



S.A.No.2091 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.06.2023

Delivered on : 12.06.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

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- 1.Sebastian (died)
- 2.Kasbar (died)
- 3.Royappan (died)
- 4.S.Jebamalai Sundaram (died)
- 5.S.Vennis Selvam

(Appellants 4 and 5 are brought on records as LR's of the deceased 1st appellant vide order dated 19.07.2010 made in M.P.Nos.1 to 3 of 2010)

- 6.Mangalarosan
- 7.Suyam Prakasam
- 8.Suvakkin Faranandhu
- 9.Gnan Sowandri
- 10.Glamens Mary
- 11.Arul Raj
- 12.Amalorpavam
- 13.Mary Elizabeth

(Appellants 6 to 13 are brought on records as LR's of the deceased 2nd appellant vide order dated 06/07/2020 made in C.M.P.Nos.12141 & 12142/2019)

- 14.Arulvalan
- 15.Arulviyani

(Appellants 15 and 16 are brought on records as LR's of the deceased 4th appellant vide order dated 16/09/2021 made in C.M.P.Nos.2434, 2436 & 2438 of 2021)



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16.Jacquelin

(16th appellant is brought on records as LR of the deceased 3rd appellant vide order dated 30/01/2023 made in C.M.P.Nos.972 and 974 of 2023)

... Appellants/Appellants/Defendants

-VS-

Y.Yesudasan (died)

2.Gana Sangirtham

3.Jabamalairaj

4.John Britto

5.Bastin Saxan

(Respondents 2 to 5 are brought on records as LRs of the deceased sole respondent vide order dated 30/01/2008 made in C.M.P.No.7810 of 2002)

... Respondents/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 29.07.1999 made in A.S.No.42 of 1998 on the file of the Additional District and Sessions Judge-cum-Chief Judicial Magistrate Court, Ramanathapuram, confirming the Judgment and decree dated 12.02.1998 made in O.S.No. 222 of 1992 on the file of the Additional District Munsif Court, Ramanathapuram.

For Appellants

... Mr.S.Srinivasa Ragavan for
Mr.M.Jerin Mathew

For Respondents

... Mr.A.Arumugam for
M/s Ajmal Associates



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JUDGMENT

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The defendants are the appellants. The deceased respondent, as the plaintiff, filed the suit in O.S.No.222 of 1992 before the Additional District Munsif, Ramanathapuram, against the appellants for declaration and permanent injunction and alternative relief of recovery of possession. The said suit was decreed by the trial Court. Challenging the said Judgment and Decree passed by the trial Court, the appellants/defendants filed the appeal before the Principal District Judge, Ramanathapuram in A.S.No.42 of 1998 and the same was made over to the Additional District and Sessions Judge-cum-Chief Judicial Magistrate Court, Ramanathapuram, for disposal. The Additional District Judge, after hearing the appeal, dismissed the same and confirmed the Judgment and Decree passed by the trial Court. Hence, challenging the said Judgment and Decree passed by the first appellate Court, the appellants/defendants have filed the present second appeal before this Court, raising the following substantial questions of law:

“1. Whether the Courts below are right in holding that the plaintiff has established the predecessor in title relating to the plaint schedule property merely because the plaint schedule property is shown as boundary in the title deeds of adjacent land owners without verifying the title deeds relating to the suit property?



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2. Whether the Courts below are right in holding that the plaintiff has established his title relating to the suit property merely on the basis of the admission of D.W.1 relating to Ex.A11 and A12 especially when the plaintiff did not have title to the suit property?

3. Whether the suit for declaration is maintainable especially even according to the admission of P.W.1 that his predecessor in title was in joint possession along with pangalis?

