



S.A.Nos.456 & 457 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Second Appeal Nos.456 and 457 of 2001

R.Venkatasubramania Chettiar (died)

2.V.Shyam Sundar

3.V.Udaya Sankar

4.V.Swaroop Sundar

5.M.Jayashree

... Appellants in both appeals

[Appellants 2 to 5 brought on record as LR's of the deceased, sole appellant vide order of the Court dated 05.08.1999 made in CMP.No.13420-13425 of 2017]

Versus

South Arcot Saravanabava Consumer
Co-operative Sales Stores Limited,
Vridhachalam Branch,
represented by its Branch Manager,
Cuddalore Road,
Vridhachalam.

2.V.Jothi Prasath

3.J.Sudha

4.V.Sekar

5.V.Jaichandar

...Respondents in both appeals

[R2 to R5 brought on record vide Order of the court dated 05.08.2019 made in CMP.No.13420 to 13425 of 2017]



S.A.Nos.456 & 457 of 2001

Common Prayer: The Second Appeals filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree made in A.S.No.46 of 1997 and A.S.No.43 of 1997 respectively, dated 11.07.2000, on the file of the Principal Subordinate Judge at Vridhachalam and the Judgment and decree in O.S.No.270 of 1989 and O.S.No.1128 of 1986 respectively, dated 20.08.1997, on the file of the District Munsif at Vridhachalam.

For Appellants in both appeals : Mr.R.Agilesh

For Respondents in both appeals : Mr.S.Balasubramanian

COMMON JUDGMENT

The defendant in O.S.No.1128 of 1986, on the file of the District Munsif Court at Vridhachalam, is the appellant in S.A.No.457 of 2001.

2. The said suit in O.S.No.1128 of 1986, had been filed by the respondent/South Arcot, Saravanabava Consumer Co-operative Sales Stores Limited at Vridhachalam, seeking declaration of title and permanent injunction and in case, if the possession is found with the appellant, for recovery of possession of the suit property. The suit property was a lane measuring 5 cents.



S.A.Nos.456 & 457 of 2001

3. The plaintiff in the other suit, O.S.No.270 of 1989, who was the defendant in O.S.No.1128 of 1986 had filed S.A.No.456 of 2001.

4. The suit in O.S.No.270 of 1989 had been filed, seeking permanent injunction restraining the defendant therein/South Arcot, Saravanabava Consumer Co-operative Sales Stores Limited at Vridhachalam, from interfering with peaceful possession of the very same suit property, namely the lane measuring 5 cents.

5. By common Judgment in both the suits, dated 20.08.1997, the learned Principal District Munsif, Vridhachalam, decreed O.S.No.1128 of 1986 and dismissed O.S.No.207 of 1989.

6. Aggrieved against the Common Judgment, two First Appeals were filed namely A.S.No.43 of 1997 and A.S.No.46 of 1997.

7. A.S.No.43 of 1997 had been filed against the decree in O.S.No.1128 of 1986 and A.S.No.46 of 1997 had been filed against the dismissal of O.S.No.270 of 1989.



8. By common Judgment dated 11.07.2000, the Principal Sub Judge, Vridhachalam, dismissed both the First Appeals. This has necessitated filing of the aforementioned two Second Appeals.

9. The Second Appeals had been admitted on 02.04.2001, and the following four substantial questions of law were framed.

“a) Are the Courts below correct and justified in holding that defendant had title to 75 cents when admittedly he had purchased only 70 cents?

b) Are the Courts below correct and justified in holding that defendant had prescribed title by adverse possession without any evidence whatsoever to that effect?

c) Are the Courts below correct and justified in negating plaintiff's claim merely on the ground that he has not sought for the relief of declaration of title?

d) Are the Courts below correct and justified in brushing aside Ex.B1?”.

10. During the pendency of the Appeals, the appellant died and his legal representatives had been brought on record as 2nd to 5th appellants and also as 2nd to 5th respondents.



S.A.Nos.456 & 457 of 2001

O.S.No.1128 of 1986 and O.S.No.270 of 1989 [The District Munsif Court, Vridhachalam]

11.The plaintiff in O.S.No.1128 of 1986 had stated that they had purchased the suit schedule property on 07.12.1963 for adequate consideration. It was stated that there were buildings put up by the plaintiff which was used as a godown for the ration shop. It was further stated that there was a small lane measuring 5 cents to go to the ration shop. It was stated that the plaintiff was using the lane from the date of the purchase. It was stated that the defendant had obstructed the usage of the lane. This necessitated institution of the suit for declaration of title and for permanent injunction and in case, it was found that the possession was with the defendant, for recovery of possession.

