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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2021

PRONOUNCED ON : 25.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1337 of 2008

and

M.P.No.1 of 2008

1. M. Venkatesh
S/o. Muniappa
 2. M. Ellappa
S/o. Muniappa
 3. Lagummaya
S/o. Muniappa
 4. M. Marappa
S/ol. Muniappa
 5. Lagumamma (died)
D/o. Muniappa
 6. Ellamma
D/o. Muniappa
- ...Appellants/Defendants

Appellants 1,2,3,4 and 6 brought on record as LR's of the deceased 5th appellant viz., Lagumamma vide order of court dated 08.02.2021 recorded in memo dated 01.02.2021.

Vs.

Nanjappa
S/o. Errappa

... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of CPC, against the judgment and decree of the learned subordinate judge of Hosur dated 06.09.2008 made in A.S.No.21 of 2007 confirming the judgment and decree of the learned District Munsif, Hosur, dated 11.07.2007 made in O.S.No.131 of 2002.

For Appellants : Mr. I. Abrar Mohammed Abdulah
for M/s. M. Sudhakar

For Respondent : Mr. C. Prabhakaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 06.09.2008 passed in A.S.No.21 of 2007 on the file of the subordinate court, Hosur, confirming the judgment and decree dated 11.07.2007 passed in O.S.No.131 of 2002 on the



file of the District Munsif Court, Hosur,

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants in O.S.No.131/2002 are the appellants in the second appeal.

4. Suit for declaration and permanent injunction.

5. The case of the plaintiff, in brief, is that the suit properties originally belonged to one Kunniyappa @ Kunnigadu, Son of Uchiappa of Kotthur village and they are his self acquired properties by virtue of Dharkast obtained by him in the year 1956 and in evidence of his possession and enjoyment of the suit properties, he had been granted "D" card patta and he had one son by name Muniyappa, who is the father of the defendants 1 to 4 and 6 and the husband of the fifth defendant. Muniyappa died in the year 1975 and Kuniyappa @ Kunnigadu died some where in the year 1977. During his life time, Kunniyappa @ Kunnigadu sold item No.1 of the suit properties to the plaintiff's brother Yellappa by way of the registered sale deed and at that point of time, the survey No.672/2 was not sub divided and during the UDR survey, the same got sub divided and the UDR patta No. 353 was granted in favour of the plaintiff for item No.1 of the suit properties in survey No.672/2A1 to an extent of 0.63.0 hectre. The second item of the suit properties bearing survey No.678/2C8 was poromboke land and along with the first item, the plaintiff was in the possession and enjoyment of the same for the past 30 years and accordingly the Government also granted patta to the plaintiff qua the second item in Survey No. 678/2C8 to an extent of 0.15.0 hectre. The defendants have no right, title or interest over the suit properties. On 25.06.1997, Yellappa, the purchaser of the suit properties and the plaintiff's another brother Goopalliyappa had divided the family properties along with the plaintiff by way of the panchayat muchilikka and as per the panchayat muchilika, the suit properties had been allotted to the plaintiff's share. As the full fledged owner of the suit properties, the plaintiff executed the registered general power of attorney deed in favour of N.Chowda Reddy in respect of the suit properties and on the basis of the said power, the general power of attorney holder had sold several portions of the first item of the suit properties to several persons with the permission of the plaintiff and after the abovesaid sale transactions, the plaintiff is retaining the remaining extent in the first item of the suit properties. The defendants are fully aware of the alienation effected by the plaintiff's power agent, as above pointed out, and the defendants have not questioned the same nor claimed any right over the suit properties. However, of late, the defendants, on ill advice, are endeavouring to grab



