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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2021

PRONOUNCED ON: 25.01.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.293 of 2019
and C.M.P.No.4456 of 2019

1.Savithiri

2.Muthulakshmi

Sadhasivam (Died)

3.Sivakami

4.Priyanka

...Appellants/Appellants 1, 2, 4 & 5/
Plaintiff's 1,2,4 & 5

Vs.

1.Rajendran

2.Sakthikumar

3.Sarangapani

...Respondents/Respondents/Defendants

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 03.09.2018 made in A.S.No.17 of 2017 on the file of the learned Sub Court, Kangayam, confirmed in the judgment and decree dated 19.12.2016 made in O.S.No.148 of 2008 on the file of the learned District Munsif Court, Kangayam.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Saravanan



JUDGMENT

This Second appeal is filed challenging the judgment and decree in A.S.No.17 of 2017 on the file of the learned Subordinate Judge, Kangayam, confirming the judgment and decree of the learned District Munsif, Kangayam in O.S.No148 of 2008.

2. The appellants/plaintiffs filed the suit for declaration of title and for permanent injunction restraining the respondents from interfering with the possession and enjoyment of the suit properties.

3. The case of the appellants is that the suit properties originally belong to one Kuppusamy counder. First appellant has purchased the suit property from Kuppusamy counder on 06.09.1967. Other appellants are children of first appellant Savithiri and her husband Palanisamy counder. The respondents are the adjacent owners on the eastern side of the suit properties. Kuppusamy counder sold 2.40 acres in survey No.473 and 4acres out of 9.91 acres in survey No.474 to Palanisamy counder. While selling properties, Kuppusamy counder had inadvertently omitted to mention survey Nos.472 and 471. It was sold along with survey Nos.473 and 474 in the sale deed. But total extent of 6.40 acres were sold in survey Nos.473, 474, 472 and 471. The present survey numbers are 471/4, 472/1, 473/2, 474/2 and 474/3. Appellants had been enjoying the suit properties for more than 40 years. They also paid kist to the Government. Agriculture was done using oil engine and ettram for drawing water from the well in the suit properties. In UDR survey, appellant's lands are given survey numbers as follows; 1.96 acres in survey No.472/1, 2.04 acres in survey No.473/2, 0.16 acres in survey No.471/4, 0.10 acres in survey No.474/2 and 1.68 acres in survey No.474/3. Total extent is 5.94 acres. Though the appellants are entitled to 6.40 acres as per the title deeds, they filed the suit only for an extent of 5.94 acres. Respondents try to interfere with the enjoyment of the suit properties by the appellant. When they tried to plot out their lands, they led to extend on the eastern itteri. They have no right to interfere with the appellant's possession and enjoyment of the suit properties. Therefore, this suit was filed for the aforesaid reliefs.

4. The respondent's case, seen from the written statement, in brief, is as follows:

Appellants are not entitled to claim right in the entire extent of the suit properties. They have no right in survey Nos.471/4 and 472/1. It is wrong to state that respondents are the eastern owners of the suit properties. Respondents and



first respondent's brother Sarangapani are entitled for survey Nos.471 and 472. Appellants are entitled to the properties only in survey Nos.473 and 474. They have no right or possession in survey Nos.471 and 472. Appellants' predecessor in title Kuppusamy counder had also no right in survey Nos.471 and 472. It is wrong to claim that they purchased properties in survey Nos.471 and 472 also. Properties in Survey Nos.471 and 472 were never enjoyed by the appellants. Kuppusamy counder had no right in survey Nos.471 and 472 and therefore, these lands were not mentioned in the sale deed in favour of Palanisamy counder. No notice was given at the time of UDR scheme. Properties were not measured. Appellants cannot claim right on the basis of the patta. Patta in favour of the appellant is not legally valid. Properties in survey Nos.471 and 472 belong to respondent's predecessors through a partition deed on 18.10.1959. There was a suit in O.S.No.210 of 1991 on the file of the Sub Court, Tarapuram and final decree was passed and these properties were allotted to respondents and Sarangapani. It is shown as 'A' schedule properties in final decree. Srangapani and his family members are proper and necessary parties to the suit. Respondents have taken steps against the wrong issuance of patta in respect of survey Nos.471 and 472.