2. The case of the respondents, as per the plaint, is that the suit property originally belonged to one Mohammed Ibrahim Sahibu and patta was issued in his name. After his life time, the suit property was inherited by his legal heir Mohammed Aliyar and he sold the property under registered sale deed, dated 14.08.1936, to one Arulanantham. The said Arulanantham took the suit property and enjoyed the same by paying kist. The said Arulanantham sold the suit property under registered sale deed, dated 27.08.1944, to one Savarimuthu. The said Savarimuthu was enjoying the suit property by fencing the same. After death of the said Savarimuthu, his legal heirs sold the property to the deceased respondent/plaintiff under registered sale deed, dated 05.06.1989. The respondent/plaintiff putting a life fence and enjoyed the



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property with the tamarind trees. Under the sale deed dated 05.06.1989, the suit property covered under survey No.265/2. Since the adjacent properties were included in the said survey numbers and a joint patta No. 2612 has been issued, subsequently, the respondent/plaintiff obtained sub-division as S.No.265/2b. Challenging the same, the appellants/defendants filed appeal before the Revenue Divisional Officer and the Revenue Divisional Officer cancelled the individual patta and sub division. Hence, the respondent/plaintiff is in continuous joint patta. However, the respondent/plaintiff is having right and title over the suit property and his predecessors in title were also entitled to the suit property. Therefore, from the original owner to the respondent/plaintiff, they are continuously enjoying the property with title and also fenced the property and enjoyed the property as separate one. The appellants/defendants interfered with the respondent/plaintiff's possession, as if, they are having right and title over the suit property and the ancestors of Savarimuthu had no right and title over the suit property and Savarimuthu has no alienable interest. Therefore, the document inherited by the predecessors in title to the said Savarimuthu is not valid and the person, who has no right and title over the suit property, is alleged to have executed the sale deed, which would not bind the



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respondent. The appellants/defendants have removed the fencing put up

in the suit property and they tried to interfere with the suit property.

Hence, the deceased respondent/plaintiff filed the suit for declaration and permanent injunction and further, in case, they find that the defendants have already encroached the property, then prayed for the alternative relief of recovery of possession of the encroached portion.

3. The case of the appellants/defendants is that originally, the suit property never belonged to the Mohammed Ibrahim Sahibu. He has no right and title over the suit property. The patta issued in favour of the Mohammed Ibrahim Sahibu is only for enjoying the trees and not for the land. Since the land was not given, the extent of the land was not mentioned in the patta, which itself clearly shows that the said Mohammed Ibrahim Sahibu has no right and title over the suit property and he has never been in possession over the property as the owner of the land and he enjoyed the trees alone. The appellants/defendants denied the right and title over the property. The respondent/plaintiff is said to have purchased the property from one Savarimuthu. Savarimuthu is said to have purchased the property from one Arulanantham and since the said Arulanantham has no right and title over the suit property, he cannot



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convey the suit property to Savarimuthu. Therefore, claiming title from Savarimuthu is not valid. Savarimuthu's vendor has no right and title to convey the suit property to Savarimuthu. Therefore, the respondent/plaintiff cannot purchase the property from the legal heirs of the said Savarimuthu. The sale will not bind the appellants. The suit property with larger extent of 1 Acre 44 cents were covered under S.No. 265/2. The said 1 Acre 44 cents in S.No.265/2 originally belonged to ancestors of the defendants 2 and 3 and they put up a life fence. The respondent/plaintiff enjoyed the trees as usufructuary. The said Savarimuthu purchased a portion of the property from one of the ancestors of the defendants 2 and 3. Since the said Savarimuthu purchased 1/24th share from the legal heirs of the ancestors of the defendants 2 and 3, Savarimuthu's legal heirs only can sell the property of Savarimuthu, which was purchased from the ancestors of the defendants 2 and 3. Therefore, joint patta was issued and no separate patta was issued. Savarimuthu purchased only undivided share of 1/24th share from the ancestors of the defendants 2 and 3. The respondent/plaintiff tried to get a separate patta and obtain sub division and the same was done without giving any notice and enquiry. Hence, the appellants/defendants filed the revision petition before the Revenue



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Divisional Officer. After enquiry, the Revenue Divisional Officer cancelled the sub division and joint patta was restored. Therefore, the respondent/plaintiff has not proved his title and enjoyment. Hence, the suit is liable to be dismissed. At the best, the respondent/plaintiff can file a suit for partition to get their share and cannot file the suit for declaration and permanent injunction.