the suit properties from the plaintiff and on that basis laying the false claim of title to the suit properties and the defendants have also not objected to the issuance of the patta in favour of the plaintiff under the UDR scheme and with the abovesaid object, the defendants misrepresented the court and illegally obtained the death certificate of Kuniyappa @ Kunnigadu, falsely stating that he had died in the year 1969, however, Kuniyappa @ Kunnigadu died only in the year 1977. Even after the sale in favour of the various purchasers qua the first item, the patta, chitta and the other revenue records still stand in the name of the plaintiff and the plaintiff is ready and willing to give the possession of the extents of the land sold to the purchasers. Hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit and contended that Kunnigadu is the grand father of the defendants 1 to 4 and 6 and he has no alias name as Kunniyappa and admitted that survey No.672/2A originally belonged to Kunnigadu by way of the dharkash and both the suit properties belonged to Kunnigadu and were in the possession and enjoyment of Kunnigadu and according to the defendants, Kunnigadu died on 09.09.1969. Recognising his possession, "D" card was issued to Kunnigadu and Kunnigadu had one son by name Muniyappa, who is the father of the defendants 1 to 4 and 6 and the husband of the fifth defendant and Muniyappa died in the year 1975 and therefore, it is false to state that Kunnigadu died after the demise of Muniappa as put forth in the plaint. It is false to state that Kunnigadu sold the item No.1 of the suit properties to Yellappa on 05.10.1970. When Kunnigadu had died in the year 1969 itself, the claim of the plaintiff that a dead person had executed a sale deed in the year 1970 is totally false and unsustainable and the sale deed dated 05.10.1970 is a fabricated record and the UDR patta had been wrongly issued in the name of the plaintiff on 17.05.1994. The brother of the plaintiff Yellappa executed a release deed in favour of the defendants in respect of the suit survey numbers and at that point of time, both the plaintiff and his brother were living together under the common roof and granting of the patta in favour of the plaintiff would not divest the title of the defendants qua the suit properties. The second item of the suit properties is a poromboke land and it was occupied by Kunnigadu. On coming to know of the issuance of patta in favour of plaintiff under the UDR scheme, the defendants presented a petition to the Tahsildar, Hosur, and the Tahsildar, after conducting the enquiry and examining the parties concerned, cancelled the UDR patta issued in the name of the plaintiff and accordingly issued the patta in the name of the defendants in Patta No.1743 and the defendants are not aware of the division of the properties between the plaintiff and his



brothers in the year 1977. The panchayath muchilika has been fabricated and it is not binding on the defendants. The defendants are not aware of the execution of the general power of attorney by the plaintiff in favour of N. Chowda Reddy qua the suit properties. The plaintiff has no right to execute the general power of attorney in respect of the suit properties which belong to the defendants. On coming to know of the same, the defendants issued a legal notice on 12.02.2002 to the plaintiff, N.Chowda Reddy and the others and the plaintiff has given a reply through his counsel setting out false facts and the alleged purchasers from N.Chowda Reddy, the power agent, had not cared to reply to the notice. The purchasers of the first item of the suit properties should have been made as the parties to the suit and the suit is bad for non joinder of necessary parties and the plaint is silent as to what portions in the first item had been alienated to the various purchasers through his alleged power agent. The death certificate of Kunnigadu had been issued by the court based on the record submitted by the defendants and it is false of to state that the defendants have no manner of right, title or interest over the suit properties. On the other hand, it is only the plaintiff who has no title, possession and enjoyment of the suit properties and come forward with the suit on fabricated records. The plaintiff is not entitled to maintain the suit on behalf of the purchasers and as such the suit framed by the plaintiff is not maintainable. The plaintiff had not handed over the possession to the alleged purchasers as it is only the defendants who are in the possession of the suit properties and hence, there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 4 examined and Exs. A1 to A17 were marked. On the side of the defendants D.Ws. 1 and 2 were marked and Exs.B1 to B19 were marked.

8. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Challenging the same, the second appeal has been preferred by the defendants.

9.At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) " Whether the learned Subordinate Judge was right in applying presumption of Section 90 of the Evidence Act to Ex.A2 sale deed on the ground that such presumption is absolute?



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- 2) Whether the learned Subordinate Judge was right in rejecting Ex.B3 as the same was obtained in the year 2001?
- 3) Whether the learned Subordinate Judge was right in holding that the plaintiff is not estopped from claiming that the original owner viz., Kunnikhan @ Kunnikadu died after execution of A2 sale deed in view of the specific admission made by him in his reply notice Ex.B15?"

10. The parties are not at issue that the suit properties originally belonged to Kunnigadu, the grand father of the defendants 1 to 4 and 6 and father-in-law of the fifth defendant. Muniyappa, the son of Kunnigadu is the father of the defendants 1 to 4 and 6 and the husband of the fifth defendant. Though it is found that item No. 2 of the suit properties is the poromboke land, the parties are not at issue that it was only Kunnigadu who had been in the possession and enjoyment of the suit properties by obtaining dharkast and also the 'D' card. Though the plaintiff is claiming that Kunnigadu had an alias name Kuniyappa, when the same is challenged by the defendants, there is no proof on the part of the plaintiff to hold safely that Kunnigadu had an alias name as Kuniyappa. Be that as it may, as above pointed out, the parties are not at issue that the properties originally belonged to Kunnigadu. In such view of the matter, naturally, the suit properties originally belonging to the defendants' ancestor and on his demise, if he had not effected any encumbrance over the suit properties as per law, the same would have been inherited by the defendants in accordance with law.

