



S.A.No.299 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 299 of 2017

Kuppusamy

...Appellant

Vs.

1.Srinivasa Pillai (Died)

2.Elumalai

3.Kodhandapani Pillai

4.Rani

5.Jayakumar

6.Murugan

7.Kanniga

8.Suganya

( R4 to R8 are brought on record as LR's  
of deceased R1 vide order dated 01.12.2023  
made in CMP.Nos.369, 374, 375/2023 in  
S.A.No.299/2017)

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal Sub-ordinate Judge, Tindivanam in A.S.No.42 of 2014 dated 21.03.2016 confirming the judgment and decree of the Additional District Munsif Court, Tindivanam in O.S.No.166 of 2010 dated 17.07.2014.

For Appellant

: Mr.M.V.Seshachari



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For Respondent 1 : Died  
For respondents 2 to 8 : Mr.S.William.

### **JUDGEMENT**

The unsuccessful defendant in the suit is the appellant. The respondents herein filed a suit for declaration of title and injunction in respect of 16 cents of land in Suit Survey No.108/9 in Ezhay village, Tindivanam Taluk. The suit was partly decreed by the Trial Court granting declaration and injunction as prayed for in respect of 12 ¼ cents. Aggrieved by the same, the appellant/defendant preferred an appeal and the same was also dismissed. Hence, he is before this Court by way of second appeal.

2. According to the respondent/plaintiff, the suit property originally belonged to Manickam Pillai and Krishna Pillai, sons of Semmaneri Pillai. They executed the settlement deed dated 21.08.1962 settling the suit property in favour of respondents' father Kanni Pillai. Thus, from the date of settlement Kanni Pillai had been in possession and enjoyment of the suit property and he died intestate. After his death, the respondents have been in possession and enjoyment of the suit property. The appellant without having any manner of right attempted to interfere with the possession of the respondents and hence, the respondents were constrained to file a suit for declaration of title and injunction



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in respect of 16 cents in suit survey number.

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3. The appellant/defendant filed a written statement denying the right of the respondents over 16 cents of land in suit survey number based on the settlement deed. It was the specific case of the appellant that in the suit survey number, only 10 cents of land were available as per the revenue documents and the settlors of respondents' father without any right settled a larger extent of 16 cents and hence, the respondents could not claim right over more than 10 cents in the suit survey number. It was also claimed by the appellant that the new survey number relevant to the Old Survey No.108/9 is New Survey No.6/11 with an extent of 4 ares equivalent to 10 cents.

4. Before the Trial Court, an Advocate Commissioner was appointed to measure the suit property with the help of Surveyor. He measured the property with the help of Surveyor and filed his report and plan along with measurement and plan submitted by the Surveyor. The report and plan submitted by the Advocate Commissioner were marked as Ex.C1 and Ex.C2. On behalf of the respondents, the 3<sup>rd</sup> respondent was examined as P.W.1 and one independent witness was examined as P.W.2. Three documents were marked on behalf of the respondents as Ex.A1 to Ex.A3. The appellant was examined as D.W.1 and four



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documents were marked as Ex.B1 to Ex.B4 on behalf of the appellant.

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5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that as per the Surveyor's report, 12 ¼ cents of land available in the suit survey number and therefore, the respondents were entitled to declaration and injunction only in respect of 12 ¼ cents. Aggrieved by the said judgment and decree, the appellant preferred an appeal in A.S.No.42 of 2014 on the file of the learned Principal Sub-Judge, Tindivanam. The First Appellate Court also confirmed the findings of the Trial Court. Aggrieved by the same, the appellant is before this Court.

6. This Court at the time of admission formulated the following substantial questions of law vide order dated 25.04.2017 and the same reads as follows:-

*“(i) Is it law judgment and Decree of Lower Courts passed relying on Ex.C1 and Ex.C2-report of learned Advocate Commissioner to arrive at the finding that the respondents/plaintiffs are in possession of 12 ½ cents of suit property is against settled proposition of law that the report of Advocate Commissioner cannot be used as a piece of evidence to prove possession and therefore liable*



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*to be set aside? ?;*

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*(ii) Whether the Lower Courts are entitled to pass a decree and judgment of declaration of title in favour of the respondents/plaintiffs relying on the Ex.A3-secondary evidence of settlement deed- in the absence of any explanation for non-production of primary evidence/original deed ?”*

7. The learned counsel for the appellant submitted that as per the revenue records produced by the appellant, the suit survey number namely Old Survey No.108/9 equivalent to New Survey No.6/11 has got only 10 cents and therefore, the Courts below ought not to have granted a decree in favour of respondents in respect of 12 ¼ cents. The learned counsel further submitted that Advocate Commissioner's report cannot be used as a piece of evidence to prove possession and therefore, the judgment and decree passed by the Courts below are liable to be set aside. The learned counsel further submitted that the respondents failed to prove the original settlement deed executed in favour of their father and they filed only the certified copy of the settlement deed. It is the submission of the learned counsel that in the absence of reason for the failure to produce the original document, the respondents should not have been allowed to lead secondary evidence.