4. Based on the said pleadings, the trial Court had framed the following issues:

1. Whether the plaintiff is entitled to get a declaration and permanent injunction in respect of the suit property?

2. Whether the plaintiff is entitled to get alternative relief of recovery of possession?

3. To what other relief the plaintiff is entitled to?

5. In order to prove the case of the respective parties on their pleadings, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and the 16 documents were marked as Exs.A1 to A16. On the side of the defendants, two witnesses were examined as D.W.1



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and D.W.2 and 19 documents were marked as Exs.B1 to B19. After trial, the trial Court, considering the pleadings and oral and documentary evidence, had decreed the suit. Aggrieved by the Judgment and Decree, the defendants filed the appeal and the same was dismissed. Hence, the defendants have filed the present Second Appeal.

6(i). The learned counsel for the appellants/defendants would submit that the trial Court failed to consider the fact that as the plaintiff, he has not proved his case by producing cogent evidence and he has not proved that his predecessors in title have right and title over the property and they have got alienable interest and they conveyed the property as title holder. Even during the evidence, P.W.1 clearly admitted that Ex.A1 Samasthana patta was issued in favour of Mohammed Ibrahim Sahibu and even in the said patta, it has been stated that it was given only for enjoyment of the trees standing in the land in S.No.265/2 and not for the land. Even P.W.1 admitted that if the patta is given for the land, the extent of the land could be mentioned. In case, patta is given without mentioning the extent of the land, only trees alone have been mentioned in the patta. The patta is given only to enjoy the trees and not for the land. Therefore, Ex.A1 itself is very clear that it was given only for the



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trees standing in that land and not for the land. Hence, Mohammed

Ibrahim Sahibu had no right and interest over the suit property.

Therefore, the respondent/plaintiff has not proved that the said Mohammed Ibrahim Sahibu has right and title over the land mentioned in S.No.265/2, whereas, their legal heirs were said to have executed the sale deed Ex.A2. Since Mohammed Ibrahim Sahibu has no right and title, their legal heirs also have no right and title to execute any sale deed in respect of the land, in that way, Ex.A2 and Ex.A3 had not conveyed any title. Unfortunately, the trial Court failed to appreciate the evidence of P.W.1 and admission given by P.W.1 and Ex.A1 patta.

6(ii). The learned counsel for the appellants/defendants would further submit that the respondent/plaintiff has not proved the case that the suit property is the ancestral property of Mohammed Ibrahim Sahibu and after his life time, his legal heir derived title from the said Mohammed Ibrahim Sahibu and later, they sold the property to the predecessor in title to the respondent/plaintiff. When the respondent/plaintiff filed the suit for declaration tracing title from Mohammed Ibrahim Sahibu, it is for the respondent/plaintiff to prove the case that the said Mohammed Ibrahim Sahibu has got right and title over



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the suit property. After the life time of the said Mohammed Ibrahim Sahibu, his legal heir Mohammed Aliyar is entitled to the suit property and he sold the property under Ex.A2 to Arulanantham. Thereafter, the said Arulanantham sold the property to Savarimuthu and the respondent/plaintiff purchased the suit property from the legal heirs of the said Savarimuthu. There is no ancestral character in the Mohammedan Law. Therefore, when the respondent/plaintiff tracing the title from Mohammed Ibrahim Sahibu, there is no document filed to show that the suit property is the ancestral property of Mohammed Ibrahim Sahibu. The first document is Ex.A1 which is not a title deed, which is given only to enjoy the trees standing in the suit land, under patta No.415 and the patta is not a document of title. Even assuming that if it is the ancestral property, there may not be any title deed other than the patta. P.W.1 admitted that Ex.A1 patta was given only for the enjoyment of the trees and not the land. Therefore, the respondent/plaintiff has not proved that the suit property originally belonged to the ancestors of the Mohammed Ibrahim Sahibu. The trial Court unfortunately accepted Exs.A2 to A4 for tracing the title and also Exs.A8, A10, A11, A12, A13 and A14 that the four boundaries have been identified as the property of Savarimuthu. Hence, the trial Court



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granted decree. The trial Court failed to appreciate both the pleadings and oral and documentary evidence since the respondent/plaintiff has to prove his title. When he seeks relief of declaration and injunction, he has to prove his title and continuous possession till the date of filing of the suit for getting permanent injunction. The respondent/plaintiff himself was not sure about his exclusive possession of the suit property to the extent mentioned in the plaint. Hence, he sought for alternative relief of recovery of possession also.