11. Now according to the plaintiff, Kunnigadu had sold the first item of the suit properties to his brother Yellappa by way of the sale deed dated 05.10.1970 marked as Ex.A2. The main defence put forth by the defendants is that Kunnigadu had died on 09.09.1969 itself and such being the position, his death certificate having been marked as Ex.B3, according to the defendants, he would not have alienated the first item of the suit properties in favour of his brother Yellappa under Ex.A2 and therefore, according to the defendants, Ex.A2 sale deed is a fabricated record. On a perusal of Ex.B3 certificate, it is found that Kunnigadu had died on 09.09.1969. Though it is seen that Ex.B3 death certificate has been obtained only in the year 2001 through court i.e. after the problems had arisen between the parties qua the claim of title over the suit properties, now according to the defendants, at the instance of the court, the death certificate had come to be issued, which has been marked as Ex.B3, wherein it has been mentioned that Kunnigadu had died on 09.09.1969. Now according to the defendants, inasmuch as



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they came to know subsequently that the plaintiff had been endeavouring to alienate the first item of the suit properties to various persons through his alleged power agent, according to them, in order to ascertain their claim of title to the suit properties, they had endeavoured to secure the death certificate of Kunnigadu and accordingly, at the instance of the Court, they were able to secure the death certificate marked as Ex.B3. Though it is found that Ex.B3 death certificate had been issued in the year 2001, however, the materials placed on record, both oral and documentary, go to disclose that Ex.B3 death certificate had come to be issued as per the direction of the court by the appropriate authority. Now according to the defendants, at the time of the demise of Kunnigadu, his death had not been recorded. There is no material placed worth acceptance on the part of the plaintiff that the court concerned had directed the issuance of the death certificate of Kunnigadu without any acceptable and reliable material put forth by the defendants. As per Section 114(e) of the Indian Evidence Act, the Court is entitled to presume that the judicial and official acts have been regularly performed, regard being had to the common course of natural events, human conduct and public and private business in their relation to the fact of the particular case. When the plaintiff has not placed any acceptable materials to safely conclude that the court had directed the issuance of the death certificate of Kunnigadu without acceptable and reliable materials, in such view of the matter, the presumption can be safely taken that Ex.B3 death certificate had been properly obtained by the defendants and the said certificate had been issued by the appropriate authority as per the provisions contained in the Registration of Births and Deaths Act, 1969.

12. As per the decision reported in 2017-1-L.W (CrI.) 709 (P. Duraisamy vs. The State represented by the Secretary to Government Department of Home (prison) Fort St. George, Chennai 600 009), it is noted that the Division Bench of our High Court, after considering G.O.(Ms) No.293, Health and Family Welfare (AB2) Department dated 02.12.2016 published in the Tamilnadu Gazette 25.01.2017, upholding the validity of the abovesaid G.O. determined that after the publication of the abovesaid G.O. in the Gazette i.e. after 25.01.2017, the Judicial Magistrate / Metropolitan Magistrate in the State of Tamil Nadu cannot pass any order under Section 13(3) of the Registration of Births and Deaths Act, 1969 and thereby held that any entry made in the registration of Births and Deaths pursuant to the order passed by the Judicial Magistrate / Metropolitan Magistrate after 25.01.2017 is non est and such an entry should be deleted.

13. In view of the abovesaid position, when according to the defendants, the death of Kuniyappa had not been recorded on the date of his demise and when they had been necessitated to assert their claim of title to the suit properties on noting



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that the plaintiff had been endeavouring to alienate the first item of the suit properties through his alleged power agent without having any valid claim of title, it is seen that the defendants had been necessitated for having recourse through appropriate authority in securing the death certificate of Kunnigadu, their ancestor, and when the death of Kunnigadu on 09.09.1969 having not been recorded and his death also having not been recorded within one year of his demise, accordingly, as per Section 13(3) of the Registration of Births and Deaths Act, 1969, the Magistrate concerned had been petitioned by the defendants and accordingly, it is found that the Magistrate concerned, after verifying the correctness of the death of Kunnigadu, as put forth by the defendants, issued appropriate direction to the concerned authority to record his death on 09.09.1969 and following the same, it is found that Ex.B3 death certificate had come to be issued by the appropriate authority.

