IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.12.2023

PRONOUNCED ON: 27.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.88 and 89 of 2021
and C.M.P.Nos.1945 and 1947 of 2021

S.A.No.88 of 2021

1. K.Ramesh

K.Rajendran (since deceased)

2. R.Valarmathi
3. R.Mohana Suresh
4. R.Mohana Dilipan
5. R.Mohana Dilipan ...Appellants

-v-

1. K.Ramadass

V.Radhakrishnan (Deceased)

2. R.Suganthi,
3. V.Ananthi

4. A.Anu Rekha
5. P.Anitha ...Respondents

Prayer in S.A.No.88 of 2021: Second Appeal is filed under Section 100 of C.P.C against the reversing judgment and decree made in A.S.No.58 of 2016 dated 18.10.2019 on the file of the VI Additional City Civil Judge, Chennai which was in the nature of reversing the judgment and decree made in O.S.No.3413 of 1993 dated 11.12.2015 on the file of the III Assistant City Civil Judge, Chennai.

S.A.No.89 of 2021

1. K.Ramesh ...Appellant

-v-

V.Radhakrishnan (Deceased)
1. R.Suganthi,
2. V.Ananthi ...Respondents

Prayer in S.A.No.89 of 2021: Second Appeal is filed under Section 100 of C.P.C against the reversing judgment and decree made in A.S.No.184 of 2016 dated 18.10.2019 on the file of the VI Additional City Civil Judge, Chennai which was in the nature of reversing the judgment and decree made in O.S.No.5333 of 1993 dated 11.12.2015 on the file of the III Assistant City Civil Judge, Chennai.

For Appellants in both cases : Mr.Ravikumar Paul, Senior Counsel for Mr.K.Manikandan

For Respondents 1 to 5**(S.A.No.88/2021)** and For Respondents 1 and 2 **(S.A.No.89/2021)** : Mrs.Chitra Sampath, senior counsel for Mr.Venkataswamy Babu

COMMON JUDGEMENT

Since the parties to the proceedings and the subject matter are one and the same in both suits, a common judgment is being pronounced.

2. S.A.No.88 of 2021 is filed by the plaintiffs challenging the

judgment and decree in A.S.No.58 of 2016 in and by which the learned VI Additional City Civil Judge, Chennai has reversed the judgment and decree passed by the learned III Assistant Judge, City Civil Court, Chennai in O.S.No.3413 of 1993. The said suit has been filed for declaration and recovery of possession.

3. S.A.No.89 of 2021 is preferred by the defendant in O.S.No.5333 of 1993, who is the first plaintiff in O.S.No.3413 of 1993. In this appeal, the defendant seeks to challenge the judgment and decree in A.S.No.184 of 2016 on the file of the VI Additional Judge, City Civil Court, Chennai whereby the learned Judge has reversed the judgment and decree in O.S.No.5333 of 1993 by the III Assistant Judge, City Civil Court, Chennai. The suit was filed by defendants 2 to 4 in O.S.No.3413 of 1993 for a bare injunction.

4. Considering the fact that the pleading in both suits overlap, the facts which are narrated herein below is culled out from the suit

O.S.No.3413 of 1993 and the parties are referred to in the same ranking as in the said suit.

Facts of the Case:

5. The plaintiffs had filed the suit O.S.No.3413 of 1993 for the reliefs stated supra. It is the case of the plaintiff that they are the sons of K.Kannan and Jaya Ammal who had died in 1983 and 1974 respectively. It is their case that Jaya Ammal had purchased the suit property from Venkatasami Naidu and his son Loganathan under a registered Sale Deed dated 14.05.1969. Venkatsami Naidu had in turn purchased the property from one Naina Naidu under a registered Sale Deed dated 15.08.1938.

6. The plaintiffs would contend that after the death of their mother, Jaya Ammal, they had inherited the suit property. The property was a low-lying land and the plaintiffs had filled it up to

ground level by dumping rubbish and they had also fenced the said property. They had also applied for mutating the records in their name and the same was yet to be granted.

7. While so, the defendant (originally the suit was filed only against one Ramadass and subsequently the second defendant, V.Radhakrishnan was impleaded, who has also died pending the suit and the legal representatives were brought on record as defendants 3 to 6) had dumped the sand and rubbish and was attempting to forcibly take possession of the suit property.

8. The plaintiffs would contend that the defendants own the property adjacent to the suit property and they were attempting to merge both the lands and enjoy it as a single unit. The plaintiff would submit that they had lodged a police complaint, however, since the

defendants were influential persons, the police was not proceeding with the enquiry. Therefore, the plaintiff left with no other alternative has come forward with the suit in question.

