



S.A.(MD).No.535 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 16.03.2022

JUDGMENT PRONOUNDED ON : 01.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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Ittoop T.Malliyekkal
S/o.M.I.Thomas
Door No.A-72, Riviera Retreat
Pandit Karuppan Road
Thevara Water Front
Kerala, Chochin
Now residing at
Bingham Dr.Konswille
T.N.37922, United States of America
Through his power agent
Ramakrishnan
Advocate Clerk
1, Perumal Koil Street
Tenkasi 627 811

...Appellant/1st Respondent /Plaintiff

Vs

1.M/s.Supervint Project (PVT) Ltd.,
Represented by his power agent
P.N.Ravi



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2.M/s.Shoop Reality (South) Private Ltd.,
represented by its Authorized signatory

N.Ayyakutti

...Respondents 1 & 2/Appellants
Defendants 1 & 2

3.M.Vasantha

4.M.Nellaiyappan

5.The Chief Engineer
Non Conventional Energy Department
800, Annasalai, Chennai – 2

6.The Superintending Engineer
Wind Form Development
Maharaja Nagar
Palayamkottai
Tirunelveli – 11

7.State of Tamil Nadu represented by
The District Collector
Tirunelveli District

Respondents 3 to 7 /Respondents 2 to 6
/Defendants 3 to 7

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to allow the second appeal and set aside the reversing judgment and decree passed by the Principal Sub Court, Tenkasi in A.S.No.129 of 2017 dated 03.11.2018 and restore the judgment and decree passed by the Principal District Munsif Court, Tenkasi in O.S.No.206 of 2010 on 13.09.2017.



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For Appellant	: Mr.T.S.R. Venkatramana
For R1 & R2	: Mr.Ajmalkhan Senior Counsel For M/s.Ajmal Associates
For R5 & R6	: Mr.B.Ramanathan
R3	: No Appearance
R4	: Died
R7	: Mr.G.Sivaraja Government Advocate

JUDGMENT

The plaintiff is the appellant.

2.The plaintiff had filed O.S.No.206 of 2010 before the Principal District Munsif Court, Tenkasi for the relief of declaration of title and recovery of possession. The plaintiff had also prayed for mandatory injunction for demolition and removal of wind mill tower erected by the defendants 1 and 2. The plaintiff had further prayed for mandatory injunction directing the 7th defendant to stop extending subsidy for the production of electricity from the wind mill towers erected in the schedule



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mentioned properties. The plaintiff had further prayed for a mandatory injunction directing the defendants 5 and 6 to cancel the permission to produce the electricity from the wind mills erected in the schedule mentioned property. The suit was decreed as prayed for by the trial Court. The defendants 1 and 2 filed A.S.No.129 of 2017 before the Principal Subordinate Court, Tenkasi. The learned Subordinate Judge allowed the appeal and dismissed the suit. As against the said judgment, the present second appeal has been filed by the plaintiff.

Pleadings of the parties:

3.The plaintiff had contended that the suit schedule properties are his self acquired properties purchased under Exhibits A1 to A5. The plaintiff had further contended that while the he returned to India from USA in February 2010, he was surprised to find some wind mills being erected in the schedule mentioned property. On verification, he came to know that the two power deeds have been forged by the defendants 3 and 4 as if the same have been executed by the plaintiff. The said power deeds have been marked as Exhibits B2 and B11. Based upon the said power deeds, the third defendant has executed Exhibit A7 sale deed in favour of the second



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defendant. The fourth defendant has executed Exhibit A8 in favour of the second defendant. The second defendant in turn has executed Exhibit A9 in favour of the first defendant. According to the plaintiff, the power deeds are said to have been executed when he was abroad and the said documents are rank forgery.

4.The plaintiff had further contended that the second defendant has purchased this property without verifying the real owner of the property. Based upon the said document, the second defendant had erected wind mill and tower pole and generating electricity from the schedule mentioned property. Since the defendants 1 and 2 have not purchased the properties from the real owner, they have not derived any title regarding the schedule mentioned properties.