14. When as per the decision of the Division Bench of the Madras High Court referred to supra, such a direction could be validly issued by the Judicial Magistrate / Metropolitan Magistrate recording the death of a person on the basis of the materials projected before them and it is only after 25.01.2017 they are not permitted to issue such a direction and when there is no materials on the part of the plaintiff discrediting Ex.B3 death certificate, the courts below had erred in not accepting the death certificate of Kunnigadu merely on the footing that it had been obtained belatedly i.e. in the year 2001. When the defendants have adduced the reasons as to why they had been necessitated to obtain the death certificate of Kunnigadu in the year 2001 and when the defendants have secured the death certificate through proper source, as above discussed, and when there is no contra material placed on the part of the plaintiff to conclude that the direction had been issued by the Magistrate concerned to record the death of Kunnigadu on 09.09.1969 without any material placed before him pointing to the same, resultantly, as mentioned supra, it can be safely presumed that the judicial and official acts had been regularly performed as per Section 114(e) of the Indian Evidence Act, and unless the materials are projected to repudiate the said presumption, in all, it is found that based on Ex.B3 death certificate the defendants have established that Kunnigadu had died on 09.09.1969.

15. Not stopping there, according to the defendants, when they had come to know about the endeavour of the plaintiff in alienating the portion of the first item of the suit properties to various persons through his alleged power agent, it is noted that the defendants had caused the issuance of legal notice to the plaintiff and his alleged power agent and the various purchasers on 12.02.2002 marked as Ex.B12 setting forth that it is only they who had title to the suit properties through



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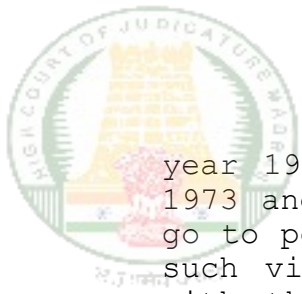
Kunnigadu and also pointed out in the abovesaid notice that Punnigadu died on 09.09.1969 leaving behind his only son Munniyappa and Munniyappa having died in the year 1975 leaving behind the defendants as his legal representatives, thus, put forth the case that it is only the defendants who had a valid title to the suit properties and that the suit properties are in their possession and enjoyment. To the abovesaid notice, it is found that only the plaintiff has responded to the same by issuing a reply notice through his counsel, which has come to be marked as Ex.B15. The other persons to whom Ex. B12 has been issued, according to the defendants, none had responded. In the reply notice marked as Ex.B15, the plaintiff, through his counsel, has stated that Kunnigadu had conveyed the properties on 05.10.1970 to his brother Yellappa and furthermore has clearly averred that Kuniyappa @ Kunnigadu died in the year 1969 and his son Muniyappa, father of the defendants died in the year 1975. Therefore, it is found that even the plaintiff, in the reply notice marked as Ex.B15, has clearly admitted that Kuniyappa @ Kunnigadu died in the year 1969 itself and his son Muniyappa died subsequent thereto i.e. in the year 1975. Therefore, the claim of the plaintiff that Muniappa died prior to the demise of Kunnigadu cannot at all be accepted in any manner. In this connection, the plaintiff examined as P.W.1, during the course of cross examination, has admitted that the first defendant issued the legal notice marked as Ex.B12 prior to the institution of the suit and that he had responded to the same by issuing the reply and for giving reply it is he who had instructed his advocate and also further informed that he had informed about the issuance of the legal notice as well as the reply sent by him to his advocate who had presented the plaint on his behalf and also handed over the copies of the notice and the reply to his advocate and further admitted that the legal notice had been issued to the 10 purchasers and he had not impleaded the 10 purchasers in the suit and would claim that he had laid the suit even in respect of the properties alienated to 10 purchasers and further admitted that he does not know as to when Kuniyappa died after the execution of Ex.A2 sale deed and would only say that he does not know whether Kunnigadu died in the year 1969 and however testified that Kunnigadu died 3 years after Ex.A2 sale deed and would only state that Kunnigadu's son Muniyappa would have died 6-7 years after the demise of Kunnigadu and also admitted that only during UDR scheme, he had been issued the patta.