6(iii). The learned counsel would further submit that the trial Court failed to consider the fact that the Revenue Divisional Officer cancelled the sub-division and separate patta and as on the date of filing of the suit, it was only the joint patta. Therefore, the respondent/plaintiff is not entitled to get the relief of injunction to the exclusive possession of the property. Hence, the appellants/defendants filed the appeal before the first appellate Court. The first appellate Court as the fact finding Court, instead of re-appreciating the evidence and giving independent finding simply endorsed the views of the finding of the trial Court. Therefore, the appellants/defendants were constrained to file the present Second Appeal.



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7(i). The learned counsel for the respondents would submit that the suit property is the ancestral property of one Mohammed Ibrahim Sahibu and patta was issued in the name of the said Mohammed Ibrahim Sahibu. After the death of the said Mohammed Ibrahim Sahibu, one of his sons, by name, Mohammed Marakkayar derived title over the suit property in his share and obtained patta and enjoyed the property. After the death of the said Mohammed Marakkayar, his legal heir divided the property and the suit property was allotted to Mohammed Aliyar. Thereafter, the said Mohammed Aliyar sold the suit property along with other properties to one Arulanantham under registered sale deed, dated 14.08.1936. Arulanantham had fenced the suit property with other properties and enjoyed the same and sold the property to one Savarimuthu under registered sale deed dated 27.08.1944. The said Savarimuthu planted tamarind trees in the suit property and enjoyed the same. After the life time of the said Savarimuthu, his legal heirs sold the suit property to the first respondent/plaintiff under registered sale deed dated 03.06.1989. The respondent/plaintiff also put up a life fence and enjoyed the property. The suit property and the adjacent properties were covered under S.No.265/2 and patta No.164. Subsequently, the survey



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No.265/2 was sub divided with reference to the suit property in S.No. 265/2b and the separate patta was given to the respondent/plaintiff in patta No.261/2. The appellants did not have any interest and right and title over the suit property.

7(ii). The learned counsel for the respondents would further submit that even the evidence of the appellants shows that they have admitted the boundaries of the suit properties and also in their documents, the name of the said Savarimuthu was mentioned, who is the predecessor of the vendor of the respondent/plaintiff. Therefore, once the appellants admitted that the boundaries and the predecessors of the appellants are having the property, they cannot deny the right and title either of the respondent/plaintiff or their predecessors in title in respect of the property. Therefore, the trial Court rightly appreciated the oral and documentary evidence, namely, original patta stood in the name of the Mohammed Ibrahim Sahibu (Ex.A1) and the sale deed of the respondent/plaintiff and also the predecessors in title (Exs.A2 to A4) and also the patta stood in the name of his predecessors. The predecessors have paid kist by enjoying the suit property. He would further submit that the respondents/plaintiffs were enjoying the property after getting the



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sub-division and obtaining separate patta. Subsequently, the Revenue

Divisional Officer cancelled the separate patta and sub division.

However, the respondent/plaintiff traced the title from the original owner Mohammed Ibrahim Sahibu. Further, the respondent/plaintiff's documents also proved that the boundaries and the predecessors in title of the respondent/plaintiff and they admitted the sale during examination. Therefore, the trial Court rightly appreciated the oral and documentary evidence produced by the respondent/plaintiff and rejected the oral and documentary evidences produced by the appellants/defendants and decreed the suit. The first appellate Court also, as the fact finding Court, rightly re-appreciated the evidence and gave independent finding that the respondent/plaintiff has title and right over the property and the respondent/plaintiff has also proved the case and hence, the Judgment and Decree passed by the trial Court was confirmed.

7(iii). The learned counsel for the respondents would further submit that the scope of the second appeal is very limited. The second appellate Court is restricted with Section 100 C.P.C. When the substantial questions of law involved in the second appeal, the second appellate Court can only take the appeal and decide the substantial



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questions of law alone. It cannot sit over the appellate Court. When the concurrent judgment held by both the fact finding Courts, in the second appeal, this Court cannot re-appreciate the facts and evidence, which was already done by both the Courts below. The grounds raised by the appellants and the submissions made by the learned counsel for the appellants are purely factual aspects and there is no substantial question of law involved in the second appeal. Hence, the learned counsel prays that the second appeal has to be dismissed, as there is no substantial question of law involved in this case.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available on records.