5.The plaintiff had further contended that the original sale deeds relating to the schedule mentioned properties are in his custody and the second defendant while executing the sale deeds in favour of the first defendant has cited the sale deeds stand in the name of the plaintiff. The



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first defendant has not verified the original document before purchasing the schedule mentioned properties and hence, the defendants 1 and 2 can never be considered to be the bonafide purchasers for valuable consideration.

6.The plaintiff had further contended that he had issued a legal notice on 16.02.2010 under Exhibit A10 to the defendants calling upon them to admit the title of the plaintiff and to hand over the vacant possession after removing the wind mill towers. Though all the defendants had received notice, the first defendant alone sent a reply on 24.02.2010 under Exhibit A12. In the said reply notice, the first defendant has simply denied the content of the suit notice, but has not given any valid reason for obtaining the said sale deed. Hence, the present suit for declaration of title, recovery of possession and other prayers.

7.The second defendant in his written statement has contended that the plaintiff has to strictly prove his title over the suit schedule properties. He had further contended that the present plaintiff is not the owner, but a different person is the owner of the properties from whom a power deed has



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been obtained. Since the power deeds have been obtained from the real owner of the property, the sale deeds executed pursuant to the said power deeds are legally valid and the defendants are the bonafide purchasers for valuable consideration.

8.The mere possession of the original sale deeds will not cloth the plaintiff over the title of the suit schedule properties. The defendant had further contended that taking advantage of the similarity of the name of the original owner, the plaintiff is attempting to create title in his favour. The defendant had further contended that the plaintiff has not purchased from all the co-owners of the properties, but he has purchased only a portion of a land covered by the plaint schedule property and hence, the relief of declaration cannot be granted in favour of the plaintiff and hence, he is not entitled to get a decree for declaration of title or any consequential prayer.

9.An additional written statement was filed by the second defendant contending that the wind mill was erected in the year 2008 and the suit has been filed only in the year 2010. It was further contended that the plaintiff has spent several crores of rupees to put up the wind mill. He had also



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bonafidly spent various amounts for improving the said lands. He had further contended that the plaintiff who had got acquiesced with the construction, would only be entitled to a compensation and the person in possession cannot be the affected. In the present case, the defendants 1 and 2 even according to the plaintiff, are the bonafide purchasers who have been cheated by the defendants 3 and 4 and purchased the properties without verifying the real personality. He had further contended that they are ready and willing to pay the value of the properties fixed by the Hon'ble High Court as per guideline by the Government to the plaintiff in the light of the judgment of the High Court. The said written statement filed by the second defendant was adopted by the first defendant.

Findings of the Trial Court and Appellate Court

10.The trial court after considering the oral and documentary evidence filed on either side, rejected Exhibits B13 to B15 on the ground that they were created pending suit and after executing Exhibits A2 and A3, the same owner cannot execute Exhibits B12, B13 and B15. The trial Court further found that based upon Exhibits A1 to A5 sale deeds, the plaintiff is the owner of the suit schedule properties. The power deeds said to have



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been executed in favour of the defendants 3 and 4 are invalid and the consequential sale deeds are also not valid. Based upon the said findings, the trial Court decreed the suit as prayed for.

11.The First Appellate Court independently analysed the oral and documentary evidence of either side. The First Appellate Court elaborately considered the sale deeds filed on the said of the plaintiff namely Exhibits A1 to A5. After analysing the tracing of title in the said document, the First Appellate Court arrived at a finding that the properties sold under Exhibits A1 to A5 are the ancestral properties of the vendor. The First Appellate Court further found that the plaintiff has not explained or filed any document or patta to establish whether the vendors were the exclusive owners of the properties dealt with under the sale deeds.