5. On the basis of this pleadings, the Trial Court framed the following issues,

- i) Whether the plaintiffs are entitled to the relief of declaration as prayed for?
- ii) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
- iii) To what other reliefs?

6. During the trial PW1 and PW2 were examined and Exhibits A1 to A29 were marked on the side of the appellants/plaintiffs. DW1 was examined and Exhibit B1 was marked on the side of the respondents/defendants.

7. On considering the oral and documentary evidence, Trial Court partly decreed the suit, granting the relief of permanent injunction in survey Nos.473/2, 474/2 and 474/3 and dismissed the suit in respect of survey Nos.471/4 and 472/1. Appellant filed appeal against the judgment in A.S.No.17 of 2017. The learned Appellate Judge also found that appellant failed to establish their claim of title in respect of survey Nos.471 and 472 and therefore, dismissed the appeal by confirming the judgment of the Trial Court. Challenging the said appeal, appellants have filed this Second Appeal.



8. The following substantial questions of law arise for consideration in this Second Appeal:

(i) Whether the Courts below committed an error in refusing to grant declaration in respect of S.Nos.471 & 472 when there are documents to stake claim in respect of these properties in favour of the plaintiffs and when boundaries will prevail over the extent?

(ii) Whether the Courts below are right in ignoring the revenue records produced by the plaintiffs when the defendants have not produced any oral and documentary evidences, except the self serving Ex.B1 document, to contradict the claim of the plaintiffs?

(iii) Whether the Courts below are right in refusing the relief to the plaintiffs without taking into consideration the possessory title claimed by the plaintiff?

9. Learned counsel for the appellants submits that the appellants claim that though the Ex. A1 sale deed in favour of Palanisamy Gounder, 2.4 acres in survey No.473 and 4 acres in S.No. 474 in Bellakoil Village are said to have been sold, the properties in Survey No.471, 472 had also been sold to Palanisamy Gounder through Ex.A1 sale deed. Inadvertently, the Survey Nos. 471 and 472 have been omitted to be mentioned in the sale deed. However, the boundaries clearly show that the properties in Survey Nos. 473, 474 and 472 and 471, lie within the four boundaries given in the Ex.A1 sale deed. The Survey numbers are now sub-divided and sub-divisions are given in the plaint description of the property. Appellants claim title to the suit property through sale deed dated 06.09.1967. The respondent claim title and possession to the suit properties in Survey Nos. 471 and 472 on the basis of Ex.B1. However, they have not produced any prior title deed to show and prove that they have right in the properties in Survey Nos.471 and 472 and get a partition decree as per Ex.B1. Commissioners' report and plan prove the appellants possession and enjoyment of the suit properties. Both the Courts below have failed to consider the possessory title of the appellants. The revenue records clearly prove that appellants have title and possession in respect of the suit properties. Patta is not challenged by the respondents as per Section 4 and 6 of the Tamil Nadu Patta Passbook Act, 1983. The entries in the patta passbook are true and correct. That is, prima facie, evidence of title. Therefore, he prayed for setting aside the judgment of the Courts below and for decreeing the suit.



10. Per contra, the learned counsel for the respondents submitted that appellants title deed show only the property in Survey No.473 and 474. The respondents have absolutely no dispute over the appellants title and possession in respect of Survey Nos.473 and 474. He further contend that appellants have no title or possession in respect of Survey Nos. 471 and 472. They obtained a patta in respect of the properties in survey No.471 and 472 behind the back of appellants and claim right in these properties. The respondent have objected to the grant of patta to appellants in respect of survey nos. 471 and 472. In response to the objection given by the respondents, the Tahsildar, Kangayan, issued a memo to the appellants to appear for enquiry on 18.02.2008. To subvert the attempt of the respondent to cancel the patta, appellant filed this suit and given Ex.A1 notice to the District Collector, Erode and Tahsildar, Kangayan to desist from enquiring into the grant of patta on the ground that the suit in O.S.No.148 of 2008 is pending. P.W.1 and P.W.2 have admitted in their evidence that respondents are entitled to the properties in Survey No.471 and 472. This is a speculative suit filed, taking advantage of the wrong entries in the revenue records. Thus, the learned counsel for the respondents submitted that both the Courts below have rightly dismissed the suit and he prayed for confirming the judgment of the Courts below and for the dismissal of this Second Appeal.

