



S.A.(MD) Nos.672 to 674 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.09.2022

PRONOUNCED ON : .25.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) Nos.672 to 674 of 2006

S.A.(MD) No.672 of 2006:

1.K.Manthaian
2.K.Soman

... Appellants/Appellants/Plaintiffs

Vs

1.Palaniammal
2.Pushpavalli

... Respondents/Respondents 1 & 3/
Defendants 1& 3

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.04.2006 made in A.S.No.173 of 2005 on the file of the I-Additional Subordinate Court, Madurai confirming the judgment and decree dated 29.03.2005 made in O.S.No.160 of 2001 on the file of the District Munsif Court, Melur.



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WEB COPY S.A.(MD) No.673 of 2006:

1.KR.Gurusamy
2.P.Santha

... Appellants/Appellants/Plaintiffs

Vs

1.Palaniammal
2.Pushpavalli

... Respondents/Respondents 1 & 3/
Defendants 1& 3

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.04.2006 made in A.S.No.174 of 2005 on the file of the I-Additional Subordinate Court, Madurai confirming the judgment and decree dated 29.03.2005 made in O.S.No.17 of 2002 on the file of the District Munsif Court, Melur.

S.A.(MD) No.674 of 2006:

1.K.Manthaian
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... Appellants/Appellants/Defendants



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Vs

1.Palaniammal
2.Pushpavalli

... Respondents/Respondents 3 & 2/
Plaintiffs 3 & 2

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.04.2006 made in A.S.No.175 of 2005 on the file of the I-Additional Subordinate Court, Madurai confirming the judgment and decree dated 29.03.2005 made in O.S.No.205 of 2002 on the file of the District Munsif Court, Melur.

For Appellants : Mr.K.Govindarajan
(In all Appeals) for Mr.M.Saravanakumar

For Respondents : Mr.M.Chockalingam
(In all Appeals)

COMMON JUDGMENT

Preliminary:

1.1. There are four items of properties, and they are comprised in R.S.Nos. 202/8B1, 202/8B2, 202/8B3 and 202/8B4. Each of the survey number have within it a meagre extent of dry land. These properties gave rise to three



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separate suits and they are O.S.No.160 of 2001, O.S.No.17 of 2002 and O.S.No.205 of 2002.

1.2 Of the three suits, the last mentioned O.S.No.205 of 2002 is a comprehensive suit for declaration of title, for recovery of possession and also for prohibitory injunction. The defendants in that suit have divided themselves into a set of two plaintiffs, and had filed the other two suits for bare injunction, and these suits relate to specific items of properties with which they are concerned. The details are as below:

Sl. No	Suit No	Name of the plaintiffs	Number of Items involved	Relief
1	205/2002	i) M.Karuppiah Velar (Died) ii) Pushpavalli iii) K.Palaniammal	Items 1 to 4	(i) For declaration of title of 1 to 4 Items of properties (ii) For bare injunction as regards the Item 1 property. (iii) For recovery of possession of Items 2 to 4



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2	160/2001	i) K.Manthaian ii) K.Soman (Defendants 1 & 2 in O.S.No.205 of 2002)	Item 2 in O.S.No. 205/2002 + 2 residential buildings divided into 2 parts	For injunction	bare
3	17/2002	i) K.R.Gurusamy ii) Santha (Defendants 3 & 4 in O.S.No.205 of 2002)	Items 3 and 4 in O.S.No. 205 of 2002 + 3 residential buildings	For injunction	bare

All the three suits were tried together and evidence was recorded in O.S.No. 205 of 2002. After trial O.S.No.205 of 2002 was decreed and the other two suits for bare injunction were dismissed. These decrees of the trial Court gave rise to three first appeals and all of them came to be dismissed, from which arises the present batch of second appeals. The details are as below:

Sl.No.	Number of the Suit	Number of the First Appeal	Number of the Second Appeal
1	205/2002	175/2005	674/2006
2	160/2001	173/2005	672/2006
3	17/2002	174/2005	673/2006

Parties would be referred to by their rank before the trial Court in O.S.No.205 of 2002.