12.The First Appellate Court also analysed the cross examination of the plaintiff wherein the plaintiff has admitted that his agent alone verified the parent document. Only relying upon the said agent, he had purchased the properties. Apart from the sale deeds, no other parent document relating to



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the properties were handed over to him at the time of purchasing the suit schedule property. He had further admitted that he has not seen the genealogy or legal heir certificate of the family of the vendor in order to ascertain the title of his vendor.

13. Based upon the said deposition, the First Appellate Court arrived at a finding that the plaintiff has purchased the property without properly analysing the title of his vendor and that apart, though the plaintiff has contended that his agent has verified the document, Exhibits A1 to A5 does not reveal the involvement of any power agent in the said process. Hence, the First Appellate Court arrived at a finding that the plaintiff has not established his title.

14. The First Appellate Court has further found that the plaintiff has no locustandi to object to the release deed obtained by the defendants from the co-owner of the plaintiff's vendor. The First Appellate Court further found that though the defendants 1 and 2 do not make a claim with regard to Survey Nos. 23/2 and 23/4, as per the revenue records, the said properties



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have been classified as Anadhinam. Hence, the plaintiff cannot claim any title to the suit Survey numbers which are item nos. 1 and 2 of the suit schedule properties. Both the plaintiff and the defendants have not purchased the properties from all the sharers. Based upon the said finding, the First Appellate Court reversed the judgment and decree of the trial Court and dismissed the suit. As against the same, the present second appeal has been filed by the plaintiff.

15.The second appeal has been admitted on the following substantial questions of law:

(A).When it is proved that the alleged powers of Attorney Exhibit B2 and B11 are impersonized forged and a fraud on Court, is the First Appellate Court right in allowing the appeal, reversing the well reasoned Judgment of the trial Court?

(B).When the Powers of Attorney Exhibit B2 and B11 are hit by the provisions of Section 28 of the Indian Registration Act is the First Appellate Court right in allowing the appeal?

(C).When Exhibit B15 is filed without pleading and executed 6 years after suit when the respondents/defendants 1 and 2 are proved master forgerers is the First Appellate Court right in relying on it to allow the appeal?



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(D). If the First Appellate Court right in relying on Exhibit B15, when it is not written as a sale deed and hit by the doctrine of lispendence?

(E). When the defendants 1 and 2/ respondents 1 and 2 admit the title of the plaintiff and offer to pay compensation to the Appellant, is the First Appellate Court right in allowing the Appeal and dismissed the suit?

(F). Is the First Appellate Court right in holding two suit items are “அனாதீனம்” when the Government itself has given Patta No.2010 to the plaintiff/Appellate as admitted by the V.A.O./DW2 and the same patta was illegally transferred in the name of the respondents 1 and 2 without notice to the Appellant violating principles of natural justice?

(G).Is not the judgment of the First Appellate Court is perverse if so far as it puts a premium on respondents 1 & 2/defendants 1 & 2 who committed forgery, impersonisations and fraud on Appellant and on the Court?

Contentions of the Counsel for the Appellant

16.The learned counsel appearing for the appellant had contended that the plaintiff has established his title by filing Exhibits A1 to A5 registered sale in his favour. The appellant has also produced Exhibit A6 encumbrance certificate to disclose that there are no other encumbrance



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over the suit schedule properties. The appellant has also been granted patta under Exhibit A13. All these factors would clearly establish the title of the plaintiff.

17.The learned counsel for appellant had further contended that the defendants claim to have purchased the property only from the plaintiff on the basis of the two forged power deeds under Exhibit B2 and B11. When these two power deeds were said to have been executed by the plaintiff, he was in USA. This fact is proved by the production of Exhibit A15 Passport copy.

18.The learned counsel for the appellant had further contended that the sale deeds in favour of the second defendant under Exhibits B3 and A8 are based upon the forged power deeds namely Exhibits B2 and B11 and hence, they are not valid. That apart, based upon Exhibit B12 sale deed, the second defendant has executed a sale deed in favour of the first defendant under Exhibit A9 for an extent of 2.50 acres. Since the second defendant does not have any title, the first defendant also will not get title under Exhibit A9.



