



S.A. (MD) 161 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGHCOURT

JUDGMENT RESERVED ON : 02.06.2020

JUDGMENT PRONOUNCED ON : 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A. (MD) 161 of 2008

and

C.M.P. (MD) .No.2244 of 2019

Janaki

.. Appellant/Appellant/Plaintiff

Vs.

1.Raja Muthaiah

2.Silvia Ebenezer

.. Respondents/Respondents/Defendants

**Prayer:** This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.2 of 2004 on the file of the Principal Sub Court, Tirunelveli, dated 28.06.2004 confirming the Judgment and Decree passed in O.S.No.67 of 1992 on the file of the Principal District Munsif Court, Tirunelveli dated 26.09.2003.

For Appellant : Mr.T.S.R.Venkat Ramana  
for Mr.T.Selvan

For Respondents : Mr.V.Meenakshi Sundaram

**JUDGMENT**

The plaintiff is the appellant herein.

2.The plaintiff filed suit for declaration of title in respect of 'A' schedule property (larger extent) and for permanent injunction against the defendants and also prayed for recovery of possession in respect of 'B' schedule property (smaller extent), which is forming part of the 'A' schedule property.

3.The suit property is situated in Viyajaragava Muthaliar Sathiram. The plaint proceeds on the basis that the plaintiff purchased the suit 'A' schedule property from one Sooriathammal and others, vide sale deed, Ex.A1, dated 15.09.1975, and also traced the title from Ex.A8, Ex.A7 and Ex.A6. Thereafter, Ex.A1 came into existence in favour of the plaintiff and also filed the revenue records.

4.The claim made by the plaintiff is resisted by the defendants on multiple grounds *inter alia* contending that the first defendant had purchased the property under Ex.B1 on 08.11.1984 and also he is tracing his title through Ex.B2 and Ex.B3 and relied upon Ex.B8 village map and Ex.B21 lay-out to show the sub division in this survey number.



5. Initially, the suit was decreed and the defendants had preferred an appeal. In the appeal, the Lower Appellate Judge at the first round has held that Advocate Commissioner has not revisited the property and accordingly, remanded the matter back to the trial Court to re-consider the position in respect of the suit 'B' schedule property.

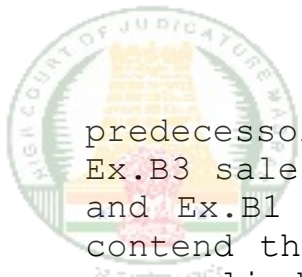
6. After remand, the trial Court has taken up the case on file in the original suit number and the Advocate Commissioner was also re-inspected the property and filed Ex.C3 to Ex.C6 and on behalf of the defendants, additional witnesses were also examined. The trial Court, on consideration of both oral and documentary evidence, has held that there is a partition of survey number and though the plaintiff relies upon the boundaries namely, southern boundary in the name of Ponnammal, however in view of the existences of the subsequent documents, namely Ex.B8, the trial Court has held that the extent of the land is measured in Acre and Cents and not in Hectare as projected by the plaintiff and accordingly, rejected the plaint and dismissed the suit. Aggrieved against the said judgement and decree passed in O.S.No.67 of 1992 dated 26.09.2003, the defeated plaintiff has preferred the appeal in A.S.No.2 of 2004 and the same was also dismissed on 28.06.2004. Hence, the second appeal.

7. The above Second Appeal was admitted on the following substantial question of law:-

*"Whether the judgment and decree of the Courts below are erroneous on account of its mis-construction of documents exhibited on the side of the appellant more particularly Exs.A.1 and Ex.A.6 to A.8?"*

8. The learned counsel for the appellant would contend that the plaintiff title deeds are prior in point of time, way back of the year 1925 under Ex.A2. Thereafter, Ex.A7 of the year 1941 followed by Ex.A6 of the year 1944 and subsequently, in 1975 to the plaintiff under Ex.A1. He further contended that a combined reading of Ex.A6 to Ex.A8 and Ex.A1 would clearly demonstrate the title being vested with the plaintiff to an extent of 1.65 cents in Survey No.182/1 with regard to the adangal 41 and also relied upon Ex.A2 to Ex.A5.