12. In the written statement, the defendants contended that he had purchased 36 cents from the very same vendor by sale deed dated 22.11.1967. It was stated that he was using the lane claimed by the plaintiff, having constructed a refresh room at the end of the lane and had been so continuously using it. It was stated that the Settlement Tahsildar



had found that though the document of the plaintiff indicated they had purchased 75 cents when they had actually purchased only 70 cents. It was therefore claimed that the lane measuring 5 cents belonged to the defendant and that the suit for declaration of title was therefore resisted and it was stated that the suit should be dismissed.

13. In O.S.No.207 of 1989, which was filed by the defendant in O.S.No.128 of 1986 both the parties, pleaded the same facts. They both claimed a right to use the lane. They both disputed the right of the other party to use the lane.

14. Since, both the suits related to the same lane measuring 5 cents, and the lis was between the same parties, the learned Principal District Munsif, Vridhachalam, conducted joint trial.

15. On the basis of the pleadings, necessary issues were framed, particularly, with respect to the area purchased under the sale deeds by both the parties and the order of the Assistant Settlement Officer, under which,



S.A.Nos.456 & 457 of 2001

the plaintiff in O.S.No.270 of 1989 claimed right to use the lane. During trial, O.S.No.1128 of 1986 was taken as the lead case.

WEB COPY

16. On the side of the plaintiff, two witnesses were examined and Ex.A1/Sale Deed, dated 07.12.1963 was marked. On the side of the defendant, one witness was examined namely the defendant himself and three documents were marked. Ex.B1 was the order of the Settlement Tahsildar, dated 23.07.1973 and Ex.B3 was the copy of the Appeal against the said order before the Sub Court at Cuddalore, dated 20.08.1971. Exs.C1 and C2 were the Report and Sketch of the Advocate Commissioner.

17. On the basis of the evidence adduced, the learned Principal District Munsif, Vridhachalam, observed that the defendant had not produced the sale deed under which he claimed title to his 36 cents, which Sale deed was dated 22.11.1987. It was therefore held that it was not possible to determine the boundaries of his property.



18. Reliance was therefore placed on Exs.C1 and C2 namely the Report and Sketch of the Advocate Commissioner. It was clearly found that the lane had been used by the plaintiff from the date of their purchase. It was also found that in the document under Ex.A1, the measurements indicated that the plaintiff had purchased 75 cents and not 70 cents. It was also held that there was necessity for the plaintiff to use the lane to go to the ration shop from the godown. It was also found that the defendant had put up a wall preventing the plaintiff from using the lane and it was therefore held that in view of these facts that the plaintiff is entitled for the relief of declaration of title and for permanent injunction to use the lane. The suit in O.S.No.1128 of 1986 was decreed and the suit in O.S.No.270 of 1989 was dismissed.

A.S.No.43 of 1997 and A.S.No.46 of 1997 [The Principal Sub Court, Vridhachalam]

19. The defendant in O.S.No.1128 of 1986, filed A.S.No.43 of 1997. He was the plaintiff in O.S.No.270 of 1989. Aggrieved by the dismissal of the said suit, he filed A.S.No.46 of 1997. Both the Appeal Suits were taken up together. A Common Judgment was delivered on 11.07.2000.



WEB COPY

20. The learned Principal Sub Judge, framed necessary points for consideration and once again re-examined the evidence available. It was observed that in Ex.B2, it was found in accordance with the measurements under Ex.A1, the plaintiff had purchased 75 cents of land, even though, the vendor had stated that he had sold 70 cents. The document spoke for itself. Those measurements was taken into consideration. The findings of the Trial Court were affirmed. Both the First Appeals were therefore, dismissed.

S.A.No.456 of 2001 and S.A.No.457 of 2001

21. Aggrieved by the dismissal of both the Appeal Suits, the aforementioned two Second Appeals had been filed.

22. The two Second Appeals had been admitted on 02.04.2001, and framed the following substantial questions of law:

“a) Are the Courts below correct and justified in holding that defendant had title to 75 cents when admittedly he had purchased only 70 cents?

b) Are the Courts below correct and justified in holding that defendant had prescribed title by adverse possession without any evidence whatsoever to that effect?

c) Are the Courts below correct and justified in



WEB COPY



S.A.Nos.456 & 457 of 2001

negating plaintiff's claim merely on the ground that he has not sought for the relief of declaration of title?

d) Are the Courts below correct and justified in brushing aside Ex.B1? ”.

23. Heard arguments advanced by Mr.R.Agilesh, learned counsel for the appellants and Mr.S.Balasubramanian, learned counsel for the respondents.

24. The appellant in S.A.No.457 of 2001 was the defendant in O.S.No.1128 of 1986. He was the plaintiff in O.S.No.270 of 1989 and is the appellant in S.A.No.456 of 2001.