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19.The learned counsel for the appellant had further contended that there are no pleadings with regard to Exhibits B13 to B15. Though an attempt was made by the defendant to file a second additional written statement on 05.07.2017 by way of filing I.A.No.528 of 2007, the same was dismissed. A revision filed by the second defendant challenging the said order was also dismissed. Hence, there are no pleadings on record to the effect that he has purchased only from some of the co-owners of the properties and the defendants have purchased the suit property from the rest of the co-owners.

20.The learned counsel appearing for the appellant had further contended that the First Appellate Court had erred in arriving at a finding that item nos.1 and 2 are Anadhinam properties based upon Exhibit X2 document. He had further contended that a perusal of Exhibit X2 document will clearly indicate that the property is assessed to tax and hence, it is not a poromboke land or Anadhinam land. According to the learned counsel for the appellant in Column No.3, it has been specifically mentioned as ryotwari. The learned counsel had further contended that Anadhinam means



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only occupier be entitled at that point of time. However, on a later point of time, he had applied for Patta and Patta was granted to the plaintiff in Patta No.1020. When the Government had recognised his right over the properties, the defendants 1 and 2 cannot contend that it is an Anadhinam land. Even assuming that it is an Anadhinam land, then the said property has been purchased by the second defendant under Exhibit B12 and the second defendant will not have any title at all. That apart, there is no pleading in the plaint that item Nos. 1 and 2 are Anadhinam land. When none of the parties have pleaded that item Nos. 1 and 2 are Anadhinam lands, the trial Court had erred in arriving at such a finding based upon Exhibit X2 and the evidence of DW2 who was the Village Administrative Officer.

21.The learned counsel for the appellant had further contended that Exhibit B15 release deed executed on 07.11.2016 after suit for declaration of title was filed by the plaintiff. There is no pleading either in the original written statement or in the additional written statement with regard to Exhibit B15. That apart, an attempt that was made by the defendants to file a second additional written statement was not successful.



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Hence, the First Appellate Court was not right in relying upon Exhibit B15 release deed.

22.The learned counsel for the appellant had further contended that when the plaintiff has relied upon a registered sale deed in his favour, his oral evidence cannot be given much importance, especially when he is residing in USA for a longer period of time. As a resident of USA, he had to rely upon his agent for purchasing the schedule mentioned properties. When the plaintiff has established his title by way of a document, minor discrepancies in the oral evidence cannot be used to non suit the plaintiff. He had further contended that the defendants were not able to pick up any holes in the title of the plaintiff. On the other hand, the defendants have relied upon the title of the plaintiff and had purchased the properties through two forged power deeds. In such an event, the First Appellate Court was not right in doubting the title of the plaintiff.

23.Though the sale deeds under Exhibits A1 to A5 referred to the plaintiff's vendor title as ancestral properties, the defendants have not placed on record any other person is also a co-sharer of the property purchased by



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the plaintiff. None of the alleged co-sharers have questioned the title of the plaintiff. There is no pleading on the side of the defendants projecting the genealogy indicating that the suit schedule property also belongs to some other co-owners. Hence, the First Appellate Court could not have arrived at such a finding that the plaintiff has not purchased from all the co-owners.

24.The learned counsel for the appellant had also relied upon ***1994-1-LW- 21 (S.P.Chengalvaraya Naidu (dead) by L.Rs. -Vs- Jagannath (dead) by L.Rs & others)*** to contend that the defendants cannot claim title on the basis of Patta. He had also relied upon ***AIR 1997 SC 2089 (Baleshwar Tewari (dead) by Lrs. and others Vs. Sheo Jatan Tiwary and others)*** to impress upon the Court that as longer as possession and enjoyment of the owner is not interdicted by due process of law, the person in possession is not concerned with the entries made in the revenue records. Hence, he prayed for allowing the second appeal.

