in order to sustain their prayer, nevertheless, in a situation like the present one, the Registered Sale Deed, Ex.A1-dated 29.01.1976 and the documents relating to the property, viz., Exs.A2 to A6, issued by the Revenue Department, indeed would show that the plaintiff's claim of ownership over the property is established to the exclusion of the claim of the defendants. The counter claim put up by the defendants, namely, Ex.B5 Settlement Deed dated 10.02.1970 which was ostensibly the basis of dismissing the claim of the plaintiff by the Courts below, ought not to

have carried conviction with the Courts below, as the basis of appreciation is not well founded. In the considered opinion of this Court, from the cumulative facts and circumstances of the case, the plaintiff had discharged their burden in establishing their title to the suit property and when such burden was discharged, it was for the defendants to sustain their claim. Unfortunately, both the Courts below have adopted slanted approach in finding immaterial lacunae in the claim of the plaintiff in order to non suit them. The so called reasons adopted by the Courts below, viz., the documents relied on by the plaintiff, viz., Exs.A2 to A6 did not establish their continuous possession though the sale was effected in 1976 under Ex.A1, is, in the opinion of this Court, is unacceptable. The conclusion by both the Courts below against the plaintiff on the basis that Exs.A2 to A6 documents were of the subsequent years and did not establish continuous possession by the plaintiff, is fundamentally erroneous and liable to be interfered with. This is because when Ex.A1 was of the year 1976, and Ex.A1 being a registered document, in the face of such unimpeachable document, the other documents, viz., Exs.A2 to A6 are supportive documents, fortifying the claim of the plaintiff vis-a-vis the defendants assertion.

29.From the circumstances of the case, it could be safely inferred that originally Ex.A1 was executed in 1976 to and in favour of Dhayanand for the benefit of the Foundation, as the revenue records were issued in favour of the Foundation only and the said Dhayanand had never disputed the claim of ownership over the property by the Auroville Foundation. These facts were unfortunately escaped from the judicial attention of both the Courts below. Both the Courts below have misdirected themselves in dismissing the claim of the plaintiff and thereby helped the cause of the third party, who entered into the picture only in 2001 and was admittedly not aware of any of the transactions anterior to 2001. Admittedly, justice was rendered on wrong side by the Courts below, which needed to be reversed in order to uphold the claim of the plaintiff, particularly, vis-a-vis, the present defendant No.3, who has contested the case in the Second Appeal stepping into the shoes of the original defendants by virtue of his purchase of the suit property pendente lite after admission of the Second Appeal.

30.In fact, the learned counsel appearing for the appellant/plaintiff has submitted that Section 27 of the Limitation Act is also attracted in this case regarding the extinguishment of right. This was pleaded on the ground that the plaintiff has been in open and continuous possession for more than the statutory period of 12 years from 1976. However, this Court does not wish to go into that aspect for the simple reason that this Court is convinced that the plaintiff has established

their ownership to the suit schedule property, in which case, attraction of Section 27 of the Limitation Act need not be considered in this appeal.

31.It is also strange that the defendant No.2, representing through a lawyer, adopted the arguments advanced on behalf of the third defendant. The third defendant is only a recently impleaded party in the Second Appeal and has purchased the suit Schedule property only after the admission of the Second Appeal, viz., on 27.09.2012. The Second Appeal was admitted on 12.11.2011. When the 3rd defendant had chosen to purchase the property knowing fully well about the pending litigation, particularly, admission of the Second Appeal by this Court, he had taken the risk of purchasing the property in question pending the out come of the Second Appeal.

32.In the above circumstances, the Substantial Questions of Law framed in the Second Appeal are answered in favour of the appellant. The Second Appeal stands allowed and the judgment and decree passed by the Principal Sub-Court, Tindivanam, in A.S.No.7 of 2010, confirming the judgement and decree, dated 21.12.2009, passed by the District Munsif Court-cum-Judicial Magistrate, Vanur, in O.S.No.1 of 2002, are hereby set aside.

33.The appellant/plaintiff is at liberty to take possession of the suit property. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Principal Sub-Court, Tindivanam.

2.The District Munsif Court-cum-Judicial Magistrate,
Vanur

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.14443

+1cc to Mr.R.Swarnalatha, Advocate, S.R.No.14492

+1cc to Mr.S.Kaithamalai Kumaran, S.R.No.14586

S.A.No.1189 of 2011

AD(CO)

CB(26/04/2021)