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The Pleadings:

2.1. Since O.S.No.205 of 2002 is the principal case based on title, pleadings in that suit are narrated below:

- A certain Nalla Velar had purchased the northern 80 cents out of a larger extent of 1.22 acres in Sy.No.383 of E.Malampatti Village, Melur Taluk, vide Ext.A.1-sale deed dated 25.05.1917. Nalla Velar had two sons viz., Karuppaiah Velar, the first plaintiff herein, and Navala Velar. Nalla Velar died intestate and this plot of 80 cents devolved on the first plaintiff and his brother Navala Velar.
- The plot of 80 cents in Sy.No.383 covered under Ext.A.1 was later came to be subdivided into Sy.No.383A. During re-survey, S.No. 383A was correlated to R.Sy.Nos.202/8A and 202/8B. Chitta in Ext.A.3 and Ext.A.4 came to be issued for Patta No.616 for R.S.No. 202/8B for an extent of 63 cents in the name of the first plaintiff and his brother Navala Velar.
- On the demise of Navala Velar in 1967, his half share devolved on his two daughters, the plaintiffs 2 and 3 herein. Indeed the first plaintiff



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brought up plaintiffs 2 and 3 as his own daughters. After marriage, these plaintiffs left the village.

- During UDR (about 1987), the aforesaid 63 cents covered under R.S.No.202/8B was subdivided further into R.Sy.Nos.202/8B1, 202/8B2, 202/8B3 and 202/8B4.
- While so, the defendants managed to win over the officials and obtain patta in their names for Items 2 to 4, and the plaintiffs were allotted only 14 cents in Item-1. Based on the patta issued to them, defendants 2 to 4 trespassed into the suit property and illegally constructed tiled houses in Items 2 to 4. The plaintiffs came to know about it only in 2001. The first plaintiff was advanced in age then and was also ailing. Hence, he could not resist the trespass by the defendants. The plaintiffs would thereafter petitioned the Tahsildar and after due enquiry, patta came to be issued to the plaintiffs on 17.08.2001. The plaintiffs had also taken up steps to measure the property officially, but on 12.09.2001, when the Surveyor was to measure the property, the defendants took time. But wasting no time, they instituted O.S.Nos.160 of 2001 and 17 of 2002.



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It is in these circumstances the plaintiffs have laid O.S.No.205/2002 for declaration of their title and for other reliefs detailed in paragraph 1.2 above.

2.2. The written statement filed by the second defendant was adopted by the other defendants. Refuting the assertion of the plaintiffs, they allege:

- The property purchased by Nalla Velar under Ext.A.1 is actually in Old S.Nos.383/D and 383/E. This has a total extent of 1.22 acres, out of which Nalla Velar had purchased the northern 80 cents. In the re-survey, it was correlated to R.S.No.202/2. The property which Nalla Velar claims to have purchased has little relevance to the suit property. While Nalla Velar had purchased 80 cents, the suit laid as concerning the 4 Items of properties scheduled to the plaint has a combined extent of only 63 cents. The balance 17 cents is unexplained.
- Turning to their title, the ancestors the defendants 1 and 2 owned 12.5 cents in Item-2 and he had put up a tiled roof building. After his demise, the property devolved on defendants 1 and 2. The second



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defendant had also obtained the eastern 10 cents from a certain Asokan in 1976, and patta was duly issued in his name.

- So far as the third defendant's title is concerned, his ancestors were in enjoyment of the 3rd Item of the property, and they had their residential building in the said property. Similarly the ancestors of the fourth defendant had been enjoying the 4th Item of the property with the residential building.

2. The pleadings in the other suits in O.S.Nos.160 of 2001 and 17 of 2002 laid by the defendants for bare injunction are not separately stated, in the context of the pleadings above.

Trial & the First Appeal:

3.1. The dispute went to trial and before the trial Court, the plaintiffs examined P.W.1 to P.W.4 of whom, Palaniammal, the third plaintiff was examined as P.W.1. P.W.2 is the Village Administrative Officer, and P.W.3 and P.W.4 are independent witnesses and they produced Ext.A.1 to Ext.A.44. For the defendants, D.W.1 to D.W.9 were examined. The second



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defendant in O.S.No.205 of 2002 (second plaintiff in O.S.No.160 of 2001) was examined as D.W.1. So far as O.S.No.17 of 2002 is concerned, none of the defendants have entered the box. On the side of the defendants, Ext.B.1 to Ext.B.87 were marked.

