



3. The averments made by the parties in brief:-

The plaintiff has purchased the suit property on 09.03.1966 under the registered sale deed and has been in possession and enjoyment of the same. The old survey number for the suit property is S.F.No.447 and it measured an extent of 1 acre 52 cents. In resurvey, the suit properties were given with survey numbers 475/2 and 575/3. On 30.11.1943, the father of the defendants namely Muthu Gounder purchased 1.14 acres in the suit survey field. The plaintiff purchased the remaining 38 cents. After the death of Muthu Gounder, his children (defendants) succeeded the property and were enjoying the same. Due to wear and tear, the boundary line between the plaintiff and the defendants' land has become uneven and curvy. Taking advantage of the same, the defendants created a false claim over the property of the plaintiff. They also attempted to purchase the property from the plaintiff. On their failure to accomplish that, they had started to disturb possession and enjoyment of the plaintiff and hence, the plaintiff has filed a suit for declaration and permanent injunction against the defendants.

3.1 The second defendant has filed the written statement and the same was adopted by the first defendant also. In the written statement, it is admitted that the entire extent comprised in S.No.447 is 1 acre 52 cents and out of it, the defendants' father Muthu Gounder has purchased 1 acre 14 cents. In the said sale deed, the property of the plaintiff's vendor Sengotaiyyan's father Rasa Gounder has been shown as the southern boundary. And the said Rasa Gounder is a witness to the sale deed. This shows that the defendants' father had purchased the northern side of S.No.447 and Rasa Gounder had purchased 38 cents on the southern side in S.No.447. Since problem arose between Rasa Gounder and defendants' father Muthu Gounder, they demarcated their respective entitlement in the year 1960. During that time, the northern side of S.No.447 was more fertile, he was given with 28 cents and the plaintiff's father was allotted with 1 acre 24 cents. In the resurvey, the lands in the enjoyment of Rasa Gounder was given with resurvey number 475/2 and the lands in the enjoyment of Muthu Gounder was given with S.No.475/3. The mutation has also been effected in the name of the respective parties for the respective survey numbers. In the survey number 475/2, the plaintiff is entitled to only 28 cents and hence, the property particulars itself is wrong. So the plaintiff can claim the relief only in respect of 28 cents and not for 38 cents.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. தாவாச் சொத்து வாதிக்ஞ பாத்தியப்பட்டதா?
2. தாவச் சொத்தின் விஸ்தீரணம் செக்குபந்தி தவறா?



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3. வாதிக்கு அவர் கோரும் விளம்புகை, நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கக்கூடியதா?
4. தாவாச் சொத்தின் தென்புற அத்தை நிர்ணயம் செய்து கொடுக்க வாதி கேட்க முடியுமா?
5. வழக்கு காலக்கெடு சட்டத்தால் பாதிக்கப்பட்டுள்ளதா?
6. வழக்குக்கு வழக்கு மூலம் இல்லையா?
7. வாதிக்கு கிடைக்கக்கூடிய பரிகாரம் யாது?

5. During the course of trial, on the side of the plaintiff, four witnesses were examined as P.W.1 to P.W.4 and Exs.A1 to A4 were marked. On the side of the defendants, two witnesses were marked as D.W.1 & D.W.2 and Exs.B1 to B17 were marked.

6. At the conclusion of the trial and on appreciation of the evidence available on record, the learned trial Judge has decreed the suit in respect of relief of declaration and permanent injunction but dismissed it in respect of the relief of mandatory injunction. Aggrieved over that, the first and second defendants preferred the First Appeal before the Sub Court, Bhavani in A.S.No.86 of 2004. The First Appellate Court dismissed the appeal. Aggrieved over that, the defendants 1 and 2 have preferred this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law:-

1. Whether the Courts below are justified in decreeing the suit by placing burden on the defendants 1 and 2 to prove their case, by overlooking the established principle that the plaintiff has to succeed in the case based on the strength of his case and not on the weakness of the defendants case?
2. Whether the Courts below are right in decreeing the suit especially when the revenue records clearly (Exs.B1 to B17) proves the case of the defendants 1 and 2?