11. Considered the rival submissions and perused the records.

12. From the case narrated above, it is clear that the respondents have no objection whatsoever in respect of the properties covered under Survey No.473 and 474. The dispute is with regard to the properties in Survey No.471 and 472, more particularly, an extent of 16 cents in Survey No.471/4 and an extent of 1.96 acres in Survey No.472/1. Ex.A1 is the sale deed in the name of Palanisamy Gounder, the husband of appellant Savithri.

13. Perusal of this sale deed shows that 6.40 acres in Survey No.473 and 474 was purchased. Precisely speaking, an extent of 2.40 acres in Survey No.473 and an extent of 4 acres in Survey No.474 was purchased. There is no four boundaries given for 2.40 acres in Survey No.473, whereas when it comes to 4 acres in survey No.474, specific for four boundaries are given. This 4 acres form part of the larger extent of 9.91 acres. Is is bounded on the north by Balliathal's property, east by by Devathal's property, south by Itteri and west by Mutthusamy Gounder.



14. The eastern owner of this property is Devathal and she is the predecessor of the respondents. These four boundaries, especially eastern boundary makes it clear that there is a property of Devathal in Survey No.474 as well. Appellants have also filed Ex.A9 to A12 field map, Ex.A14 patta, Ex.A16 to A19 mortgage deeds and A20 to A22 mortgage receipts. All these documents show that only the properties in survey nos.473 and 474 had been dealt with. Only in Patta and other revenue records, 'A' register extract that the properties in survey nos.471 and 472 are shown in the name of Palanisamy Gounder. Most of these revenue records had come into existence only in 2008. As already stated by the respondents they had already given objections to the grant of patta and an enquiry was initiated by the Tahsildar, Kangayan, through Ex.A5. Appellants had raised their claim for title and possession in respect of the properties in Survey No.471/4 and 472/1 on the basis of the revenue records. It is pertinent here to refer to evidence of witnesses for the better appreciation of the case.

15. Though P.W.1 has supported the plaintiff's case in the proof affidavit, his evidence was tested in the cross-examination. He faulted on many occasions to confirm to the case of the plaintiffs. He claims that the properties in survey nos.471 measures 72 cents and 472 measures 1 acre 96 cents and he filed the suit for the total extent of 2 acre and 13 cents. This 2 acre and 13 cents belong to plaintiffs through sale deed. It is his specific claim that the properties covered in Ex.A1 sale deed belonged to appellants. He clearly admitted that only Survey Nos. 473 and 474 are mentioned and survey nos.471 and 472 are not mentioned in Ex.A1 sale deed. He admitted that the eastern boundary of the suit property is Devathal's property and she is the respondents' predecessor. He also admitted that he is not making any claim in respect of the Devathal's property. It is his submission that he was not aware of the total extent of the property in Survey No.472 and there is no document available for survey nos.471, 472 and 473 and 474. Most importantly, he admitted that his predecessor had title in survey no.473 and 474 and the properties in Survey Nos.471 and 472 belong to respondents' predecessor.

16. This evidence shows that the properties in survey nos. 471 and 472 belong to respondents predecessor. He also submitted that he has not purchased the properties in Survey Nos.471 and 472 from the predecessor of respondents. His predecessor Muthusamy purchased the properties through a sale deed dated 24.06.1957 and that the sale deed was not produced



before the Court. He also submitted that the documents have been executed in the family of the respondents in connection with Survey Nos. 471 and 472. At the time of purchasing Ex.A1 property, the properties were not measured. It is his submission that there is no mention about the well irrigation for Survey No.472 in the Adangal filed for Survey No.474. It is his evidence that there is no revenue records, Chitta or Adangal to show the enjoyment of 1.94 acres in survey no.472, before the resurvey.