Contentions of the Counsel for the Respondents.

25.Per contra, the learned Senior Counsel appearing for the respondents 1 and 2 had contended that the plaintiff has filed the present



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suit for declaration of title and recovery of possession and hence, the entire burden is only upon the plaintiff to establish his title in order to seek recovery of possession. The learned Senior Counsel had further pointed out that insofar as S.Nos. 23/1 and 23/3 namely item Nos. 3 and 4 are concerned, the legal heirs of one of the co-owners of the property have approached the second defendant and raised a claim that they have got 1/4th share in their extent as legal heirs of the predeceased Shanmugaiah. Since the sale deeds of the plaintiff namely Exhibits A1 to A5 also discloses that the properties are ancestral in nature, the defendants proceeded to get a release deed under Exhibit B15. The learned Senior Counsel had further contended that admittedly the plaintiff has not purchased the share of the said Shanmugaiah.

26.The learned counsel appearing for the respondents had contended that the plaintiff has categorically admitted in his deposition that the before purchasing, he has not verified the parent document or made enquiry from the other share holders. Hence, the plaintiff cannot be considered to be a bonafide purchaser. That apart, the plaintiff has not filed any parent



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document which would trace the title of the vendor of the plaintiff. The learned Senior Counsel has elaborately relied upon the deposition of PW1 to contend that the plaintiff has never verified about the title of the property and he has relied upon his agent and without verifying the fact that it is owned by other persons, the plaintiff has chosen to purchase it from a few co-sharers.

27.The learned Senior Counsel had further contended that the plaintiff has not verified the date of death or legal heirship certificate of the deceased person or the revenue records to find out who are entitled to a share in the suit schedule properties. The plaintiff in his deposition has not disputed the 1/4th share of the said Shanmugaiah. Only that 1/4th share, the defendants have got the release deed under Exhibit B15.

28.When the plaintiff and the defendants have purchased it from the co-owner and there is no proof of partition among the co-owner, the plaintiff would only be entitled to file a suit for partition. The plaintiff having purchased an undivided share from some of the co-owners, would not be



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entitled to seek a relief of declaration of title and recovery of possession from the other co-owners.

29.The learned Senior Counsel further relied upon the deposition of one Shanmugaiah who was examined as DW3. As per the said deposition of the Shanmugaiah, the suit properties originally belonged his grant father Perumal Thever. After his death, it is devolved upon his four sons namely Shanmugaiah Thever, Subbaiah Thevar, Velu Thevar and Ramaiah Thevar. The said Shanmugaiah Thevar had three sons namely Subramaniya Thevar, Thangavel and Periasamy and four daughters Mookammal, Seeniyammal, Vallithai and Backiathai. Hence, the said Shanmugaiah Thevar had died leaving behind him, seven legal heirs. He had further deposed that himself, his sisters and legal heirs of Subbaiah Thevar and Velu Thevar have jointly sold the property in favour of the second defendant on 07.11.2016 under Exhibit B15. Relying upon the said deposition, the learned Senior Counsel contended that the property being an ancestral property, the plaintiff has not purchased it from other co-sharers. Hence, he is not entitled to a decree for declaration of title.



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30.The learned Senior Counsel had further contended that the entire burden is upon the plaintiff in view of the Section 101 of Indian Evidence Act, 1872. He had further contended that the plaintiff has to get a decree only based upon his pleadings and evidence on the strength of his pleading and evidence and he cannot succeed by picking up holes in the case of the defendants. He had further contended that the trial Court without assigning any proper reasons has erroneously decreed the suit. On the other hand, the First Appellate Court after total analysis of the title of the plaintiff and the defendants had proceeded to dismiss the suit. Hence, he prayed for dismissal of the second appeal.

Discussion:

31.I have considered the submissions made on either side and perused the records placed before me.