9. The bone of contention of the learned counsel for the appellant/plaintiff is that the plaintiff has successfully demonstrated the title to the sale deed tracing from 1925. Per contra, the defendants have miserably failed to establish the title and anterior point of time / document of title of the



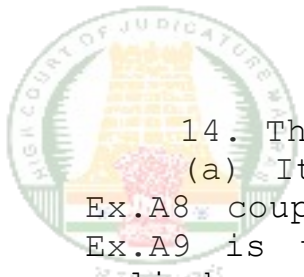
predecessor is only from 1974 Ex.B3. He drawing attention of Ex.B3 sale deed of the year 1974, Ex.B2 sale deed of the year 1983 and Ex.B1 sale deed of the year 1984 coupled with Ex.B2, would contend that all is not well in respect of Ex.B21 document, which was relied upon by the Courts below and would contend that both the Courts below have concurrently committed the mistake in overlooking the title deeds and placing much reliance upon the revenue records and also draw my attention to Ex.A9, Ex.A10 and Ex.B8. In support of his contention, he would rely upon the decision of this court in S.A(MD) No.384 of 2006 in the case of **Dr.N.Mohamed Farook Vs. R.Muruga Boobathy.**

10.Learned counsel for the respondent would contend that the plaintiff cannot take advantage of the weakness of the defendant whereas the plaintiff has to specifically plead his case and to prove the pleadings and he has relied upon decisions reported in **1998 (2) LW189 (Srinivasan and 6 others v. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli District), 1999 (3) CTC 340 (Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others) and 2014 (2) SCC 269 (Union of India v. Vasavi Cooperative Housing Society Limited)**

11. As stated supra, the present second appeal in S.A(MD). No.161 of 2008 on the file of this Court was preferred by the plaintiff as appellant as against the concurrent judgment and decree dated 28.06.2004 passed in A.S.No.2 of 2004 on the file of the Principal Sub Court, Tirunelveli confirming the judgment and decree dated 26.09.2003 passed in O.S.No.67 of 1992.

12. The main suit is filed for declaration of the plaintiff's title in suit A-schedule property and consequential permanent injunction for the A-schedule and to pass a decree for mandatory injunction and recovery of possession of suit B-schedule property which is part and parcel of first schedule, more particularly northern side of the first schedule and for other reliefs.

13. Originally as per Judgment in A.S.No.44 and 47 of 1995, on the file of the Principal Sub Court, Tirunelveli the case was remanded back to the trial Court and thereafter Ex.B23 sale deed dated 15.05.1986 was marked on the side of the defendants and Advocate Commissioner's report and plan with FMB was marked as Ex.C3 to C6. Plaintiff's father Govindan was examined on the side of the plaintiff and witnesses were re-examined on the side of the defendants. After remand, the trial Court by its judgment and decree dated 26.09.2003 dismissed the suit and the same was confirmed in the Appeal and hence the present second appeal.



14. Thus,

(a) It is seen that the plaintiff traces his title through Ex.A8 coupled Ex.A7 read with Ex.A6 and then Ex.A1 Admittedly Ex.A9 is the order of settlement Tahsildar dated 15.11.1969 is relied upon by the plaintiff side to show that this is the special settlement Tahsildar under Inam Abolition Act to show that the predecessor in title of the plaintiff was allotted the extent of the land as mentioned therein.

(b) Per contra, the respondent/defendant in order to substantiate his title over the disputed land relied upon Exs.B3, B2 and B1 in the chronological order and also drawn my attention to the boundaries as stated therein.

(c) Pending suit, Advocate Commissioner was appointed and Ex.C1 and Ex.C2 were marked. On perusal of Exs.C1 and C2, the Advocate Commissioner has categorically stated that there is an encroachment of plot no 16 of the Tmt. Janaki Ammal the plaintiff herein. The operative portion of the said finding given by the Advocate Commissioner is as follows:

" 1.Plot No.16 which is petition first schedule property measures East West 75 feet on the northern side and 77.6 feet on the southern side.