3.2. One critical document which the plaintiffs have produced during trial is Ext.A.26. This is the proceedings of the Revenue Divisional Officer (RDO), Madurai, dated 23.09.2003 and it was made during the pendency of the suits. Earlier, the plaintiffs herein have challenged the grant of patta to the defendants for Items 2 to 4 during UDR as relating to the properties in R.S.Nos.202/8B2, 202/8B3 and 202/8B4. The RDO vide his proceedings, dismissed the appeal preferred by defendants and had also made a statement therein that the defendants believed that they had any right they might approach the civil Court where the present set of suits are pending.

3.3 On appreciating the evidence before it, the trial Court went in for Ext.A. 1 and Ext.A.26 to enter a finding that the plaintiffs indeed are the title holders to the property in R.S.No.202/8B2, and once this finding was



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entered decreeing O.S.No.205 of 2002 became its automatic choice, and O.S.No.160 of 2001 filed by defendants 1 and 2 and O.S.No.17 of 2002 filed by defendants 3 and 4 met with necessary dismissal.

4. All the defendants challenged the decrees of the trial Court before the first appellate Court, the details of which are provided already in paragraph 1.3 above and these appeals came to be dismissed by the first appellate court. The first appellate Court essentially adopted the line of reasoning of the trial Court. Hence, these second appeals by the defendants.

5. All the three appeals were admitted for considering the following substantial questions of law:

“(i) Whether the plaintiffs have failed to prove that the sale deed under Ex.A-1 relates to the suit property and that the vendors who executed Ex.A-1 had title to the suit properties, are not the judgments and decrees of the Courts below vitiated in accepting Ex.A-1 as the document of title in favour of the plaintiffs?

(ii) When the defendants are continuous and uninterrupted



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enjoyment of suit property from 1963 by putting up pucca residential houses to the knowledge of the plaintiffs is not in dispute, have not the plaintiffs lost their right to seek recovery of possession or mandatory injunction for removal of superstructure by virtue of the well recognized principles of equitable estoppel and doctrine of acquiescence? and

(iii) Whether the suit for mandatory injunction and recovery of possession is barred by limitation on the admitted facts?

The Arguments:

6. The learned counsel for the appellants submitted that:

- The principal plank of the defendants' case is one of identity of the suit properties. The plaintiffs' case is that Nalla Velar had purchased the northern 80 cents out of 1.22 acres in Sy.No.383A. However, in the patta, the survey number is given as 383 without any sub-division. Therefore, whatever property which the plaintiffs claim can only be on the north and nowhere else. Circulating a re-survey plan which is not marked before the Court or produced in terms of Order XLI Rule 27 CPC, but as an aspect of his argument, the learned counsel



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submitted that if S.No.383A were to be correlated with R.S.No.202/8, then the property covered under Ext.A.1 would be in the south-east of Sy.No.202 and cannot be in the north. Secondly, the defendants have categorically asserted in their written statement that the property which Nalla Velar had purchased under Ext.A.1 actually fell in Old S.Nos.383/D and 383/E and it is correlated to R.S.No.202/2. This re-survey number property has an extent of 1.22 acres and this is on the north-west extreme of S.No.202.

- While the plaintiffs claim that Nalla Velar had purchased 80 cents under Ext.A.1, they now purported to limit their claim to only 63 cents, and they have not explained in their plaint as to what exactly happened to the remaining 17 cents. Indeed P.W.1 in her cross examination would state that this 17 cents had gone to a third party and that she did not know about it. When the defendants had raised a dispute as to the identity of the property which the plaintiffs had purchased under Ext.A.1, then identifying the 17 cents would also be significant, since this is part of the 80 cents covered under Ext.A-1. The plaintiffs have done precious little to explain this.