17. P.W.2 Savitri also confirms that the sale deed refers only about survey nos.473 and 474 and there is no mention about 471 and 472. D.W.1 reiterates the case of the respondents. The evidence of these witnesses, especially P.W.1 and 2 shows that they had purchased the properties covered under Survey Nos.473 and 474 and not the properties covered under Survey Nos.471 and 472. They mainly base their claim for the properties in Survey No.471 and 472 on the basis of their alleged long possession, revenue records and Commissioner's report and plan. It is a settled proposition of law that revenue records are not documents of title and Commissioner's report and plan cannot be the basis for deciding the possession.

18. Learned counsel for the appellant relied on a judgment in the case of Nazir Mohamed Vs. J. Kamala and Others reported in [(2020) AIR SC 4321] for the proposition that though title is not claimed on the basis of adverse possession, it can be claimed, if it is established that the plaintiff was in long possession to claim possessory title. The relevant portion of the judgment is extracted below:

49. From the pleadings filed by the Appellant-Defendant, it is patently clear that the Appellant-Defendant claimed the right of ownership of the suit property on the basis of a deed of conveyance, executed over 75 years ago. The Appellant-Defendant has claimed continuous possession since the year 1966 on the strength of a deed of release executed by his father. In other words, the Appellant-Defendant has claimed to be in possession of the suit premises, as owner, for almost 28 years prior to the institution of suit.

50. In the facts and circumstances of this case, where the Appellant-Defendant was owner of only a portion of the suit property but has admittedly been in possession of the entire suit property, and the Appellant-Defendant has, in his written statement, claimed to be in



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continuous possession for years as owner, the defence of the Appellant in his written statement was, in effect and substance, of adverse possession even though ownership by adverse possession had not been pleaded in so many words. It is, however not necessary for this Court to examine the question of whether the Appellant-Defendant was entitled to claim title by adverse possession or not.

51....

52. The maxim "possession follows title" is limited in its application to property, which having regard to its nature, doesnot admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else. In this case it is admitted that the Appellant-Defendant is in possession and not the Respondent Plaintiff.

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56. As held by the Privy Council in Peri v. Chrishold reported in (1907) PC 73, it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner...and if the rightful owner does not come forward and assert his right of possession by law, within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.

19. The judgment reported in [(2014) 3 CTC 802] in the case of Seetharaman Vs. Jayaraman and Others, is relied for the proposition that the respondent acquiesced the long possession of the suit properties by the appellants and, therefore, they cannot object to claim of appellants right in the suit property. The relevant portion reads as follows:

19. With regard to the plea of



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acquiescence, it could be seen that the Defendant had purchased the property under Ex. B1-Sale Deed dated 07.05.1990. He obtained electricity connection in the year 1992 itself. According to the First Defendant, he has been residing in the house constructed in the Suit property since the year 1991. There is nothing on record to show that the Plaintiff objected the First Defendant room putting up any construction in the suit property. The first Notice, Ex.A7, was issued in the year 1995. Thereafter, Ex.All-Notice was issued in the year 1997 and the Suit was filed in the year 2000. The first Defendant purchased the Suit property from Rajaram under the bona fide impression that his vendor was selling the property only to him. This is also supported by the 'Nil' entries found in the Encumbrance Certificate obtained by the First Defendant.....

The first Defendant must have taken several months for completing the construction. But the Plaintiff did not raise any objection for the construction till the year 1995. The ratio laid down in the judgements relied upon by the learned counsel for the First respondent reported in Venkataswamy Naidu and another v. Munnappa Mudaliar and others, AIR (37) 1950 Mad. 53 and The Associated Cement Companies Ltd., by the Manager, Sri J.P.Munsiff v. L.S.Ramakrishna Gowder, 1964 (77) LW 629, squarely applies to the facts and circumstances of the present case. Therefore, I am of the considered view that this is not a case for directing delivery of possession of the Suit property to the Plaintiff.