2.Plot No.16 measures north south 45.6 feet on the western end and 46.6 feet on the eastern end.

3.In Plot No.16, the vacant site as it exists now measures north south 27.6 feet on the western and north south 30 feet on the eastern end. The vacant site in Plot No.16 measures East West 78 feet on the northern side and east west 77.6 feet on the southern side.

4.The portion existing as vacant site is shown by the surveyor in the surveyor's plan enclosed along with this report.

5.The portion encroached by Thiru. Rajamuthiah in Plot No.16 is indicated by the surveyor in the plan prepared by him. The encroachment measures north south 18 feet on the western side and north south 16.6 feet on the eastern side and east west 75 feet on the northern side and east west 78 feet on the southern side."

15. It is seen that after the first round of litigation the First Appellate Court has allowed the appeal and remitted back to the trial Court and the same Advocate Commissioner was required to re-inspect the property and to file a report that were marked as Exs.C3, C4, C5 and C6. The relevant portions are extracted hereunder;

" Finally I compared the measurements of the disputed property as on ground with that of the measurement mentioned in the sale deed dated 15.09.1975-Ex.A1 sale dated 8.11.1984-Ex.B1 and sale deed dated 24.10.1983-Ex.B14 and found the following observations stated below:

<https://hcservices.ecourts.gov.in/hcservices/> The main dispute is with respect to South North



measurements of the disputed properties shown as EGDF and in my rough plan.

a. As on ground pertaining to disputed property EGDF.

The South north measurement on the eastern side DF, 9.4 meters=30.9 feet.

The South north measurement on the western side GF 9 meters=29.6 feet.

b. As per the sale deed dated 15.09.1975-Ex.A1 plot No.16 plaintiff's property.

The South north measurement on the eastern side 46  $\frac{1}{2}$  feet.

The South north measurement on the western side 43  $\frac{1}{2}$  feet.

So as per Ex.A1-south north-on the eastern side 15 feet 8 inches lies within IF point; while on the western side 13 feet 11 inches lies within EH point-that is within the property of 1<sup>st</sup> defendant.

c. As per sale deed dated 24.10.1983-Ex.B14, Plot No.5 2<sup>nd</sup> defendant's property.

The South north measurement on the eastern side 36  $\frac{1}{4}$  feet.

The South north measurement on the western side 32  $\frac{1}{4}$  feet.

So as per Ex.B14- south north-on the eastern side 5 feet 6 inches lies within IF point; while on the western side 2 feet 9 inches lies within EH point-that is within the property of 1<sup>st</sup> defendant.

d. 1<sup>st</sup> defendant's property EFIH as on ground

The South north measurement on the eastern side FI 23.2 meter=75.6 feet..

The South north measurement on the western side EH, 23.8 meter=78 feet.

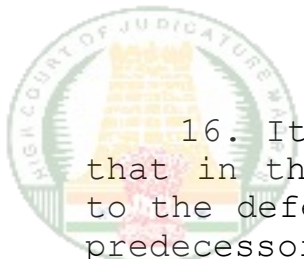
e. As per sale deed dated 08.11.1984-Ex.B1 and Ex.B14, 1<sup>st</sup> defendant's property EFIH.

The South north measurement on the eastern side 77 feet.

The South north measurement on the western side 77 feet.

So on the south north, excess-approximately one foot-lies within the property of EDGF."

Thus, this Court finds that the defendants have encroached upon the plaintiff's property as per Exs.C2 and C7.