16. In the light of the abovesaid evidence tendered by the plaintiff, when it is found that the reply notice Ex.B15 had been issued by his advocate only as per his instruction and when the plaintiff has clearly admitted in the reply notice that Kunnigadu died on 09.09.1969 and thereafter only his son had died and further also admitted that he does not know whether



actually Kunnigadu died in the year 1969, when the evidence of the plaintiff is as above, the courts below had failed to consider the abovesaid aspects in the right perspective and on the other hand, proceeded to discard or reject Ex.B3 certificate on the footing that the same could not be relied upon inasmuch as the same had been secured by the defendants after the problems had arisen between the parties concerned qua the title of the suit properties. When the defendant are able to substantiate their defence that Kunnigadu died on 09.09.1969 by placing acceptable and reliable materials i.e Ex.B3 certificate and, as above pointed out, the plaintiff has not placed any contra material worth acceptance to discredit Ex.B3 death certificate as well as to rebut the presumption that could be taken qua the genuineness of Ex.B3 certificate as provided under Section 114(e) of the Indian Evidence Act, in view of the abovesaid factors, the contention has been raised by the defendants' counsel that the courts below had appreciated the materials placed on record in the wrong perspective and also misread the evidence adduced by the plaintiff, as above pointed out, vis-a-vis the material placed on record, particularly Ex.B3 death certificate and the legal notice Ex.B12 and reply notice Ex.B15. In such view of the matter, the reasonings and conclusions of the courts below for rejecting Ex.B3 death certificate despite the clear admission of the plaintiff that Kunnigadu had died on 09.09.1969 in Ex.B15, the determination of the courts below that Kunnigadu had validly executed the sale deed in favour of the plaintiff's brother Yellappa under Ex.A2, as such, cannot be accepted and upheld in any manner.

17. When the factum of the death of Kunnigadu had been raised as a serious issue in the matter and when the defendants have established that Kunnigadu died on 09.09.1969, in such view of the matter, when the plaintiff claims that his brother Yellappa has purchased the first item of the suit properties from Kunnigadu on 05.10.1970 marked under Ex.A2, it is for the plaintiff who has come forward with the suit seeking for the relief of declaration of title qua the suit properties particularly based on Ex.A2 sale deed, the plaintiff being the suitor should establish that Kunnigadu died only subsequent to Ex.A2 and not on 09.09.1969 as put forth by the defendants. However, the plaintiff has not placed acceptable and reliable material as to when actually Kunnigadu died. In the plaint, the plaintiff would claim that Kunnigadu died somewhere in the year 1977. However, as above pointed out, during the course of cross examination, P.W.1, the plaintiff, has deposed that he does not know whether Kunnigadu died on 09.09.1969 and would also state that Kunnigadu died 3 years after the execution of Ex.A2 sale deed. If that version of the plaintiff is to be accepted, according to the plaintiff Kunnigadu should have died in the year 1973. When he has pleaded that Kunnigadu has died in the



year 1977 and however, having deposed that he died in the year 1973 and on the other hand, when the materials placed on record go to point out that Kunnigadu had died on 09.09.1969 itself, in such view of the matter, it is for the plaintiff to establish with the acceptable and reliable material as to when actually Kunnigadu died. However, pointing to the same, at least to establish that Kunnigadu died in the year 1973 or 1977 as put forth by the plaintiff in the plaint and evidence respectively, the plaintiff should have placed necessary materials pointing to the same.

18. Even the plaintiff's brother examined as P.W.2 would claim that Kunnigadu died 3 years after Ex.A2 sale deed. Similar is the evidence of the attesor of Ex.A2 one Muniappa examined as P.W.3 who would state that Kunnigadu died three years after Ex.A2. P.W.4, Munireddy would state that Kunnigadu died two years after the execution of Ex.A2. Therefore, the plaintiff and his witnesses are not clear as to when actually Kunnigadu died whether on 09.09.1969 as admitted by the plaintiff in Ex.B15 reply notice or in the year 1977 as averred in the plaint or in the year 1973 as testified by P.Ws. 1 to 3 or in the year 1972 as testified by P.W.4. In the light of the abovesaid inconsistencies as regards the date on which Kunnigadu had actually died, the plaintiff cannot expect the Court to assume that Kunnigadu would have died after the execution of Ex.A2 despite the production of his death certificate as Ex.B3 wherein it has been clearly mentioned that he died on 09.09.1969 particularly when the demise of Kunnigadu on 09.09.1969 has been accepted by the plaintiff in the reply notice Ex.B15, hence, as rightly contended by the defendants' counsel, the plaintiff would be estopped from putting forth the case that Kunnigadu died subsequent to the execution of Ex.A2 as averred in the plaint as well as put forth in the evidence.