The facts are as follows:

25. The respondent herein/South Arcot, Saravanabava Consumer Co-operative Sales Stores Limited at Vridhachalam, had purchased, by sale deed, dated 07.12.1963, the suit schedule property namely, land measuring 75 cents. From the very same vendor, the appellant had purchased 36 cents, by sale deed dated 22.11.1967. The respondent had produced his sale deed as Ex.A1. The appellant did not produce his



sale deed. That was noted to his disadvantage by both the Courts below.

WEB COPY

26. The issue is with respect to a lane measuring 5 cents. The appellant claims that he is using the lane to go the refreshment room which he constructed. The respondent however claims the right to use the lane, to go to the ration shop and to access the ration shop from the godown. It is seen from the records that after the institution of O.S.No.1128 of 1996 by the respondent herein, the appellant had put up a wall preventing use of the lane by the respondent.

27. The main argument of the learned counsel for the appellant is that the respondent had pleaded title by adverse possession and if it is to be so, they should establish possession for more than 12 years. The learned counsel stated that under Ex.B1 dated 23.07.1973, it was determined that the respondent had land only measuring 70 cents. It was therefore inferred that the remaining 5 cents belonged only to the appellant. This order was affirmed under Ex.B3, which was dated 26.08.1975.

28. It is pointed out by the learned counsel for the appellant that



S.A.Nos.456 & 457 of 2001

O.S.No.1128 of 1986 was filed on 01.11.1986, which was within the period of 12 years period from 26.08.1975. It was stated that both the Courts below had wrongly calculated the starting period of limitation from 23.07.1973, which was the Deed under Ex.B1.

29. I would however hold that both Exs.B1 and B3 are only incidental documents granting patta and they would not confer title.

30. A Full Bench of the Madras High Court in a judgment reported in **1998 (I) CTC 630 : (1998) IIMLJ 722, Srinivasan and six others V. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District and five others**, had held, consequent to a reference made by a learned Single Judge with reference to orders passed by the Tribunal or revenue authorities and in that particular case under the Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963, as follows:

“15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be



*decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, **does not have the effect of ousting the jurisdiction of the Civil Court** once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved and existence of such exceptional factors, **the Civil Court is entitled to nullify any or all such decisions**. Similarly, even in cases where the principles of res judicata are rendered applicable, **the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of res judicata exist in a given case or not cannot be denied** to the Civil Courts and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the*



WEB COPY



S.A.Nos.456 & 457 of 2001

same, that the subject matter of the suit and the other proceedings also are identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or Court of competent jurisdiction.”

31. It is thus seen that the order of the Assistant Settlement Officer would have the effect of giving a finality to the proceedings under that Act and the jurisdiction of the Civil Court is certainly not ousted.

32. The right to use the passage commences with the purchase of the property and the document indicating such purchase, Ex.A1, sale deed under which the respondent had purchased his property, dated 07.12.1967. The measurements given with respect to the property in Ex.A1 indicate that the respondent had purchased 75 cents. The appellant had purchased his property of 36 cents by sale deed dated 22.11.1967. Unfortunately, that particular sale deed had not been produced as document.

33. Naturally, illustration (g) of Section 114 of the Indian Evidence



WEB COPY

Act, 1872 comes into play. It is as follows:

*“114.Court may presume existence of certain facts:—
The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

The Court may presume—

(a)

(b)

(c)

(d)

(e)

(f)

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

.....”

34. A presumption can be drawn that the document, Sale Deed dated 22.11.1967 had not been produced only because, if it has been produced, it would have been adverse to the appellant herein. Under Ex.B2, it had been very clearly stated that the document under Ex.A1 indicates that the property purchased is 75 cents. Both the Courts below have held against the appellant herein. In view of the concurrent findings of both the Courts below in finding unless it is found that the findings are perverse, it would not be proper for this Court in a Second Appeal to interference with the



same.

WEB COPY

35. In **Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-**

Niswan, (1999) 6 SCC 343, it was held as follows by the Hon'ble Supreme

Court :

“12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

*“13. In **Ramanuja Naidu v. V. Kanniah Naidu [(1996) 3 SCC 392]** this Court held:*

“It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.”

*“14. In **Navaneethammal v. Arjuna Chetty [(1996) 6 SCC 166]** this Court held:*

“Interference with the concurrent findings of the courts below by the High Court under Section 100



CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

36. The 1st substantial question of law is answered that the document under Ex.A1 indicates that the respondent has purchased 75 cents. No amount of oral evidence can be spoken as against such written document.

37. Section 92 of the Indian Evidence Act is as follows:

"92.Exclusion of evidence of oral agreement: _ When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms."

38. The admission of the vendor that he had sold only 70 cents



becomes irrelevant in view of the measurements given under Ex.A1 and therefore, I would hold that both the Courts below had correctly held that the respondent was entitled for 75 cents in accordance with Ex.A1.