32.The plaintiff had filed a suit for declaration of title, recovery of possession and other consequential reliefs. The plaintiff has relied upon Exhibits A1 to A5 sale deeds, Exhibit A6 encumbrance certificate, Exhibit A13 Patta issued in his favour and Exhibit A15 passport to contend that he



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was not in India while the disputed documents were said to have been executed by him.

(A).Identity of the Plaintiff

33.The defendants in their written statement have taken a plea that the plaintiff Ittop T.Maliyakal is said to have his address in Cochin, Kerala. However, a perusal of Exhibits A1 to A5 indicate that the property was purchased by one Ittop T.Maliyakal having his residence at Tiruchur, Kerala. Therefore, the defendants have pleaded that from the person whose name appears in Exhibits A1 to A5, defendants 3 and 4 have got power deeds under Exhibits B2 and B11. Based upon Exhibits B2 and B11 power deeds, the sale deed under Exhibits B3 and B12 have been executed by the said power agent.

34.From the above said pleadings, it is clear that the defendants are also tracing their title only from Exhibits A1 to A5. The only contention of the defendants is that the owner under Exhibits A1 to A5 is a person residing at Tiruchur, Kerala, but the plaintiff is a person residing at Cochin, Kerala. The defendants have further contended that relying upon the



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similarity in the name of the defendants's vendor, the plaintiff has filed the present suit.

35.Though the identity of the plaintiff was disputed in the written statement, no attempt was made on the side of the defendants to let in evidence to establish that the plaintiff is different from the purchaser under Exhibits A1 to A5. Since no issues were framed before the trial Court with regard to the said dispute, there are no finding in the trial Court on the said issue.

36.A perusal of the grounds of first appeal clearly discloses that the defendants have not raised any such ground before the First Appellate Court. In fact, the grounds of first appeal clearly reveals that the defendants have only contended that the plaintiff is also one of the co-owners and hence, he is not entitled to a decree for declaration of title. Even before this Court, no submissions were made on the side of the respondents questioning the identity of the plaintiff. The written submissions filed on the side of the respondents also does not question the identity of the plaintiff. Hence, this Court can safely arrive at a conclusion that the plaintiff is the purchaser under Exhibits A1 to A5.



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(B).Plaintiff's Title:

37.The First Appellate Court has proceeded to dismiss the suit mainly on the ground that the plaintiff has not proved that he has purchased the property from all the co-owners. No genealogy was placed on the side of the defendants to contend and prove that the plaintiff has not purchased it from the other co-owners. That apart, the defendants claiming title under Exhibit A1 to A5 cannot turn around and contend that the plaintiff's title is defective and he has not purchased it from other co-owners. The present title dispute is between the plaintiff and the defendants 1 and 2. The Court has to consider only the comparative merit of the title between the plaintiff and the defendants 1 and 2. The defendants having relied upon the title deeds of the plaintiff are estopped from contending that the plaintiff does not have absolute title to the suit schedule property. Neither Exhibit B3 nor Exhibit B12 standing in the name of the second defendant or Exhibit A9 sale deed standing in the name of the first defendant discloses that they have purchased an undivided share. The above referred sale deeds namely Exhibits B3, B12 and A9 recite that the absolute properties are being sold and not undivided properties. If really the plaintiff has purchased only from



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some of the co-owners, that will be reflected in the document of the defendants also. That not being the case, it is only a futile attempt on the part of the defendants to contend that the plaintiff does not have absolute title. In case, if other alleged co-owners raise a dispute, it is for the plaintiff to face such a situation. In their written statement, the defendants have not specifically pleaded who are having shares in the suit schedule properties. The defendants must trace the title to a third party other than a plaintiff. A mere suggestion that there may be a third party with a better title will not be enough to non suit the plaintiff. When the defendants have not established better title and contend that apart from the plaintiff there are others who are title over the property, it is for the other co-sharers to question the title of the plaintiff. It is not open to the defendants who have entered into the possession on the basis of Exhibits A1 to A5 sale deeds to question the title of the plaintiff or his vendor.