20. Further reliance is place on a judgment reported in [(2012) 5 L.W. 466] in the case of Syed Dhasthakeer Vs. Navab John for the proposition that when the Court is seized of the matter, the Revenue Authority should not entertain petitions for grant of patta. The relevant portion of the judgment is extracted below:

16. When the Court is seized of the matter, normally the Revenue Authorities should not entertain the petitions for change of patta and the party should be directed to seek their relief in the Civil Court. Even assuming that what the Revenue Divisional Officer did, which



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lead to the issuance of Ex.A5, was perfectly within his power, patta cannot be taken as a document of title since the plaintiff himself has not claimed title in himself. When the plaintiff did not claim title in himself, this Court wonders how the Revenue official directed issuance of patta in the name of plaintiff. If at all his possession alone was to be recorded for the purpose of levying Kist, order should have been made for recording his possession in the Adangal. Therefore, this Court comes to the conclusion that Ex.A5 does not lend any help to the respondent/plaintiff in establishing his case that he was in possession as on the date of plaint or on the date of his examination as PW1.

21. The judgment reported in [(2003) 1 CTC 478] in the case of Tuticorin Diocesan Trust Association Vs. Thavamani and Others and the judgment in Anil Rishi Vs. Gurbaksh Singh reported in [(2006) 5 SCC 558] are relied for the proposition of burden of proof. When the appellants discharged burden of proof by producing oral and documentary evidence, it is for the respondents to challenge the evidence, by producing relevant evidence. However, in the case before hand, respondents have not produced any evidence except Ex.B1 to show that the properties in Survey No.471 and 472 belong to their family. The relevant portion in the case of Tuticorin Diocesan Trust Association (supra) is extracted below:

10. But, however, when both the parties have let in evidence, the burden of proof would assume secondary importance. Ramji Dayawala & Sons Pvt. Ltd v. Invest Import , AIR 1981 SC 2085 at Page 2094.

11. In Lakhan Sao (deceased) through LRs. v. Dharamu Chaudhary , 1991 (3) SCC 331 , the Supreme Court has held, "6..... The question of burden of proof at the end of case when both parties have tendered evidence is not of any great importance and the Court has to come to a decision on a consideration of all materials." The very same view was reiterated by the Supreme Court in the case of Arumugham (dead) by LRs and others v. Sundarambal and another , AIR 1999 SC 2216 , wherein it was held, "16. On the question of burden of proof we are of the view that even assuming burden of proof is relevant in the



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context of the amended provision of Section 100, CPC, the same would not be relevant when both sides had adduced evidence. It would be relevant only if a person on whom the burden of proof lay failed to adduce any evidence altogether".

12. In our case, both sides have adduced oral as well as documentary evidence and therefore, even if there is any observation by the lower appellate Court that the burden of proof lies on the defendants to prove that the plaintiff is not entitled to the suit property, that would not have any material bearing on the conclusion reached by the lower appellate Court.

13. In our case, the plaintiff through Ex.A1 to A4 has established that the suit property originally belonged to Alwar and the same was purchased by the plaintiff under Ex.A5. As the suit property is a "Grama Natham" and it is lying vacant, neither the plaintiff nor the defendants were able to file any other record to show, whether they are enjoying the property and also paid some tax to the Government, but, that will not take away the right of the plaintiff in the suit property.

14. That apart Ex.A1 is in anterior point of time than Ex.B1 and the said fact was also taken note of by the lower appellate Court, in coming to the conclusion that the plaintiff is entitled to the suit property and I do not find any error in the said finding. As the plaintiff is able to establish the title to the suit property, the mere non-examination of his vendor would not affect the right, claimed by the plaintiff and therefore, question no.(i) is answered in favour of the respondent.

22. The Relevant paragraph in the case of Anil Rishi (supra) reads as under:

19. There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a



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case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is [Section 101](#) is inflexible. In terms of [Section 102](#) the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

23. Learned counsel for the respondents relied on the judgment reported in [(1999) III CTC 304] in the case of Kammavar Sangam, through its Secretary R.Krishnasamy Vs. Mani Janagarajan for the proposition that mutation entries in revenue records cannot convey or extinguish right over the property and once it is found that plaintiff has no title, the question of granting the relief on the basis of possessory title will not arise. The relevant portion of the judgment is as under:

16. In this connection Ex.B1 assumes much importance. Long before Ex.A1, entire property of 2.73 acres under pymash No.350 was purchased by appellant's predecessor from one Ramasamy Naicker. It also refers to 9 cents of land in the same survey number, which has been given to the local fund office. Statement in Ex.B1 is supported by Ex.B2 from which it could be seen that is inam land and all sides of 9 cents of land is covered by pymash No. 350. After inam was abolished, it has been re-surveyed and it is admitted by both sides that survey number is 310/1. That could be seen from Ex.A2 also which is an extract of town survey register. In Ex.A2, area of property is mentioned as 1265 sq. metres as mentioned in schedule of properties in the plaint. When antecedent title shows that entire property in pymash No. 350 belong to appellant out of which 9 cents have been given to the local fund office, it is for the plaintiff to prove that he obtained right over the property by some



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mode known to law. Except for producing patta or mutation entries, no evidence have been let in. As stated earlier, Ex.A1 patta only shows that patta has been changed in the name of plaintiff since property devolved on him. It therefore follows that plaintiff cannot be ancestral title holder. When there is no evidence regarding plaintiff's predecessor had title of the property, it is for the plaintiff to prove, how he acquired the property after the death of Shanmuga Nadar, his grandfather. Reliance was only placed on ExsA1 and A2 for the said purpose. Lower appellate court also found that predecessor of defendant was owner of 2 acre and 50 cents in pymash No. 350. I feel that reliance placed by courts below on the patta is not correct.

17.In *Sawarni v. Inder Kaur*, their Lordship held thus,

... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question..." (Italics Supplied)

18.In *Baleshwar Tewari v. Sheo Jatan Tiwary*, , also, in para 15 of the Judgment, a similar view has been taken.

19.In *Balwant Singh v. Daulat Singh*, , their Lordships said that mutation entries will not convey or extinguish the right over the property.

20. In view of these legal position, it goes without saying that no reliance could be placed on Exs.A1 and A2. It is not the case of plaintiff that he obtained title of the property on the basis of order of the Government as an assignee of the property. His claim is based only on devolution of right i.e., derivative title. In such a case he is bond to prove the ancestral title and how the property devolved on him.

24. Once it is found that the plaintiff has no title, the question of granting the relief of the basis of possessory title may not arise



since the appellant herein is having better title. As against the true owner or as against the person having better title, a person claiming possessory title cannot get injunction.

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24. Learned respondent counsel also relied on the judgment reported in [(2014) 2 SCC 269] in the case of Union of India and Others Vs. Vasavi Cooperative Housing Society and others for the proposition that revenue records do not confer title and also for the proposition that in a suit for declaration of title, burden is always on the plaintiff to establish a clear case for granting the relief of declaration. The weakness, if any, in the case of the defendant would not be a ground to grant relief to the plaintiff. The plaintiff has to succeed on the strength of his own title. The relevant portion of the judgment reads as under:

15. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

21. This Court in several Judgments has held that the revenue records does not confer title. In Corporation of the City of Bangalore v. M. Papaiah and another (1989) 3 SCC 612 this Court held that:

"5. ... it is firmly established that revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In Guru Amarjit Singh v. Rattan Chand and others (1993) 4 SCC 349 this Court has held that "



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(SCC p.352, para 2)

"2.that the entries in jamabandi are not proof of title".

In State of Himachal Pradesh v. Keshav Ram and others (1996) 11 SCC 257 this Court held that

"5. an entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

22. The Plaintiff has also maintained the stand that their predecessor-in- interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgment of this Court in Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors. (2007) 8 SCC 361 and Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors. (1991) Supp. (2) SCC 228.

23. We notice that the above principle laid down by this Court sought to be distinguished by the High Court on the ground that none of the above- mentioned judgments, there is any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are maintained. The High Court took the view that Ext.A-3 has evidentiary value since the same has been prepared on the basis of Hyderabad record of Rights in Land Regulation, 1358 Fasli. It was also noticed that column 1 to 19 of Pahani Patrika is nothing but record of rights and the entries in column 1 to 19 in Pahani Patrika shall be deemed to be entries made and maintained under Regulations.

24. We are of the view that even if the entries in the Record-of-Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 fasli which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the



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property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned.