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- The plaintiffs seek a decree for mandatory injunction to remove the residential buildings in Items 2 to 4, but in their plaint they have not stipulated the time during which these buildings came to be constructed. The plaintiffs have merely averred that these defendants have trespassed into items 2 to 4 without any reference to the time of such trespass which is essential to justify their prayer for mandatory injunction. After all, a suit for mandatory injunction could be laid within three years of arising of the cause of action. Here, the defendants had produced several documentary evidence such as property tax receipts to show that they had occupied items 2 to 4 well prior to three years next before the institution of O.S.205 of 2002.
- The plaintiffs have produced Ext.A.2 correlation statement to show that S.No.383A is relatable to R.Sy.Nos.202/8A and 202/8B. The endorsement in the document was made on 26.01.1978. This document is least reliable and it can be borne out by at least two facts:
- (i) The alleged sub-division was made on the Republic Day in 1978, and it is not adequately known why this document was specially made on a public holiday; and (ii) To support their case, the plaintiffs have



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produced Ext.A.4-chitta (for Patta No.616) in the name of Navalla Velar, father of plaintiffs 2 and 3 for R.S.No.202/8B for fassli 1373. If this is converted into Gregorian calender it would be in 1963. However, going by the endorsement in Ext.A.2, the sub-division itself had taken place only in January, 1978. Ext.A.3 is also stated to be another chitta issued prior to the UDR.

- The plaintiffs have also produced Ext.A.44, a correlation for S.No.202/2. It gives the corresponding old survey numbers as 383/D and 383/E for a combined total extent of 1.22 acres. In terms of the survey plan, R.S.No.202/2 is in the north-west portion of S.No.202 and it also reconciles with the description of the property sold under Ext.A.1. In other words, in giving their survey number in Ext.A.1, instead of stating it as S.Nos.383/D and 383/E, the document refers to S.No.383/A. This has to be appreciated in the context of the fact that even in her chief examination, P.W.1 asserts that the property purchased under Ext.A.1 was the northern 80 cents.
- So far as Ext.A.26 is concerned, first, this proceedings is post litigation; second, the RDO did not take into account the dispute as to



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title to the property. Indeed even today the entire property is classified as a Government poromboke and the RDO ought to have taken into the conflicting facts that are now placed before this Court, or at least should have waited for the ultimate disposal of the suits. When title to the property is in dispute and is pending adjudication by a civil Court, the proceedings of the Revenue Official cannot be given any credence. Therefore, both the Courts had gone wrong in relying on Ext.A.26 for justifying their line of reasoning.

The learned counsel for the appellants relied on the authority of the Hon'ble Supreme Court in ***P.Chandrasekharan and Others Vs S.Kanakarajan and Others*** [(2007) 5 SCC 669] and the authority of this Court in ***R.S.Muthuswamy Gounder Vs A.Annamalai*** [AIR 1981 Mad 220]

7.Per contra, the learned counsel appearing for the respondents/plaintiffs made the following submissions:

- The defendants/appellants are attempting to shift the suit property from S.Nos.383/A to 383/D and 383/E and trying to locate it within R.S.No.202/2 with all its sub-divisions which is the corresponding re-



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survey number for S.Nos.383/D and 383/E. This is not permissible since what is transacted under Ext.A1 is the northern 80 cents in S.No.383/A and not the northern 80 cents in S.No.383 with all its sub-divisions.

- The Commissioner had visited the property along with Surveyor and also the FMB, and had located not only item Nos.2 to 4 which are the disputed properties in the suit, but also item No1. He identified item No.1 in R.S.No.202/8B, and more particularly he also finds the house of the plaintiffs in item No.1. In the written statement of the defendants, they did not raise any dispute as to the exact location of item No.1, nor have they filed any objections to the Commissioner's report about the availability of the house of the plaintiffs in item No. 1.
- The description of item Nos.2 to 4 in the suit properties are the same as the description of suit properties in other two suits namely O.S.No. 160 of 2002 and O.S.No.17 of 2002. All the revenue records namely Exts.A2 to A4 read along with Ext.A27, Ext.A33 to Ext.A37 categorically indicate that S.No.383A is correlated to R.S.Nos.202/8A



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and 202/8B1 to 202/8B4. Of this, Nalla Velar under whom the plaintiffs claim right have been granted patta for R.S.No.202/8A for 63 cents. The rest has been given to the first plaintiff, Karuppaiah.