19. Another factor also go to show that Ex.A2 sale deed would not have been really executed by Kunnigadu as claimed by the plaintiff. Now according to the attesor Muniappa examined as P.W.3 Ex.A2 sale deed had been written by Karnam Ramaiah and he had attested the said document. However, P.W.4 Munireddy would state that Ex.A2 sale deed had been written by Karnam Nagaraj and he had been examined only to identify the signature of Karnam Nagaran in Ex.A2. Therefore, when the witnesses are not sure as to which scribe had written Ex.A2 sale deed, the abovesaid factor also throw a serious suspicion in the genuineness of Ex.A2 sale deed.

20. Furthermore, when according to the plaintiff he had been issued patta in respect of the suit property only under the UDR scheme and when he would further put forth the case that Kunnigadu had alienated the suit properties i.e. item No.1 of the suit properties to his brother Yellappa and since then it is his brother Yellappa who had been enjoying the suit properties



by obtaining the patta paying kists, etc., he has also been enjoying the suit properties by obtaining the patta and paying kists etc., and when according to the plaintiff the suit properties had been allotted to him in the Muchilika effected on 15.06.1997 marked as Ex.A3, if really Kunnigadu had alienated the suit properties in favour of the plaintiff's brother Yellappa and subsequent thereto it is only Yellappa who had been in the possession and enjoyment of the suit properties, the plaintiff and his brother would have placed acceptable and reliable materials pointing to the their possession and enjoyment of the suit properties under valid title from the date of Ex.A2 till the issuance of patta Ex.A4 under UDR scheme during 1996. In this connection, the plaintiff's brother examined as P.W.2 would claim that he had been enjoying the suit properties by paying kists, etc., however, no kists receipts standing in the name of Yellappa for evidencing his possession and enjoyment from the date of Ex.A2 till Ex.A4 had been produced. No patta in the name of Yellappa had been filed. Similar is the evidence of the plaintiff examined as P.W.1 and he would state that only recognising his possession, the UDR patta had been issued and admitted that it is true that from 1970 onwards till the issuance of patta in 1996, no patta had been issued in their names and also admitted that till the issuance of UDR patta, the patta stood in the name of Kunnigadu and further admitted that as at present the patta has been mutated in the name of the defendants and that he had petitioned the authority concerned to change the patta in his name and no order has been passed on account of the pendency of the present suit. But the plaintiff claims title to the suit property based on Ex.A3 muchilika under which he claims to have been allotted the suit properties and Ex.A3 is dated 15.06.97 and when according to the plaintiff it is only to his brother who had been alienated the first item of the suit properties by Kunnigadu under Ex.A2 sale deed, it does not stand to reason as to how the patta had been issued in favour of the plaintiff during UDR and thereafter certain kists have come to be paid, which had been exhibited in the matter. However, as above pointed out, no patta in the name of Yellappa, the plaintiff's brother has been filed and no kist receipt in the name of Yellappa, the plaintiff's brother has been filed. Though it is claimed by P.W.2, Yellappa that kists receipts standing in his name is available, the same is not forth coming for the reason best known to him and according to the plaintiff as at present the patta has been mutated in the name of the defendants. All these facts put together would only disclose that inasmuch as no valid title had been transferred in favour of Yellappa, the plaintiff's brother under Ex.A2 sale deed as put forth by the plaintiff and furthermore, inasmuch as Ex.A2 sale deed had not been really executed by Kunnigadu in favour of Yellappa, as above pointed out Kunnigadu having died on 09.09.1969 itself,



accordingly it is found that either Yellappa or the plaintiff is unable to place any materials evidencing their valid claim of possession and enjoyment of the suit properties as the lawful owners right from Ex.A2 sale deed till the issuance of patta in the name of the plaintiff during UDR scheme. Therefore, the abovesaid factors also throw a serious suspicion in the genuineness of Ex.A2 sale transaction.