9. While admitting this second appeal, this Court, considering the facts and circumstances of the case, has formulated the following substantial questions of law:

“(1) Whether the Courts below are right in holding that the plaintiff has established the predecessor in title relating to the plaint schedule property merely because the plaint schedule property is shown as



boundary in the title deeds of adjacent land owners without verifying the title deeds relating to the suit property?

(2) Whether the suit for declaration is maintainable especially even according to the admission of P.W.1 that his predecessor in title was in joint possession along with pangalis?

10(i) Admittedly, the deceased respondent, as the plaintiff, filed the suit for declaration and permanent injunction with alternative relief of recovery of possession. The specific case of the respondent/plaintiff is that the suit property is the ancestral property of one Mohammed Ibrahim Sahibu. After the death of the said Mohammed Ibrahim Sahibu, his son Mohammed Sulthan Marakkayar inherited the property. During his life time, a Samasthana Patta was given to him. After the death of the said Mohammed Sulthan Marakkayar, his legal heirs divided the entire properties and the suit property with other properties was allotted to one of his legal heirs, namely, Mohideen Aliyar. The said Mohideen Aliyar executed the sale deed in favour of one Arulanantham under registered sale deed, dated 14.08.1936 and Arulanantham took the property and enjoyed the same. Thereafter, the said Arulanantham sold the property in



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the year of 1944 under the registered sale deed, dated 27.08.1944, to one Savarimuthu and Savarimuthu enjoyed the property with boundaries of life fence by planting tamarind trees. After the life time of the said Savarimuthu, the deceased respondent/plaintiff purchased the property from the legal heirs of the said Savarimuthu and thereafter, the deceased respondent/plaintiff is enjoying the property.

10(ii) The specific case of the appellants/defendants is that it is not the ancestral property of Mohammed Ibrahim Sahibu and his legal heir Mohideen Aliyar has no right and title over the property to sell the same and therefore, his successor Arulanantham has no right and title. In that way, Savarimuthu has no right and title over the property. Therefore, the respondent/plaintiff's ancestors have no right and title over the suit property. However, the said Savarimuthu purchased a portion of the property from one of the legal heirs of the ancestors of the appellants 2 and 3/defendants 2 and 3. Since the said Savarimuthu purchased undivided property of 1/24th share from the legal heirs of the ancestors of the appellants 2 and 3/defendants 2 and 3, a joint patta was given and the name of the all the relatives and the name of the said Savarimuthu were mentioned in the joint patta. The said patta number is 164. S.No.265/2 is



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covered the larger extent of 1 acre 48 cents. Either the respondent/plaintiff or his predecessors in title do not have any right and title over the exclusive specific extent of the suit property.

10(iii) Though the scope of the second appeal is limited, this Court has to interfere with only when the substantial question of law is involved. This Court, while admitting the second appeal, considering the entire materials and grounds of appeal, has formulated the substantial questions of law as mentioned above.

Question No.1:

11(i) As far as the first substantial question of law is concerned, as already stated, the deceased respondent/plaintiff is claiming title from one Mohammed Ibrahim Sahibu, for which, he has produced Ex.A1 Samasthana Patta. A perusal of the said Ex.A1 would show that it is the Samasthana Patta in Patta No.415 in S.No.265/2 filed for Fasali 1347. When the respondent/plaintiff has specifically stated that the suit property with larger extent is the ancestral property of Mohammed Ibrahim Sahibu and the patta stands in the name of the Mohammed Sultan Marakkayar, even the respondent/plaintiff has not proved the