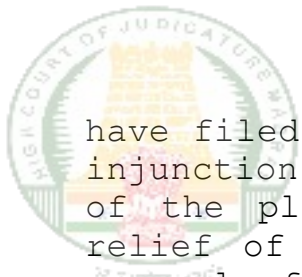
16. It is seen from the documentary evidence of the defendants that in the absence of any vendor title, no title can be pass on to the defendant under Ex.B14 since it is not known as to how the predecessor of the title of the defendant got title over the property under Ex.B14 and therefore the Lower Appellate Court has rightly held that the defendant has not proved his title to the disputed property, the scheduled property herein and accordingly held that the defendant has failed to prove his pleadings, however, non-suited the plaintiff on the ground that the plaintiff has not established his title.

17. As against the said finding, the respondents/defendants have not filed any Cross Appeal. Even during the course of the argument, learned counsel has contended in respect of his title as stated supra.

18. On the contrary, the defendants have relied upon Exs.B3, B2 and B1 as observed earlier, in Ex.B14, there is a recital as if the undivided 1/3<sup>rd</sup> extent of land in the said survey number was purchased from the Ponnammal vagaiyara however, except recital, there was no tracing of title and in the absence of any document to show how the Ponnammal Party have acquired the 1/3<sup>rd</sup> of the land in Survey No.47 under the Inam Abolition Act also goes against the defendants. It is to be stated that Ex.B14 there is no title for the predecessor in title of the defendants and therefore, how they got the title to the property was not explained nor proved in the manner known to law. The Ex.B14 boundaries duly tallies with Ex.A1-the sheet-anchor for the plaintiff assumes significance. The lower Appellate Court has rightly commented upon this issue and also rightly rendered a finding that the defendant though relied upon Exs.B3, B2 and B1 and B10 and B21 in view of the recitals in B14 which was not proved in the manner known to law as rightly held that the defendants have miserably failed to prove the recitals consequently, the defendants' vendor title in other words, the predecessor title does not derive title to the said survey number and in the absence of any positive evidence, I hereby confirm the said finding and the finding arrived at by the Lower Appellate Court is well-considered, well-merited and does not warrant any interference of this Court.

19. Accordingly, the said finding of the Lower Appellate Court that the defendants have no title to the disputed property is hereby confirmed.

20. It is to be stated that once the defendants 1 and 2 have not proved their title the property they are said to be in possession of the property and reliance is placed upon the revenue records and hence in the absence of any title they ought to be



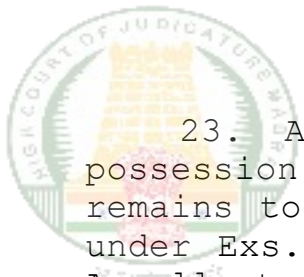
have filed the suit for recovery of possession by way of mandatory injunction and further, as the defendant have disputed the title of the plaintiff, they have rightly laid the suit seeking the relief of declaration of title and for mandatory injunction for removal of the encroachment and accordingly, I find that the suit as framed before the trial Court is well-framed on the facts and circumstances of the case. Now I proceed to consider whether the plaintiff has substantiate his claim for declaration of title. In other words whether the plaintiff has proved his plea regarding his title to the property.

21.(a) After going through the documents Exs.A9 and A10, I find that the extent of the land covered under the settlement Tahsildar order is 65 ares and not 65 cents. Further more, the Ex.B14 boundaries tallied with Ex.A1. On a clear reading, I find that Ex.B21 what was conveyed is only in Survey No.182/1A and not otherwise. On an combined reading of oral and documentary evidence of the plaintiff, this Court finds that the claim of the Appellant are substantiated by the documentary evidence under Exs.A1, A6, A7, A8 corroborating the oral evidence of PW.1. The land bearing survey number 182/1 was Inam land and in and by virtue of the proceedings under the provisions of Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 1963 and patta has been granted under Exs.A9 and A10 in favour of the predecessors in title of the appellant.

(b). The predecessors in title of the appellant prepared a layout in respect of the land in survey No.182/1 and plot No.16 was sold in favour of the appellant under Ex.A1 along with a sketch annexed therein. The very admissions of DW-1 that the entire land covering an extent of 1 acre and 65 cents was divided into various plots and as such the claim of the appellant in respect of plot No.16 cannot be disputed.