7. Heard Mr.S.Kaithamalai Kumaran, learned counsel for the appellants and Mr.R.Ayyadurai, learned senior counsel for the first respondent.

8. The learned counsel for the appellants submitted that excepting the title deed, the plaintiff has not produced any document to show her possession on the date of the suit but the defendants have produced Exs.B1 to B17 to show that they have been in possession and enjoyment of 1 acre 21 cents in the suit survey field. It is further submitted that the Courts below have shifted the burden of proof from the plaintiff to the defendants and decreed the suit; the plaintiff has not discharged her burden and it is wrong on the part of the Courts to place the burden on the defendants and decree the suit. It



is further submitted that due reliance was not given to Exs.B1 to B17 filed by the defendants 1 & 2 before the Court.

9. The learned senior counsel for the first respondent submitted that they have not objected to the sale deed Exs.A1 & A2, through which the plaintiff's vendor and father of the defendants had purchased the respective portion in the suit survey field. When the plaintiff has established her title, the burden would shift upon the defendants to disprove the same and prove that they have got title to 1 acre 24 cents. Though the burden of proof is on a party who asserts a particular fact, after it is proved, the onus would shift to the other side to disprove the same. The learned senior counsel clarified that the burden of proof is static, the onus of proof is mobile. In support of his above said contention, he cited the decision of this Court reported in 2017 1 MWN (Civil) 741 'Arulmighu Sadayappasamy Temple Vs. The State of Tamil Nadu and that is applicable to the facts of this case. In the said judgement, it is held as follows:-

"3.....

(u) The learned Government Pleader, strenuously contended that the plaintiff should discharge the burden of proof and establish the title and cannot succeed by picking holes on the deposition of D.W.1 or the documents marked by defendant State through D.W.1. On first blush, this argument appears attractive, but a closer scrutiny, in the light of the factual matrix in the instant case, would reveal that such a submission cannot be countenanced in the instant case. The reason is, the plaintiff has, in fact, produced documents and also oral evidence and discharged their initial burden, as would be evident from the factual matrix and discussions, supra. The burden of proof, no doubt, does not shift, but onus of proof, certainly, shifts. The onus or proof not only shifts, but it also swings like a pendulum from one end of litigation to the other. All these principles of law are too well settled by a long line of authorities. In the instant case, the plaintiff, having discharged their initial burden by producing a two centuries old document and also after letting in evidence of an expert in the field, the onus shifts to the State to rebut the evidence and to discredit the witness. The State did neither. On the contrary, the documents produced by the State and marked through the revenue official, supports the case of the plaintiff. Therefore, the theory of not discharging the burden of proof, as canvassed, does not help the State in the instant case. This takes us to the next aspect of the submission of the Government Pleader."



10. On perusal of the records, it is seen that the plaintiff has purchased an extent of 38 cents out of 1 acre 52 cents in S.Nos.475/2 and 475/3 by virtue of a sale deed dated 09.03.1966 and the father of the defendants Muthu Gounder had purchased 1 acre 14 cents in the same survey field. Those documents have been produced as Exs.A1 & A2. These facts were not denied by the appellants. In fact, the sale deed of the defendants' father is earlier in point of time. The plaintiff is the subsequent purchaser and she has purchased the remaining 38 cents. However, it is claimed by the appellants that in the year 1960, there was an understanding entered into between Rasa Gounder (father of the plaintiff's vendor Sengotaiyyan) and the defendants' father Muthu Gounder and as per the said understanding, Rasa Gounder was given with 28 cents and the defendants' father was given with 1 acre 24 cents. Admittedly, there is no document to prove the said fact.