- Turning to the mandatory injunction, the plaintiffs mentioned in paragraph No.6 of the plaint that the defendants had trespassed into the suit property and had put up the building which they came to know only in the year 2001. But it will pale into insignificance since the suit was filed also for the larger relief of recovery of possession coupled and not just for mandatory injunction. This apart, no sooner these plaintiffs came to know that the patta has been wrongly issued to the defendants, they moved the revenue officials. In this context Ext.A-26 is relevant to prove the conduct of the plaintiffs as well. It would now indicate that the plaintiff had wasted no time to seek the demolition of the buildings put up by the defendants.
- In the written statement in the suit, the second defendant would plead that to the west of item No.2, there existed a property measuring 12.05 cents that belonged to his ancestors where there was a house. But, he would also proceed to state that there was an oral sale by



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which he had obtained item No.2 from certain Ashokan (who was not examined, and another Ashokan was examined as D.W.4, but he is the Power of Attorney of the 4th defendant). This would show that the second defendant's contention of occupation of the land itself is wobbling.

- Before the first appellate Court, the defendants have literally conceded that they would pay compensation, but it was too late an offer which the plaintiffs were in no mood to consider.

8. In response, the learned counsel for the appellants/ defendants submitted that at no time before the first appellate Court did the defendants have conceded the title of the plaintiffs, and they have only made a proposal that in case the first appellate court found that the plaintiffs are the title holders then instead of directing its removal the Court might consider granting a decree for payment of compensation as an alternative mode of remedying the cause before it. This is only based on the legal proposition and not made as a concession on title.



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Of Discussion & Decision:

9.1 The appeals can be split into two segments: (a) that which relate to defendants 1 and 2; and (b) that which relate to defendants 3 and 4. If the case of the defendants coupled with the submission of their counsel is carefully analysed, it becomes evident that they did not dispute that the plaintiffs own some property in Old Sy. No.383. They only dispute the subdivision number of Sy.No. 383 where the plaintiffs claim title. While the plaintiffs claim title to 63 cents in Sy.No:383A, these defendants would plead that the plaintiffs need to find their property in Sy.Nos:383 D and E. Accordingly they contend that Sy.No:386/D and 386/E are correlated to Re.Sy. No. 202/2, and that the plaintiffs are trying to locate the property at the wrong place.

9.2 The reason why the defendants contend as above is that, under Ext.A1, the predecessor in title of the plaintiffs had purchased the northern 80 cents in S.No.383, and if this plot has to be found in the north, then it can be only in R.S.No.383/D and 383/E. But this Court does not find it impressive enough to merit acceptance. The reasons are:



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- When this Court perused Ext.A1, sale deed, it finds that what was sold to the plaintiffs' predecessor in title was the northern 80 cents in S.No.383/A and not the entire S.No.383. There is a world of difference between a statement that the property covered under Ext.A1 is the northern 80 cents of S.No.383 and the one that forms the northern 80 cents in S.No.383A.
- Secondly, the plaintiffs have claimed title to property in Items 1 to 4, of which, there was no dispute regarding Item No.1. Item No.1 lies adjacent to Item Nos. 2 to 4, and the Commissioner has noted it in his report. This report of the Commissioner has not been objected to by the defendants. If only the property covered under Ext.A-1 lies in R.Sy.No. 383/D and 383/E, then how to account for the existence of the plaintiff's house in suit item I R.Sy.No:202/8? In other words, if only it is the case of the defendants that the plaintiffs are trying to identify the property wrongly, then they have to satisfy how Item No. 1 with the house of the plaintiffs therein, can lie adjacent to Item Nos. 2 to 4. This fact disclosed by the Commissioner's report corroborates the contention of the plaintiffs counsel that what was sold under



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Ext.A1 was the northern 80 cents in S.No.383A and not Old S.No. 383. Here, this Court is not overly concerned with the revenue sub-divisions seen made on 26.01.1978 Vide, ExtA-2 as it happened to be the Republic Day and hence public holiday, since the geography associated with the location of the plot covered under Ext.A-1 appears stronger on ground to the historical implications of Ext.A-2. After all it is revenue sub-division, but what this Court principally concerned with the title of the defendants to be in S.No:202/8B2, S.No:202/8B3 and 202/8B4.