21. The factors being above, as above pointed out, the courts below on an erroneous reasonings having rejected Ex.B3 death certificate and proceeded to presume the genuineness of Ex.A2 sale deed by invoking Section 90 of the Indian Evidence Act. However, when the factors projected in the matter, as above discussed, throw a serious suspicion as regards the truth and validity of Ex.A2 sale deed, merely because Ex.A2 sale deed is of 30 years old document, on that score alone, ipso facto, the presumption under Section 90 of the Indian Evidence Act could not be taken and as rightly contended by the defendants' counsel, the presumption under Section 90 of the Indian Evidence Act is not required to be taken merely because the document is 30 years old document and the presumption that could be raised under Section 90 of the Indian Evidence Act is only a discretionary one to be taken on proper appreciation of the materials available on record. In this connection reliance is placed upon the decision of the Apex Court reported in (2015) 4 SCC 601 (Om Prakash (dead) through his legal representatives v. Shanti Devi and others), wherein it has been held that the presumption regarding the old document is discretionary and merely because the document is 30 years old document, the person seeking to rely on Section 90 would not axiomatically receive a favourable presumption and the position of law has been outlined in the abovesaid decision as follows:

"Evidence Act, 1872 - S.90 - Presumption regarding old document - Discretionary nature of presumption - Words "court may presume" in S.90 - Importance of - Emphasised - Held, even if the document is purported or is proved to be thirty years old, person seeking to rely on S.90 would not axiomatically receive a favourable presumption, the S.90 presumption being a discretionary one."

22. In the light of the abovesaid glaring materials placed on record raising serious suspicion as regards the truth and validity of Ex.A2 sale deed, in my considered opinion, the courts below had erred in upholding the plaintiff's case merely by raising the presumption qua Ex.A2 sale deed as per Section 90 of the Indian Evidence Act.

23. Barring Ex.A2 sale deed, there is no acceptable and reliable material to hold that the plaintiff has acquired a valid claim of title to the suit properties and when the truth and validity of Ex.A2 sale deed has been failed to be



established by the plaintiff, his claim that in the muchilika marked as Ex.A3, the suit properties had been allotted to his share falls to the ground. When Yellappa has not been established to have lawfully acquired the suit properties under Ex.A2, there is no question of Yellappa and his brothers including the plaintiff having partitioned including the suit properties, which is the subject matter of Ex.A3 muchilika. Therefore, Ex.A3 muchilika, on its own, would not in any manner confer a valid title to the plaintiff qua the suit properties.

24. Apart from Ex.A3, the other documents projected by the plaintiff are only the revenue records. As rightly contended by the defendants' counsel, the revenue records cannot be construed as the documents of title and in this connection, he would place reliance upon the decision reported in (2014) 2 Supreme Court Cases 269 (Union of India and others vs. Vasavi Cooperative Housing Society Limited and others), wherein it has been reiterated that the revenue records do not confer any title. Particularly it has been held that conferment of patta, by itself, would not confer title.

25. The counsel for the defendants in support of his contention also placed reliance upon the following decisions reported in

- 1) (2018) 11 SCC 652 (Shivaji Balaram Haibatti vs. Avinash Maruthi Pawar)
- 2) (2018) 5 SCC 376 (Uma Pandey and another vs. Munna Pandey and others)
- 3) (2016) 11 SCC 374 (Haryana State and another vs. Gram Panchayat Village Kalehri)
- 4) (2019) 8 SCC 637 (State of Rajasthan and others vs. Shiv Dayal and Another)
- 5) (2014) 15 SCC 255 (Easwari vs. Parvathi and others)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

26. Another factor requires to be adverted to in this matter is, assuming that the case projected by the plaintiff is a true one i.e. Ex.A2 sale deed has been really executed by Kunnigadu as claimed by the plaintiff and that the suit properties had been allotted to the share of the plaintiff under Ex.A3 muchilika, when even as per the case projected by the plaintiff, prior to the institution of the suit he had appointed the power agent and his power agent had alienated the various portions of the first item of the suit properties to various purchasers i.e. about 10 purchasers and if really the plaintiff had valid claim of title to the first item of the suit properties under Ex.A2, definitely the plaintiff would have