Written statement of the defendants 3 and 4:

9. The defendants 3 and 4, who are the legal representatives of the deceased second respondent, had filed a written statement *inter-alia* contending that the suit was originally filed against the first defendant alone, and thereafter, the second defendant was impleaded as a party to the suit. Likewise, the suit was originally filed for the relief of bare injunction. After the second respondent (deceased) had filed a written statement wherein he had contended that the suit property belonged to him absolutely and that he was in possession of the same, the plaintiff had amended the suit as one for declaration and recovery of possession.

10. The defendants would submit that the second defendant had been impleaded on 31.07.1996 and the amendment was carried out only in August 2001 and in September 2001, the plaint was served on the second defendant who had filed his written statement on 06.12.2001. The defendants would submit that the plaintiffs have been in possession of the suit property and therefore, there is no question of the defendants interfering with their peaceful possession and enjoyment of the suit property. The defendants would contend that under a registered sale deed dated 02.08.1992, the second defendant purchased a house site measuring 4 ¼ cents in T.S.No.70/15, Old.S.Nos.197/1 and 197/2 and T.S.No.70 from one Murthy. The said Murthy had in turn purchased the property under a registered sale deed dated 19.12.1985 from one Ranganathan who had purchased the larger extent from K.Selvaraj and Krishnamurthy under a registered sale deed dated 29.09.1969. The second defendant had also got the revenue records

mutated in his name. The plaintiffs who claim title through the sale deed dated 14.05.1969 have not produced any document to prove their possession.

11. The first plaintiff in his written statement in the connected suit O.S.No.5333 of 1993 had traced the title to the suit property. It is his case that the property originally belonged to one Naina Naidu. The said Naina Naidu had sold the property to Munusamy Naidu and his son Venkatasamy Naidu under a sale deed dated 15.10.1938. The said Venkatasami Naidu had sold the property to Jayammal, the mother of the plaintiffs.

Issues:

12. The trial Court on considering the pleadings in both the suits had framed the following issues and additional issues separately for each suit:

1. *Whether the plaintiff is entitled for permanent injunction as prayed for?*
2. *To what relief the plaintiff is entitled to?*
3. *Whether the plaintiff is entitled for declaration relief as claimed?*
4. *Whether the plaintiff is entitled for delivery of vacant possession of the suit property?*

5. *Whether the relief of declaratory and delivery of possession claimed by the plaintiffs are barred by limitation?*
6. *To what other relief?*

In O.S.No.5333 of 1993, the following issues were raised:

1. *Whether the plaintiff is entitled for permanent injunction as prayed for in the suit?*

2. To what relief this plaintiff is entitled to?.

Trial Court:

13. The evidence was recorded in the suit O.S.No.3413 of 1993. The plaintiffs in O.S.No.3413 of 1993 had examined themselves as P.W1 and P.W2 respectively and marked Exs.A1 to A27. On the side of the defendants, the first defendant had examined himself as D.W1 and one Vasu, the husband of Anandhi, the fourth defendant had examined himself as D.W2 and Exs.B1 to B17 were marked on their side.

14. The learned III Assistant Judge, City Civil Court, Chennai on considering the evidence on record had proceeded to decree the suit O.S.No.3413 of 1993 and dismiss the suit O.S.No.5333 of 1993. The learned Judge had observed that the plaintiffs have traced their title to the suit property right from the year 1938. The defendants' vendor has

purchased the property under Ex.B1 six months after the plaintiffs' mother had purchased the property under Ex.A1. The learned Judge also observed that the property which was purchased by the plaintiffs' mother was situate on the northern side of S.No.197/1 measuring an extent of just 2 ½ cents. The total extent which was shown as existing in Survey No.197/1 was an extent of 5 cents. The defendants' vendor on the other hand have purchased 6 cents in Survey No.197/1 and 2 ½ cents in 197/2, totally 8 ½ cents. Out of this, the second defendant has purchased 4 ¼ cents. The learned Judge further held that FMB would show the total extent in S.No.197/1 as measuring an extent of 5 cents whereas the defendants' document would show that the total extent in S.No.197/1 is 6 cents. That apart, the boundaries in Ex.B7-sale deed under which the defendants' vendor had purchased property was different from Ex.A8=Ex.B1 under which the defendants' vendor has purchased the suit property. The learned Judge further observed that to the east of the property purchased by the plaintiffs, lands belonging to the Thiruvaduthurai Adheenam were situate. However though in Ex.B1 which is the Sale Deed under which the second defendant's predecessor-in-title had purchased the property, the Adheenam's land is shown as being situate on the south of the property but in Ex.B7, sale deed under which the defendant purchases the property the Adheenam's land is shown as the Eastern boundary. Therefore, the trial Court had held that the defendants had failed to establish their title to the suit property. The suit O.S.No.5333 of 1993 was dismissed. The suit O.S.No.3413 of 1993 filed by the plaintiffs was decreed. Challenging the said judgement and decree, the defendants had filed A.S.No.58 of 2016 and A.S.No.184 of 2016 respectively.