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8. A perusal of the pleadings of the parties would suggest that respondents/plaintiffs are claiming right over 16 cents in Old Survey No.108/9. The settlement deed marked as Ex.A3 is in favour of their father. The revenue documents for said survey number is also stands in the name of respondents. However, the appellant claimed that as per the revenue documents the extent of land available in the suit survey number is only 10 cents and hence the respondents were not entitled to claim a larger extent. As per the respondents title document, Ex.A3, their father was given 16 cents under settlement deed. However, as per the A-Register marked as Ex.B2, the suit survey number has only 10 cents. The Trial Court appointed an Advocate Commissioner to measure the suit property with the help of a qualified Surveyor. He measured the suit property and filed a report along with the measurement and plan submitted by Surveyor.

9. A perusal of the Advocate Commissioner's report and plan would suggest the suit survey number was measured with reference to the revenue documents and it was confirmed that the total extent of land available in suit survey number is 12  $\frac{1}{4}$  cents. It is not the case of the appellant that they have got any right in New Survey No.6/11. As per their pleading, the new survey number for the respondents' property is 6/11 and the new survey number for the



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appellant's property is 6/8. When appellant has not claimed any right in New Survey No.6/11 is relevant to Old Survey No.108/9, the respondents are entitled to extent of land available on ground in the new survey number. When Surveyor who measured the property with reference to the revenue documents found that the total extent of land available in New Survey No.6/11 belonged to respondents is 12 ¼ cents. The Courts below are justified in granting a declaration in favour of respondents. It is not in dispute that New Survey No.6/11 relevant to Old Survey No.108/9 is registered in the name of respondents' father Kanni Pillai in Ex.B2, A-Register filed by the appellant. In these circumstances, based on the revenue documents and the report of the Advocate Commissioner and Surveyor, both the Courts below rightly came to the conclusion that respondents proved their title as well as possession over the 12 ¼ cents in suit survey number. The said conclusion is not purely based on any finding by Advocate Commissioner with regard to the possession. The findings were arrived at by the Courts below based on the entry in revenue records read with measurement made by the Surveyor based on revenue records. In these circumstances, the 1<sup>st</sup> substantial question of law is answered against the appellant and in favour of respondents.

10. The respondents are claiming right over the settlement deed executed



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in favour of their father Kanni Pillai under Ex.A3. The said document is an old document of the year 1962. When certified copy of the settlement deed was marked by the respondents through P.W.1, no objection was made by the appellant with regard to the proof of the same through secondary evidence. When respondents marked certified copy of the registered document, the appellant failed to raise any objection with regard to the marking of the same. In these circumstances, the appellant is not entitled to raise any objection in the second appeal stage that the respondents ought not to have been allowed to mark certified copy without explaining reasons for their failure to produce original. Had the objection been raised at the time of marking, the respondents would have had an opportunity to explain reasons for non-production of original. Further, the entry of respondent's father's name in revenue record, A-Register, supplement the settlement deed in favour of respondent's father. In these circumstances, I do not find any reason to disagree with concurrent findings of Courts below that respondents entitled to decree as prayed of in respect of 12 ¼ cents. Accordingly, the 2<sup>nd</sup> substantial question of law is answered against the appellant and in favour of respondents.

11. In view of the answers to the substantial questions of law formulated at the time of admission, the second appeal stands dismissed.



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a) by affirming the judgment and decree passed in A.S.No.42 of 2014 dated 21.03.2016 on the file of learned Principal Sub-ordinate Judge, Tindivanam confirming the judgment and decree passed in O.S.No.166 of 2010 dated 17.07.2014 on the file of learned Additional District Munsif Court, Tindivanam.

b)In the above facts and circumstances of the case, there will be no order as to costs.

**21.12.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation Case : Yes/No  
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**S.SOUNTHAR, J.**  
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To

- 1.The learned Principal Sub-ordinate Judge, Tindivanam
- 2.The learned Additional District Munsif Court, Tindivanam.



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