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relationship of Mohammed Ibrahim Sahibu and Mohammed Sultan Marakkayar. The patta stands in the name of Mohammed Sultan Marakkayar and not in the name of Mohammed Ibrahim Sahibu. When the respondent/plaintiff has stated that the suit property is the ancestral property of the said Mohammed Ibrahim Sahibu, he has not produced any document to show that the ancestor of the said Mohammed Ibrahim Sahibu was having the title over the suit property and after that, the said Mohammed Ibrahim Sahibu derived title from his ancestors. Even though the ancestral character is not applicable to the Mohammedan Law, however, no document has been produced to show either in the name of Mohammed Ibrahim Sahibu or his ancestors. Ex.A1 patta only stands in the name of the Mohammed Sultan Marakkayar. The respondent/plaintiff has stated that the said Mohammed Sultan Marakkayar is the son of Mohammed Ibrahim Sahibu. After the life time of Mohammed Sultan Marakkayar, the property mentioned in Patta No.415 was divided by the legal heirs of Mohammed Sultan Marakkayar. The suit property with the larger extent was inherited by Mohideen Aliyar, who was said to be the son of Mohammed Sultan Marakkayar. However, there is no oral and documentary evidence to prove that the legal heirs of the Mohammed Sultan Marakkayar divided the properties under partition and the suit



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properties came to Mohideen Aliyar and the respondent/plaintiff is tracing the title from Arulanantham. In fact, Mohideen Aliyar sold the property to Arulanantham under Ex.A2, dated 14.08.1936 and Arulanantham sold the property under Ex.A3 to Savarimuthu. Savarimuthu's legal heirs sold the property to the deceased respondent/plaintiff. Therefore, when the respondent/plaintiff has filed the suit for declaration and permanent injunction and has come with the specific case that the ancestral property of Mohammed Ibrahim Sahibu, first of all, the respondent/plaintiff has to prove that the suit property is the ancestral property of Mohammed Ibrahim Sahibu. However, there is no oral and documentary evidence to prove that the suit property is the ancestral property of the Mohammed Ibrahim Sahibu and only the respondent/plaintiff is tracing title from Ex.A1 - patta, which only stood in the name of the Mohammed Sultan Marakkayar. Even in that patta, no specific extent has been given. As pointed out by the learned counsel for the appellants/defendants, if the patta/document of title is issued, the said patta will indicate not only the survey number, but also the specific extent and boundaries. Except Ex.A1-patta, the respondent/plaintiff has not produced any other documents to show that the suit property was the ancestral property of Mohammed Ibrahim Sahibu.



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11(ii) Further, the respondent/plaintiff has not filed any document except Ex.A1-patta to show that the suit property was enjoyed by the legal heirs of the Mohammed Sultan Marakkayar and they divided all the properties mentioned in the said patta and there was a partition and in the partition, the suit property was allotted to the Mohideen Aliyar. Therefore, in the absence of the same, the respondent/plaintiff has not proved that the said Mohideen Aliyar has got the specific extent in the said properties and he enjoyed the property and sold the property to one Arulananthan under registered sale deed, dated 14.08.1936 (Ex.A2). The appellants/defendants have denied the title of Mohideen Aliyar and Mohideen Aliyar has no right and title to execute the sale deed in favour of Savarimuthu. Hence, the title has not been transferred to Arulanantham and therefore, the sale deed said to have executed in favour of Savarimuthu is also not valid and no separate patta was given either in the name of the Mohammed Aliyar or Arulanantham or Savarimuthu. No doubt, the appellants/defendants' document mentioned one of the boundaries that Savarimuthu is the owner of the property, which will not create any right and title either to Mohideen Aliyar or Arulanantham or Savarimuthu to the specific extent. Therefore, the



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respondent/plaintiff's predecessors-in-title was not proved. Therefore, the respondent/plaintiff is not entitled to the suit property as exclusive.

11(iii) Further, the appellants/defendants have stated that Savarimuthu purchased a portion of the property from the co-sharer and therefore, their names are mentioned in the boundaries. However, as the plaintiff, the respondent/plaintiff has to prove his case and he has to substantiate his pleadings by oral and documentary evidence.