Lower Appellate Court:

15. The lower appellate Court had proceeded to reverse the judgment and decree of the trial Court. The learned Judge has

observed that Survey No.197/1 had not been sub divided and therefore, the description of the survey number in Ex.A1 as S.No.197/1A is without any basis. The learned Judge observed that the plaintiffs have not explained how and when Survey No.197/1 had been subdivided as S.No.197/1A and S.No.197/1B. The learned Judge observed that in Ex.A7-Sale deed executed in favour of Venkatasamy Naidu by Naina Naidu, the linear measurements of the property were not given and only the extent has been shown. However, under Ex.A1 when the property was sold to Jaya Ammal, the Survey number 197/1 has been subdivided as S.No.197/1A and the linear measurements were also given. The learned Judge further observed that boundaries in Ex.A7 (15.10.1938) and Ex.A1 (14.05.1969) are different and it is only the eastern boundaries was similar. The lower appellate Court further observed that the plaintiffs had fairly conceded that although their mother purchased the property in the year 1969, they have attempted to take possession of the property only in the year 1993. Further, the learned Judge went on to observe that the defendants have been dealing with the property from the year 1969 when their vendor had purchased the same. Therefore, the lower appellate Court had proceeded to allow the appeals. Challenging the judgment and decree, the appellants had filed the above second appeals.

Substantial questions of law:

16. The second appeal has been admitted on the following question of law:

> *(a) Whether the approach of the First Appellate Court in a Suit for declaration of title was rendered erroneous and suffered from an illegality in as mich as the said court failed to frame proper issues which arose for consideration in the Appeal and failed to deal with the same?*
>
> *(b)Whether the finding of the First Appellate Court,*

viz, that the Appellants herein did not file revenue records in support of their title deed, is sufficient to ignore the valid and subsisting registered Sale Deed in the name of the mother of the 1st Appellant?

(c)Whether the approach of the First Appellate Court in a Suit for declaration of title was rendered erroneous on account of its reliance upon revenue records put forth by the Respondents, instead of reliance upon subsisting and registered title deeds in the name of the mother of the Ist Appellant?

(d)Did not the First Appellate Court fall in error in not appreciating the settled position of law that no revenue records and/or subsequent documents can confer any title or extinguish/annul title conferred upon the existing owner. viz, the mother of the 1st Appellant, through valid and subsisting registered

Sale Deeds? .

17. Both the learned counsels have filed their written submissions and therefore, this Court is extracting from the written submissions made by them.

Submissions of the learned counsel for the appellants:

18. The learned counsel for the plaintiffs/appellants had presented his submissions against each of the substantial questions of law separately.

(i) As regards the question of law regarding the framing of issues, the appellants would submit that that the foremost anomaly/error in the judgment of the lower appellate Court is that the lower appellate Court has not deemed it fit to frame the points for consideration / determination and the lower appellate Court has not discussed the arguments on the basis of the points for consideration. They would also submit that the lower appellate Court, while reversing the judgment and decree of the trial Court, has not given proper reasons for the same. The requirement of framing points for determination is mandatory, as it can be inferred from these points for consideration that the learned Judge has applied his mind, perused the records and logically arrived at a conclusion. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2020) 4 SCC 313[Malluru Mallappa Vs Kuruvathappa]*** in support of this argument.

(ii)With reference to the second substantial question of law as to whether the lower appellant Court was correct in its finding that the non-filing of the revenue records by the appellants in support of their title deeds would be sufficient to ignore Ex.A1, the plaintiffs would contend that it is a settled proposition of law that the revenue records neither creates nor extinguishs title and they only serve the purpose of identifying the persons in possession of the property from whom the land revenue had to be collected. This is only one piece of evidence and not the primary evidence. The revenue records that have been placed by the defendants in support of their case, viz., Exs.B4, B8 and B12 pertain to the properties situate in Amaravathi Nagar which is immediately north of the suit property. The defendants have not pleaded that their property is situate in Amaravathi Nagar which is a deliberate suppression. The learned counsel for the plaintiffs would further submit that though they had applied for patta, the same was rejected on the ground that there was already a patta in the name of the second defendant in Survey No.197/1. The plaintiffs who had challenged the order before this Court were given liberty to approach the revenue authorities when the writ petition was disposed of. The patta produced on the side of the defendants namely Exs.B4, B8 and B12 refers to T.S.Nos.70/15 and 70/30 and is described as Plot No.48A situate in Amaravathi Nagar lay out. The above entries are also confirmed by the Advocate Commissioner's report as well as the

Surveyor's report. However, the documents produced by the plaintiffs would clearly show their possession of the property.