11. It is not the case of the appellants that Rasa Gounder and Muthu Gounder belonged to same family or descendants of any common ancestor and hence, there was a necessity to enter into a partition between themselves. Having purchased the property in the suit survey field with specific boundaries and extent, it cannot be claimed that they were in joint possession and enjoyment of whole of the property and later partitioned between themselves.

12. It is submitted by the learned counsel for the appellants that the boundary recitals in Ex.A2 would presuppose the fact that the plaintiff's vendor's father could not have purchased 38 cents. When there is no dispute with regard to the extent of the property conveyed in a sale deed, even if there is a mistake in describing the boundaries, the extent will convey the intention of the vendor and the vendee would get the title to the extent mentioned in the sale deed. Only when there is a dispute with regard to the extent then the boundaries would prevail over the extent. But here is a case where defendants themselves have admitted that on 30.11.1943, their father has purchased 1 acre 14 cents and the plaintiff has purchased 38 cents by virtue of Ex.A1. The plaintiff has proved the respective title of herself and the defendants' father in the suit survey field through Exs.A1 & A2. When the appellants do not deny the genuineness of Exs.A1 & A2 but claim that they are not in excess enjoyment of the lands by virtue of a subsequent partition in the year 1960, the onus to prove the said contrary fact would be on the appellants only.

13. According to Section 103 of the Indian Evidence Act, 1872, the burden of proof in respect of any particular fact lies on the person who wishes the Court to believe in its existence,



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unless it is provided by any law that the proof of that fact shall lie on any particular person. Section 101 of the Indian Evidence Act reads that the burden of proof is on the person who asserts the existence of the fact. For the ready reference, Sections 101, 102 & 103 are extracted hereunder:-

"101. Burden of proof.- Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.- The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact.- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

14. It is the contention of the appellants that they had encroached 10 cents out of 38 cents of the plaintiff's land and they were in enjoyment of the same for more than the statutory period and prescribed title. It is a specific contention of the appellants that they are entitled to excess extent of 10 cents by way of alleged partition occurred in the year 1960 between their father Muthu Gounder and plaintiff's vendor's father Rasa Gounder.

15. When the plaintiff has proved the fact which he asserted to be true, the burden is equally on the appellants also to prove that their father had got an excess 10 cents by virtue of the alleged partition in the year 1960. If the appellants do not prove the said fact and thereby discharge their onus, that would naturally confirm the facts already proved by the plaintiff. In other words, the facts proved by the first respondent/plaintiff would become final in the absence of any contrary proof with regard to the contrary contentions raised by the appellants/defendants 1 & 2. Hence, the learned First Appellate Judge is right in appreciating the evidence and understanding the concept of burden of proof. As rightly pointed out by the first respondent/plaintiff, the appellants did not disprove the facts proved by the plaintiff by proving that their father had got an excess extent of 10 cents through a partition in the year 1960.

16. The appellants have claimed that the revenue records (Exs.B1 to B17) would prove the contention of the appellants



that they are entitled to 1 acre 24 cents in the survey field. The revenue records should have been mutated only on the basis of any title deeds. If any entry is made in revenue records without the basis of any proof for title or if it is found to be contrary to the actual title of the parties, it is always open to the parties to challenge the same and rectify the mistake. So with the entries in the revenue records alone, the appellants cannot claim any right superseding the title deed of the first respondent/plaintiff. Since the learned trial Judge and the First Appellate Judge have rightly appreciated the evidence on record and applied the law of evidence, I find no reason to interfere with the judgement of the trial Court. Hence, the substantial questions of law are answered against the appellants.

In the result, this Second Appeal is dismissed and the judgement and decree dated 29.12.2006 passed by the learned Subordinate Judge, Bhavani in A.S.No.86 of 2004 is confirmed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Subordinate Judge,
Bhavani.
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+1 CC to Mr.P. Muthukumarasamy, Advocate sr 50082
+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 49587.

S.A.No.308 of 2008

GJ(CO)
SP(18/11/2021)