(c). The extent what was conveyed in favour of the predecessors in title of the appellant under Ex.A10 is 65 acres and not 65 cents. There is clear reference to Inam survey no.41 in the sale deeds of the predecessors in title of the appellant which was clearly reflected in the documents of title under Exs.A1,A6,A7, A8,A9 and A10.

22. Thus on a combined reading of Exs.A1, A6, A7, A9 and A10 this Court finds that the plaintiff has demonstrated his title to the suit property and further more, the additional document that is marked in the Second Appeal also fortifies the claim of the plaintiff by tracing their title from the year 1929 as against the defendants' claim from 1981 and thus, I find that the plaintiff has proved his title to the property by the above said sale deeds.



23. As to the possession whether the defendants are in possession of the property belonged to the plaintiff or not, it remains to be stated that the report of the Advocate Commissioner under Exs.C3-C6, which categorically establishes the claim of the Appellant on the basis of Ex.A1 and also the specific reasons in the report that the respondent has encroached a portion of a property of the appellant. Thus this Court finds that as extracted supra the Advocate Commissioner's report Exs.C1 and C2 marked at the first instance and Exs.C3 to C6 marked at the second instance after remand from the First Appellate Court clearly demonstrates that the defendants 1 and 2 have encroached upon the property of the plaintiff and hence as an encroacher in order to remove the encroachment, the plaintiff has rightly prayed for the relief of mandatory injunction.

24. In the decision rendered by this Court in S.A.(MD).No.384 of 2006, at paragraph Nos.28, 29, 30 and 31 this Court has held as follows:

**"28.In 1939 MLJ 74 (Perumal Moopan and another vs Subramanian Mudaliar), this Court had held that mere entry in Survey Registrar of a name is not sufficient to prove ostensible ownership in a person.**

**29. In (2001) 3 MLJ 572 (Shanmugam and others vs Trichy Thanjavur Diaseas of Church of South Indian Association Trust represented by its Treasurer and President, Samiraj and others), it had been held as follows:**

**"The classification of the land as Natham poramboke is no legal evidence of title in the Government and utmost it is evidence only of an assertion of title. A mere facat that in the re-settlement register, a particular piece of land is described as poraomboke, will not establish title of the Government to the land in question. It is also settled position of law that the revenue records are not documents of title. A ryotwari patta is nothing more than a bill and the grant of it is not a conferment of title."**

**30. In AIR 1997 SC 2089, (Baleshwar Tewari and others vs Sheo Jatan Tiwary and others), when commenting upon the revenue records, the Supreme Court had held as follows:**

**"16.....Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries,..... Therefore, creation of records is a**



camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills."

31. The above judgments clearly show that the 'B' memo relied upon the trial Court as well as the first appellate Court cannot confer any title on the defendant. Title of the plaintiffs has been traced from 1931 onwards."

25. The summary of finding of both oral and documentary evidence in the preceding paragraphs are hereunder:

The appellant/plaintiff claims title to the property based upon Exs.A1, A6, A7 A8 and also Ex.A9 special Tahsildar settlement proceedings, and Ex.A10 village land records, and village land register. From the said document, it is seen that as per the settlement proceedings land in S.No.181/1A to an extent of 1.67 Acres was allotted to him and it is so duly reflected in the land register and land records under Ex.A9 and A10. As stated supra, the extent of the land mentioned in the land register and land records produced from the competent authority clearly demonstrates the fact that it is 69 Ares not 69 Cents. Before proceeding further, keeping in memory and reminding myself of the various measurements in the filed measurements 100 cents is one Acre and One Acre = 100 cents, 1 Are = 2.47 cents so also one sangili is 3.42 Acres. With these in memory on analysing the documents, it is seen that the finding rendered by both the Courts below that the predecessor in title of the plaintiff owned only 69 Cents is absolutely wrong and it is 69 Ares. Further more, it is seen that 2 land owners have made two lay outs in order to have by converting the agricultural lands formed two layouts and to have more land as housing plot so as to make rich amount have chosen to join together in a formal way and made only one road by mixing their lands together instead of giving two separate roads for two separate layouts, in the process, the original survey number which was subsequently bifurcated and subsequently shown as one layout, there was messing up of lands in survey numbers especially in the border areas. In the instant as held in the preceding paragraphs, the defendants' vendor has no title as stated in Ex.B13 and except the recital there is nothing on record to show that the vendor of the defendants had acquired undivided 1/3<sup>rd</sup> share in the above said survey number 181/1A. From the Tahsildar proceedings as shown in the map, the said survey number 181/1 was bifurcated and there is a change in the various extents. Without noticing the same, it appears that both the promoters of the layout have formally joined together and made only one road for the entire layout for them and sold the lands as per their will whereby the present defendants got into the mess. This factum of, state on ground, has been duly highlighted and enlightened from the Advocate Commissioner report Exs.C1 and C2, which clearly shows