37(A).The First Appellate Court has proceeded to hold that item Nos. 1 and 2 are Anadhinam properties based upon the remarks column in Exhibit X2 'A' register. In fact, there is no pleading from either side that it is



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an Anadhinam property. The plaintiff has been granted patta under Exhibit A13 which is also reflected in Exhibit X3. In fact, Exhibit X5 indicates that the sixth item stands in the name of the plaintiff. Exhibit X4 refers to the name of the plaintiff along with 8 other persons. This joint Patta for suit item No.5 will not affect the present case of the plaintiff, for the reason that the suit item No.5 have not been dealt with either under Exhibit B2 or Exhibit B11 power deed or under Exhibit B3 or Exhibit B12 sale deeds in favour of the second defendant. Hence, none of the third party document marked through DW3 could be put against the case of the plaintiff.

38.As against the defendants, the plaintiff has got a better title and the First Appellate Court had miserably erred in holding that the plaintiff has not established his title over the suit schedule properties.

(C). Validity of Power Deeds:

39.The plaintiff is said to have executed Exhibit B2 power deed on 19.07.2005 in favour of the third defendant with regard to Item No.6 of the suit schedule properties. The plaintiff is also said to have executed another power deed under Exhibit B11 on 22.08.2007 in favour of the fourth defendant with regard to Item Nos.1 to 4 of the suit schedule property. The



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plaintiff has specifically contended that he was abroad during that period and hence, these documents have been forged in his name. The defendants have not disputed the said fact that the plaintiff was abroad during the relevant period. The said fact has not been specifically denied in the written statement. On the other hand, the defendants have tried to circumvent the issue by contending that the plaintiff is not the purchaser under Exhibits A1 to A5, but another person with the same name residing in a different place is the purchaser under Exhibits A1 to A5. The defendants have not taken forward the issue of identity of the plaintiff to the level of trial and have not raised it as one of the grounds of appeal in the first appeal and not raised the same in the second appeal. We can safely conclude that the plaintiff was abroad during the relevant point of time when Exhibits B2 to B11 were said to have been executed by the plaintiff. That apart, the plaintiff had produced Exhibit B15 passport to prove that he was abroad during the relevant point of time. Hence, it is clear that Exhibits B2 and B11 power deeds said to have been executed by the plaintiff in favour of the defendants 3 and 4 respectively are forged documents.



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(D).Validity of defendants' Sale Deeds

40.Exhibit B3 is the sale deed said to have been executed by the power agent in favour of the second defendant with regard to the 6th item of the property. Exhibit B12 is the sale deed said to have been executed by another power agent in favour of the second defendant with regard to the items 1 to 4. Since Exhibits B3 and B12 sale deeds are based upon forged power deeds, these two sale deeds will not confer any title upon the second defendant. The second defendant has chosen to execute Exhibit A9 sale deed in favour of the first defendant with regard to a portion of third item of the suit schedule property. Hence, the first defendant will also not have title over the property said to have been purchased by him under Exhibit A9. Thus, Exhibits B2, B11, B3, B12 and A9 are not valid in the eye of law.

(E).Validity of Exhibits B13 and B15:

41.The second defendant is said to have obtained a release deed from other co-owner of the property with regard to item nos. 1 to 3 under Exhibit B13 on 22.02.2008. However, there is no such pleading either in the written statement or in the additional written statement with regard to Exhibit B13. Similarly, the defendants are said to have obtained a release deed from other



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co-owners under Exhibit B15 on 07.11.2016 while the suit was pending.

Though the pleadings relating to the said document were attempted to be inserted by way of second additional written statement, the said application in I.A.No.528 of 2017 was dismissed. If really the second defendant has purchased the property under Exhibits B3 and B12, there is no necessity for him to get a release deed under Exhibit B13. The pleading relating to the ancestral nature of the property and the names of the co-owners are as vague as it could be in the written statement. Hence, Exhibit B13 cannot be relied upon.