11(iv) It is well settled proposition of law that the plaintiff has to prove his case on his own strength and he cannot take advantage of the weakness of the defendant. When the respondent/plaintiff has claimed specific extent for declaration and tracing the title from a specific person, it is for him to prove the case about the ancestral characters and the predecessors-in-title from the ancestors till the sale of the respondent/plaintiff. In this case, unfortunately, the respondent/plaintiff has not cogently proved the title from the ancestors till the respondent/plaintiff got the title from his sale deed under Ex.A4. Therefore, the respondent/plaintiff cannot take advantage of the weakness of the appellants/defendants. Because some of the documents



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of the appellants/defendants mentioned in the boundaries about some of the names of the predecessors of the respondent/plaintiff, he cannot take advantage of them claiming title on this score. Therefore, as already stated, as the plaintiff, he has to prove his case on his own strength and he cannot take advantage of the weakness of the defendants.

11(v) Further, even for the injunction, the respondent/plaintiff has to prove the continuous possession from the date of his ancestors-in-title till the date of filing the suit. The respondent/plaintiff himself has stated that prior to the filing of the suit, the appellants/defendants have removed the life fence and tried for encroachments. He was not sure about the enjoyment. Therefore, he sought for alternative relief of recovery of possession. Hence, the trial Court as well as the first appellate Court, have elaborately discussed and given findings. However, unfortunately, both the Courts below have failed to appreciate the evidence in right perspective.

11(vi) It is well settled proposition of law that the plaintiff has to prove his case on his own strength and he cannot take advantage of the weakness of the defendant. In this case, as already stated, the



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respondent/plaintiff has stated that it is ancestral property of the Mohammed Ibrahim Sahibu, however, he has not proved his case from his original ancestors/predecessor in interest without any breaking chain till his title deed.

11(vii) Further, it is seen that in the discussion, the first appellate Court and the trial Court relied upon the documents of the defendants and some of the documents mentioned about the boundaries of the title of the respondent/plaintiff, which shows only that the respondent/plaintiff has got some land adjacent to that land mentioned in those deeds, however, it cannot be taken for a title for specific boundaries and extent, which is mentioned in the plaint. Hence, it is for the respondent/plaintiff to prove his case from his own pleadings and documents.

11(viii) Even P.W.1 clearly admitted that Ex.A1 patta, was not given for the extent of the land and it is only given for the enjoyment of the trees. Therefore, Ex.A1 cannot be treated as a document of title for ancestral property of the Mohammed Ibrahim Sahibu. Therefore, the first substantial question of law is answered accordingly.



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Question No.2:

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12. Insofar as the second substantial question of law is concerned, as already discussed, the respondent/plaintiff has not proved his title on his own documents and evidence. Further, P.W.1 has also admitted that it was a joint patta for S.No.265/2 for larger extent and not only for the suit property. As on date, there is no separate patta and there is no sub division. Further, the respondent/plaintiff has mentioned in the plaint that the appellants/defendants have removed the fence. The respondent/plaintiff sought the relief of recovery of possession. But he has not proved the fact that on the date of filing the suit, he was in exclusive possession of the suit property and the appellants/defendants tried to interfere with the possession. Since it is a joint patta, survey number covered a larger extent and unless the respondent/plaintiff has proved the title for specific extent with specific four boundaries, he is not entitled to get decree for declaration as well as permanent injunction. Therefore, once it is covered under the joint patta and survey number, they can treat as co-owner or joint owner and they cannot get any injunction against the joint owner or co-owner for the specific property. Therefore, since the appellants/defendants have admitted some of the rights of the respondent/plaintiff in the suit property, the respondent/plaintiff has to



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work out his remedy in the manner known to law. Therefore, both the substantial questions of law are answered in favour of the appellants/defendants and against the respondent/plaintiff.

13. In the result, this Second Appeal is **allowed**. The Judgment and Decree dated 29.07.1999 made in A.S.No.42 of 1998 on the file of the Additional District and Sessions Judge-cum-Chief Judicial Magistrate Court, Ramanathapuram and the Judgment and decree dated 12.02.1998 made in O.S.No.222 of 1992 on the file of the Additional District Munsif Court, Ramanathapuram are set aside. No costs.

12.06.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

- 1.The Additional District and Sessions Judge
-cum-Chief Judicial Magistrate Court,
Ramanathapuram,
- 2.The Additional District Munsif,
Ramanathapuram.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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