that the defendants had encroached upon plaintiff's land as marked therein. So also on the revisit by the very same Advocate Commissioner, who has filed Exs.C3, C4,C5 C6 also substantiate the same that the defendants 1 and 2 have encroached upon the lands of the plaintiff and hence the revenue records produced on behalf of the defendants, having been obtained based upon the deed of conveyance without any title cannot advance the case of the defendants and hence they have to be treated as a encroacher. In view of the settled legal preposition of law that possession follows the title and on the factual back ground, the plaintiff has established his unmistakable trace of title from the year 1929, this Court has no hesitation to hold that the plaintiff has proved his title and his possession follows his title and the defendants have no title to the property and the revenue records of the defendants having been obtained based upon the deed of conveyance without any title cannot stand in the way of the granting the relief of mandatory injunction to the plaintiff. Accordingly, the Substantial Question of Law is hereby answered in affirmation in favour of the plaintiff/appellant.

**26.C.M.P(MD).2244 of 2019:**

(a) This Civil Miscellaneous Petition is filed under Order 41 Rule 27 CPC by the plaintiff/appellant to receive his additional document in this second appeal.

26.(b) The document is the certified copy of the Doc. No.873/1942 & 3493/1961 and it is to show that the predecessor in title had title to 8 sangili. Since it is a certified copy along with the clean copy, I am of the considered view that in the interest of justice the same is allowed. Since it appears that at the time of the hearing by one of the brother Judge, the petitioner/plaintiff has directed to produce relevant records to show the old measurement of sangili and pursuant to the direction, this petition appears to have filed. It seems that 0.8.0 sangili were held to be in favour of the plaintiff's predecessor in title and hence this CMP.(MD).No.2244 of 2019 is hereby allowed and the said additional document is marked as Ex.A12 & Ex.A13.

**27. In the result,**

(i) The Second Appeal is allowed. No Costs.

(ii) The judgment and decree passed in A.S.No.2 of 2004 on the file of the Principal Sub Court, Tirunelveli, dated 28.06.2004 and the Judgment and Decree passed in O.S.No.67 of 1992 on the file of the Principal District Munsif Court, Tirunelveli dated 26.09.2003 are hereby set aside.

(iii) The O.S.No.67 of 1992 on the file of the Principal District Munsif Court, Tirunelveli is hereby decreed and time for



**S.A. (MD) 161 of 2008**

delivering the possession of the property by the defendants is fixed at two months.

(iv) The Advocate Commissioner's report viz., Exs.C1,C2 and C6 sketch shall form part of the decree.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

PJL

To

1.The Principal Subordinate Judge,  
Tirunelveli.

2.The Principal District Munsif,  
Tirunelveli.

3.The Section Officer-2 copies  
Vernacular Reocrds,  
Madurai Bench of Madras High Court,  
Madurai.

+2 CC to Mr.T. SELVAN, Advocate ( SR-15496[F] dated 01/09/2020 )

**JUDGEMENT**

**MADE IN**

**S.A. (MD) 161 of 2008**

**31.08.2020**

MR (CO)

KM (01.10.2020) 11P 7C