handed over the portions alienated by him through his power agent to the respective purchasers. The plaintiff has not come forward in the plaint as to on what dates he had alienated the various portions in the first item of the suit properties to the several purchasers and he had also not furnished the names of the purchasers who had purchased the first item from his power agent and when according to the plaintiff, the abovesaid transactions are truly effected, naturally, the plaintiff should have handed over the portions which had been alienated to the purchasers and thereafter, it is only the purchasers who would have been issued the patta, chitta and other revenue records qua the portions purchased by them as per law and on the other hand, when according to the plaintiff despite the abovesaid sales, the patta, chitta and other revenue records still stand in his name and when the plaintiff would also aver that he is ready to give possession of the portions alienated to the purchasers, as rightly contended by the defendants' counsel, inasmuch as the plaintiff is not in the possession and enjoyment of the suit properties as put forth by him, he is unable to deliver the possession of the first items of the suit properties said to have been alienated to various purchasers. The purchasers had not been arrayed as the parties in the suit. The copies of the sale deeds executed in favour of the purchasers had not been filed in the suit. If the abovesaid transaction have any colour of validity, as rightly contended by the defendants' counsel, the plaintiff having alienated various portions of the first item of the suit properties to several purchasers, thereafter, the plaintiff ceases to have any right over the alienated portions. Even assuming that the plaintiff is unable to hand over the possession of the alienated portion to the purchasers concerned, the position being above, it has not been explained by the plaintiff as to how after the sale of the various portions, he still claims to be the title holder of the entire extent of the first item of the suit properties. Thus it is noted, assuming the case of the plaintiff is true, even on the date of the suit it is found that the plaintiff has no title over the entire extent of the first item of the suit properties. In such view of the matter, it does not stand to reason as to how come the plaintiff is seeking declaration of title to the suit properties including the portions said to have been alienated by him to the various purchasers, particularly, when the purchasers had not been impleaded either as the plaintiffs or as the defendants. In any event, when the plaintiff has failed to establish that he had the competency or entitlement to alienate the portions of the first item of the suit properties to the various purchasers, inasmuch as the plaintiff has no title, possession and enjoyment of the suit properties at any point of time, accordingly, it is found that the plaintiff is unable to buttress his claim of alienation of various portions of the first item of the suit properties to the several



purchasers by placing acceptable and reliable material and with a view to suppress the same, he had also not chosen to implead the purchasers as the parties in the suit and for the reasons aforesaid also, the plaintiff is disentitled to seek and obtain the declaration of title as prayed for in the plaint.

27. On the basis of the revenue records projected by the plaintiff, ipso facto, it cannot be presumed that the plaintiff is in the valid possession and enjoyment of the suit properties. When the defendants have also projected the revenue records pointing to their claim of possession and enjoyment of the suit properties and when admittedly as at present the suit properties had been mutated in the names of the defendants and thereafter, the patta had not been transferred in the name of the plaintiff as admitted by the plaintiff during the course of evidence, the patta standing in the names of the defendants marked as Ex.B11, all put together, it is noted that the plaintiff has also miserably failed to establish his claim of valid possession and enjoyment of the suit properties.

28. In the light of the abovesaid factors, the plaintiff having failed to establish the truth and validity of Ex.A2 sale deed and in such view of the matter, his claim of title to the suit properties based on Ex.A3 muchilika falls to the ground. When admittedly Kunnigadu, the ancestor of the defendants is the owner of the suit properties, when the plaintiff has miserably failed to establish that Kunnigadu had effected Ex.A2 sale transaction in favour of his brother Yellappa, resultantly, Kunnigadu having died leaving behind his son Muniyappa and the defendants as his legal heirs, naturally, it is only the defendants who would acquire valid title to the suit properties as per law and the abovesaid factors have been failed to be considered properly by the courts below.

29. In view of the abovesaid discussions, it has to be only held that the reasonings and conclusions of the courts below for upholding the plaintiff's case are only based on the improper and incorrect appreciation of the oral and documentary evidence adduced in the matter, both on factual matrix as well as on the point of law, and resultantly, they being totally perverse, illogical and irrational, the judgment and decree of the courts below are liable to be set aside. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the defendants and against the plaintiff.

30. For the reasons aforesaid, the judgment and decree dated 06.09.2008 passed in A.S.No.21 of 2007 on the file of the subordinate court, Hosur, confirming the judgment and decree dated 11.07.2007 passed in O.S.No.131 of 2002 on the file of the District Munsif Court, Hosur, are set aside and consequently, the suit laid by the plaintiff in O.S.No.131 of 2002 is



dismissed with costs. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-V)

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Sub Assistant Registrar

Bga

To

1. The subordinate Judge, Hosur.
2. The District Munsif, Hosur.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.I.Abrar MD.Adullah, Advocate, S.R.No.19583

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 19862

S.A.No.1337 of 2008

SSI (CO)

GN(17/08/2021)