42.The defendants have also filed Exhibit B14 Patta and Exhibit B15 release deed dated 07.11.2016. The release deed has been obtained pending suit. The release deed under Exhibit B15 relates only to the property already covered in the suit schedule property. The defendants have chosen to obtain release deed from some of the alleged co-owners only to create an impression that the suit schedule properties are not the absolute properties of the plaintiff, but a joint family properties belonging to several other persons. Hence, Exhibit B15 is clearly as lis pendens document. That apart, there is no pleading either in the original written statement or in the first



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additional written statement with regard to Exhibit B15. The second additional written statement which was attempted to be filed incorporating the pleading for Exhibit B15 was rejected by the trial Court and confirmed by the High Court.

(F).Admission of Title

43.Paragraph No.4 in the additional written statement filed by the defendants is very crucial. The said paragraph is extracted as follows:

“4.It is further submitted that the defendants 1 and 2 are advised that they can avail the benefits of the judgment of our Madras High Court reported in AIR 1977 Madras at Page 342 which followed the judgment of our Apex Court reported in AIR 1965 Supreme Court at Page 1812. In the said judgment, it is reported that when a trespasser is allowed to do a construction during the acquiescence of the owner then the real owner would be entitled only to a compensation and the trespasser cannot be evicted. Here in the present case the defendants 1 and 2 even according to the plaintiff are bonafide purchasers who have been cheated by the defendants 3 and 4 and purchased the property without verifying the real personality. Hence, the defendants are ready and willing to pay the value of the property fixed by this Honourable Court as per the guidelines of the Government to the plaintiff in the light of the decision reported in AIR 1977 Madras



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Page 342.”

44.A perusal of the above said paragraph in the additional written statement will clearly disclose that the defendants have taken a defence that they are bonafide purchasers who have been cheated by their power agents namely defendants 3 and 4. The defendants have also agreed that they are ready and willing to pay the value of the properties fixed by the Court as per the guidelines of the Government to the plaintiff. This pleading on the side of the defendants 1 and 2 is clearly an admission of the title of the plaintiff to the suit schedule property.

45.The First Appellate Court has relied upon the evidence of DW2 who has narrated the genealogy and the nature of the property to arrive at a conclusion that the plaintiff has purchased only from some of the co-owners. In fact, the said DW2 is one of the vendors under Exhibit B15 for which there is no pleadings in the written statement. No such genealogy has been pleaded either in the written statement or in the additional written statement for which the evidence was let in through DW2. Hence, the First Appellate Court was not right in relying upon DW2 to arrive at a conclusion



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that the plaintiff has purchased the suit property only from some of the co-owners. The defendants after admitting the title of the plaintiff, relying upon Exhibits A1 to A5, have purchased the said properties through two power deeds. Thereafter, the defendants cannot turn around and contend that the plaintiff does not have any absolute title to the suit schedule property. In fact that the defendants are estopped from questioning the title of the plaintiff. The conduct of the defendants by relying upon Exhibits A1 to A5 and the pleadings in Paragraph No.4 of the additional written statement that they are ready and willing to pay guideline value for purchasing the property will clearly indicate that the defendants themselves have clearly admitted the title of the plaintiff.

46. The First Appellate Court without considering the pleadings and the admission of the defendants has erroneously non-suited the plaintiff based on documents and the deposition for which there were no pleadings on the side of the defendants.



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47. In view of the above said discussion, all the substantial questions of law are answered in favour of the appellant. The judgment and decree of the First Appellate Court is set aside. The judgment and decree of the trial Court is restored. The second appeal is allowed. No costs.

01.08.2022

Index : Yes / No

Internet : Yes / No

msa

To

1.The Principal Subordinate Judge
Tenkasi

2.The Principal District Munsif
Tenkasi

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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01.08.2022