25. Admittedly, the predecessor in interest of the plaintiff got this property in question through the above-mentioned family settlement and partition deed. Conspicuous absence of the suit land in question in the above-mentioned deed would cast doubt about the ownership and title of the plaintiffs over the suit land in question. No acceptable explanation has been given by the plaintiff to explain away the conspicuous omission of the suit land in the registered family settlement and partition deed.

28. In our view, such an exercise was totally unnecessary. Rather than finding out the weakness of GLR, the Courts ought to have examined the soundness of the plaintiff case. We reiterate that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession.

29. In such circumstances, we are of the view that the plaintiff has not succeeded in establishing his title and possession of the suit land in question. The appeal is, therefore, allowed and the judgment of the trial court, affirmed by the High Court, is set aside. ...

25. The judgment reported in [(2004) 10 SCC 779] in the case of Karnataka Board of Wakf Vs. Government of India and Others, is relied by the respondents for a proposition that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario' i.e. peaceful, open and continuous. The plea of title and adverse possession is mutually inconsistent. The relevant portion of the judgment is extracted below:

11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property



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by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See :S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi(1993) 4 SCC 375 andD N Venkatarayappa v. State of Karnataka(1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Dr. Mahesh Chand Sharma v. Raj Kumari Sharma 1996 8 SCC 128.

12. A Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See:S M Karim v. Bibi SakinalAIR 1964 SC 1254).In P Periasami v. P Periathambi(1995) 6 SCC 523 this Court ruled that: (SCC P.527, para 5)



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"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with [Mohan Lal v. Mirza Abdul Gaffar](#) (1996) 1 SCC 639 that is similar to the case in hand, this Court held: (SCC pp.640-41, para 4)

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

13. As we have already found, Respondent obtained title under the provisions of Ancient Monuments Act. The element of Respondent's possession of the suit property to the exclusion of the Appellant with the animus to possess it is not specifically pleaded and proved. So are the aspects of earlier title of Appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by



Respondent is unsustainable. High Court ought not have found the case in their favour on this ground.

26. It is submitted by the respondents that the appellants claim title on the basis of title deed, possessory title and on the basis of adverse possession in a subtle way. However, there is no specific pleadings in the plaint as to how the appellants claim adverse possession in respect of the suit property, when the adverse possession commenced so on and so fourth. Therefore, it is submitted that when title deeds of the appellants do not support their case, they cannot claim adverse possession without proper pleadings and evidence.

27. Finally, learned counsel for the respondent circulated a judgment reported in [(2006) 1 MLJ 423] in the case of Lingappa Gounder Vs. Palanisamy Gounder and Others for the proposition that resurvey conducted without proper notice to the parties affected will not bind the party, if notice was not served. The relevant portion of the judgment reads as under:

9. In the decision of this Court reported in 97 Law Weekly 198 (Paramakudi Sri Sundararaja Perumal Devasthanam v. S.K.C.Kanakasabapathy Chettiar and others), this Court considered the scope and ambit of Section 13 of the Tamil Nadu Survey and Boundaries Act, 1923 and also about the issuance of notice under Section 9(2) to the parties concerned. Relying upon the earlier decisions of Division Bench as well as the single Judge of this Court, held that where the party affected had no notice of the survey as contemplated by Section 9(2) of the Madras Survey and Boundaries Act, it cannot be said that there has been a completion of the survey in accordance with the orders passed under Section 9 within the meaning of Section 13 and, therefore the party adversely affected thereby is not bound to file a suit within three years to set aside the order of the survey officer. Thus, this Court held that the question of title cannot be decided by the survey authorities finally and conclusively and even if an indirect decision is rendered by the survey authorities, the finality under section 13 will arise only if the notice of the proceedings has been served on the affected party as contemplated under Section 9(2) of the Act. In the said judgment, an earlier Division Bench decision of this Court reported in 1953 Mad. 158:



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65 L.W. 364 ([Mariyam Umma v. Ummer Kutti](#)) was also relied on.