39. The 2nd substantial question of law is answered that even though, both the Courts below have held that the respondent had prescribed title by adverse possession, it can also be held that the document under which they claimed possession under Ex.A1 also upholds their title.

40. The 3rd substantial question of law is answered that in a suit for injunction, when a cloud is raised doubting title, then, a suit should be instituted seeking declaration of title. The appellant had not done so. This is to his disadvantage.

41. In *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. and others* reported in (2008) 4 SCC 594 : 2008 (6) CTC 237, the Hon'ble Supreme Court held as follows:-

“13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a



cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

*14. We may, however, clarify that a prayer for declaration will be necessary **only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property.** A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property.*

*15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, **the plaintiff will have to establish that as on the date of the suit he was in lawful possession** of the suit property and the defendant tried to interfere or disturb such lawful possession.”*

(Emphasis Supplied)



42. Therefore, I hold that both the Courts below have correctly held that the suit for mere, injunction is not maintainable in the absence of seeking relief of declaration of title.

43. The 4th substantial question of law is with respect to the findings of the Settlement Tahsildar. It must be mentioned that Ex.A1 provides title to the property. The order of the Settlement Tahsildar, does not settle title. It is only a finding of a Revenue Authority. The Revenue Authority has no right to examine or determine the title between the parties. I therefore, hold that both the Courts below are correct in upholding Ex.A1 vis-a-vis Ex.B1.

44. In the case of *Jitendra Singh Vs. State of M.P* reported in **2021 SCC Online 802**, it was held as follow;

"5..... as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the Will, the party who is claiming title/right on the basis of the Will has to approach the appropriate civil court/court and get



WEB COPY



S.A.Nos.456 & 457 of 2001

his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

6. Right from 1997, the law is very clear. In the case of **Balwant Singh v. Daulat Singh (D) By Lrs.**, reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that **mutation of property in revenue records neither creates nor extinguishes title to the property** nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

6.1 In the case of **Suraj Bhan v. Financial Commissioner**, (2007) 6 SCC 186, it is observed and held by this Court that **an entry in revenue records does not confer title on a person whose name appears in record-of-rights**. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that **so far as the title of the property is concerned, it can only be decided by a competent civil court**. Similar view has been expressed in the cases of **Suman Verma v. Union of India**, (2004) 12 SCC 58; **Faqraddin v. Tajuddin** (2008) 8 SCC 12; **Rajinder Singh v. State of J&K**, (2008) 9 SCC 368; **Municipal Corporation, Aurangabad v. State of Maharashtra**, (2015) 16 SCC 689; **T. Ravi v. B. Chinna Narasimha**, (2017) 7 SCC 342; **Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co.**, (2019) 3 SCC 191; **Prahlad Pradhan v. Sonu Kumhar**, (2019) 10 SCC 259; and **Ajit Kaur v.**



S.A.Nos.456 & 457 of 2001

Darshan Singh, (2019) 13 SCC 70."

WEB COPY

45. In view of the above reasonings, I hold that no grounds have been advanced to interfere with the findings of both the Courts below.

46. The Second Appeals in S.A.No.456 of 2001 and S.A.No.457 of 2001 are both dismissed. No costs.

47. The Common Judgment and decree in O.S.No.270 of 1989 and O.S.No.1128 of 1986, dated 20.08.1997, on the file of the District Munsif at Vridhachalam are confirmed.

48. The Common Judgment and the decree made in A.S.No.46 of 1997 and A.S.No.43 of 1997, dated 11.07.2000, on the file of the Principal Subordinate Judge at Vridhachalam are confirmed.

49. It is clarified that along with the decree in the Second Appeals, the Sketch prepared and filed as Ex.C2, namely the Sketch of the Advocate Commissioner may be appended. The disputed portion namely the lane is



S.A.Nos.456 & 457 of 2001

given as A, B, C & D.

WEB COPY

50. The right of the respondent to use the lane has been affirmed by both the Courts below and it is also affirmed by this Judgment. If at all, the appellant(s) want to use it, they may enter into a negotiation with the respondent to use the lane for their purposes. It must also be stated that the respondent, can use only A, B, C & D, but should not enter into the building of the appellant. The respondent can use only the lane A, B, C & D, but cannot encroach into the building of the defendant given in D1, D, C & C1.

51. Ex.C2/Sketch of the Advocate Commissioner shall form part of the decree.

25.08.2022

Index:Yes/No

Speaking Order : Yes/No

ssi

To

1.The Principal Subordinate Judge, Vridhachalam.

2.The District Munsif, Vridhachalam.



WEB COPY

3. The Section Officer, V.R. Section,
High Court of Madras.



S.A.Nos.456 & 457 of 2001

C.V.KARTHIKEYAN,J.,

ssi

S.A.Nos.456 & 457 of 2001

25.08.2022