10. Turning to the title of the first and second defendant, he claims that he had inherited part of the property in Item No.2 from his father and orally purchased the reminder from certain Asokan. Who is this Asokan? None knows. And, what is his title to alienate? It is not made evident. They indeed have produced Exts.B-1 to B-50, and not even one is original. Even if this aspect is briefly kept aside, Ext.B-1 appears to be the copy of the patta issued to the 2nd defendant under Patta No:952 for fasli year 1396 as regards R.Sy.No: 202/8B2. This in 1986-1987 and which is the period



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11.1 Turning to the 3rd defendant, he has produced Exts.B-51 to B-65, and not one document is the original, and production of primary evidence is compromised with. And, scanning through the documents produced for their merit, it appears Ext.B-51 is the patta issued to the father of the 3rd defendant's, for fasli 1396 for R.Sy.No: 202/8B3 and Ext.B-58 and B-59 are



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the *kist* receipts all of which refer to patta No:451. Ext.B-52 to B-57 and Exts. B-60 to B-61, all of which are photo copies of the property tax receipts for the buildings in the item 3. And the earliest of these receipts is in 1994.

11.2. So far as the 4th defendant is concerned, she has produced Exts.B-66 to B-86, again all of which are original documents as has been the case with the other defendants. Of the documents produced Ext.B-62 is the copy of Patta Pass Book dated 13.09.2000 issued to the 4th defendant under Patta No:1017 as regards R.Sy.No: 202/8B4. She has produced Ext.B-77 to B-79 and Ext.B-84 to B-86 *kist* receipts, and also Ext.B-66 to B-76 and Exts. B-81 to B-83 property tax receipts for the buildings in the item 4 with Door Nos. 2/64. And the earliest of these receipts is in 1986.

12. The common feature with the case of all the defendants is their failure to produce the original documents; Secondly, not one of them were able to produce any documents prior to UDR to show that they or had any right in them to the property they occupy; And, significantly not one of them had



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pleaded adverse possession but contest the suit on title.

13. If a dispute is based on rival claim of title, with both sides tracing their title to independent sources of title, then both are under a compulsion to discharge their burden to prove their title. It is then the Court applies the rule of preponderance of probability in deciding the controversy. Here, the defendants did attempt to prove their title, but this Court finds that the case of the plaintiff preponderates the case put forward by the defendants. As earlier indicated, the defendants did not challenge the title of the plaintiff based on Ext.A-1 sale deed, but only questioned the location of the property purchased thereunder. This has been already found against the defendants. With the defendants failing to prove their anterior title prior to 1986 or thereabouts (the decade during which UDR was undertaken) with original documents is their own undoing. It is here one needs to position Ex.A-2. It is true there is an endorsement for the revenue subdivision of Rs.No:202/8 into R.Sy.No:202/8A and 8B dated 26-01-1978. That it was a Republic Day and hence a public holiday cannot be disputed, but if some official is so duty conscious to work on a public holiday, is it a sin? Or, does it render all



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that was done on that day void? It may ordinarily give rise to some suspicion, but mere suspicion not backed by material to establish that it was never done may not be of any consequence. Have the defendants been prejudiced by the revenue sub division made vide Ext.A-2? They could not have been for they have not produced any evidence to show that they had any right to be in the property in 1978. And significantly, all of them today claim title to portions of property in R.Sy.No:202/8B, which claim cannot sustain unless they accept subdivision made vide Ext.A-2.

14. To conclude, this Court finds that these appeals lack merit and are liable to be dismissed and the common judgement and decree of the first appellate court in A.S.No.173 of 2005, A.S.No.174 of 2005 and A.S.No.175 of 2005 are hereby confirmed. No costs.

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