10. In an another Division Bench decision of this Court reported in *State of Madras v. Kasthuri Ammal and others*, 1974 T.L.N.J. 145, it is held that though in an earlier survey one portion of the suit site might have been labelled as a road poramboke, such action by the survey authorities cannot affect the plaintiff in any manner unless the defendants establish that due notice of the result of the survey was given and the latter acquiesced in the correctness of the operations. The law is that a party concerned by an adverse survey to whom no notice of the survey was given is not bound to file a suit within three years to set aside the order of the survey officer because he had no notice of the survey, and the orders on it cannot be said to be correctly passed under Sec.13 of the Act and binding on the party.

11. From the decisions referred to above, which are also relied on by the trial Court, this Court is of the considered view that non-mentioning of existence of the common cart-track in the re-survey will not in any way affect the rights of the plaintiff as it is not proved that notice was issued by the survey authorities as required under Sec. 9 (2) of the Tamil Nadu Survey and Boundaries Act, 1923, the predecessors-in-title of the plaintiff.

28. It is further submitted that no resurvey notice was given to the respondents and patta was given to the appellants for survey nos. 471 and 472. When it came to the notice of the respondents, they gave objection and enquiry in this regard is pending because of the pendency of the suit.

29. Learned counsel for the appellant claims that appellants are entitled for the decree on the basis of their long possession. The possession must be recognized by law. One cannot claim title to other man's property on the basis of long possession, unless the claim is based on adverse possession. If proprietary right is claimed, it must be established by documents of title. However, as rightly pointed out by the learned counsel for the appellant, there is no proper pleading with regard to the adverse possession and there is no evidence as well to prove the claim of adverse possession. Therefore, this Court is of the



considered view that the appellants claim of title to the suit property on the basis of the long possession cannot be entertained in law. Admittedly, the title deeds of the appellants and other documents produced do not show that they purchased the properties in survey no.471 and 472. As already found, they cannot claim title to the properties in S.Nos.471 and 472 on the basis of the revenue records, especially in this case where the respondents made objection to the grant of patta for survey nos.471 and 472.

30. Therefore, this Court finds that the judgments relied on by the learned counsel for the appellant in support of appellant's case are not useful to advance their case. This Court finds that the judgments relied on by the learned counsel for the respondents shows that the claim of adverse possession cannot be entertained without proper pleadings and evidence. Patta issued without proper notice to the affected parties will not bind them. Finally the plaintiff cannot pick holes from the case of the defendant and has to prove his case on the basis of his own title. At the risk of repetition, it is found that appellants have not established their title in respect of survey nos.471 and 472 specially survey nos.471/4 and 472/1 and therefore, they are not entitled for any relief claimed in respect of these properties. Both the Courts below have concurrently found on the same lines and this Court confirms the judgment and decree of the first Appellate Court confirming the judgment and decree of the trial Court.

31. In view of the reasons stated above, this Court finds that the Courts below have not committed any error in refusing to grant a declaration in respect of survey nos.471 and 472 for the reason that appellants have not proved their title and possession, for substantial question of law no.1. It is for the plaintiff to prove their case on the basis of their own title and they cannot pick holes in the case of the defendants and revenue records cannot be relied to decide the title, for substantial question of law no.2. There is no proper pleadings and proof with regard to plaintiffs claim of title by long possession. Either proprietary right on the basis of documents of title or adverse possession on the basis of long, uninterrupted, open, continuous and hostile possession to the knowledge of the owner can alone be made for claiming title. Both the claims are not proved in this case and therefore the claim of title on the basis of possession was rightly rejected by the Courts below, for the substantial question of law no.3.



32. In fine this Court confirms the judgment of learned Sub-Court, Kangayam in A.S.No.17 of 2017 confirming the judgment of the District Munsif Court, Kangayam in O.S.No.148 of 2008 and dismisses this appeal with the costs of the respondents through out. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

Ep/Ska

To

1.The Sub Judge,
Kangayam,

2.The District Munsif,
Kangayam.

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

+1cc to Mr.S.Saravanan, Advocate SR.No.4366

+1cc to Mr.N.Manokaran, Advocate SR.No.4506

S.A.No.293 of 2019
and C.M.P.No.4456 of 2019

BR(CO)
CB(11/03/2022)