(iii) As regards the third and fourth substantial questions of law, namely, whether the lower appellate Court has erred in placing the reliance upon the revenue records without looking into the title deeds standing in the name of the plaintiffs' mother is correct and the lower appellate Court was in error in not appreciating the settled position of law that without any title, no revenue records or subsequent document can confer / extinguish / annul title conferred upon the existing owner, viz., the mother of the plaintiff. The learned counsel for the plaintiffs would submit that in both suits, the properties were not the same and the suit O.S.No.3413 of 1993 is in respect of 1200 sq.ft of land situate in S.No.197/1A purchased under Ex.A1 whereas the defendants' claim in O.S.No.5333 of 1993 is in respect of a larger extent of 4 ¼ cents in Survey Nos.197/1 and 197/2. The defendants' vendor traced title to this property on the basis of the earlier sale deed dated 29.09.1969 under which the Ranganathan had purchased an extent of 8 ½ cents and the same is shown as comprised in S.No.197/1 (6 cents) and 197/2 (2 ½ cents). It is stated that the property is the ancestral property of Selvaraji and Krishnamoorthy. The plaintiffs had produced the documents to prove their title from the year 1938. However, the defendants have not produced any document prior to the sale in favour of Ranganathan, i.e, prior to 29.09.1969. The learned counsel would try to distinguish the recitals in Ex.B1 where the property is described as ancestral by pointing out to this Court that the vendors belonged to different communities. Therefore, without any prior document of title and without establishing as to how it is the ancestral property of Selvaraj and Krishnamoorthy the lower appellate Court was in error in rendering a finding that the suit property belongs to the defendants. That apart, the counsel would draw the attention of the Court to the fact that Selvaraj belongs to Mudaliar community and Krishnmoorthy belongs to Naidu community. Therefore, by no stretch of imagination can the lands be termed as their ancestral property. The lower appellate Court has erred in brushing aside this argument by stating that just because they belonged to different communities, it cannot be said that the property could not have been owned by them. Therefore, the finding of the lower appellate Court is merely based on presumptions and not on concrete evidence. It is also noticed that Ranganathan had sold the property under two sale deeds both dated 19.12.1985 in favour of Manicka Mudaliar and his son Moorthy under Exs.B3 and B2 respectively and on the basis of these documents, Ranganathan had obtained patta by stating that the property had been purchased by him under Ex.B1. Therefore, the learned Judge held that the identity and location of the property as claimed by both parties are different. Even the measurements differ. A perusal of the boundaries given in Ex.A1 and in the Commissioner's report would tally since the property comprised in S.No.197/2 belonged to Janakiraman. This is corroborated in Ex.A23 Sale Deed dated 13.06.1985 in favour of Chellam. This is described as P.No.48A. The southern boundary is described as S.No.197/1B in Ex.A1 as well as the Commissioner's report. Likewise, the eastern boundaries is the same in Ex.A1 and Ex.A19, FMB sketch and Commissioner's report and plan. Further Ex.A19 would clearly show that S.No.197/1 measured 5 cents whereas the defendants' claim that lands in S.No.197/1 measures 6 cents.

(iv) He would argue that the trial Court has rightly considered the documents and decreed the suit filed by the plaintiffs and dismissed the suit filed by the defendants. The lower appellate Court has reversed the judgment only on the following basis:

(a) It is based of revenue records Ex.B4, B8 and B12.

(b) The sub division of S.No.197/1 as S.No.197/1A

and S.No.197/2B is not reflected in the revenue records.

Despite a cloud being cast on the title of the defendants, they have not chosen to seek the relief of declaration.

Submissions of the learned counsel for respondents:

19. (i) The learned counsel for the respondents at the outset would submit that the plaintiffs cannot rest their case on the weakness of the defense or the flaws in their evidence. He would submit that the plaintiffs have come forward with the specific case that they are the owners of the property comprised in S.No.197/1A measuring an extent of 1200 sq.ft. However, the plaintiffs have not been able to establish this survey number on site whereas the defendants had claimed a right to the property comprised in S.Nos.197/1 and 197/2 which corresponds to new Survey No.70/15. The defendants have been able to trace their title to one Krishnamoorthy and Selvaraj under sale deed dated

29.09.1969. The plaintiffs have not been able to establish the existence of the survey number or the exact survey number in which the lands are situate.

(ii) The learned counsel for the respondents would submit that since there was a difficulty in identifying the property of the parties, an Advocate Commissioner had been appointed by this Court who had taken the assistance of a Revenue Surveyor for inspecting the same. The Advocate Commissioner's report would show that the boundaries of the defendants' property correlate with the report of the revenue surveyor. However, the Advocate Commissioner has found that there were encroachments by the third parties in the properties of the defendants. That apart, the Surveyor has opined that there were no such subdivision as 197/1A in the revenue records and has also spoken about the correlation of the survey numbers of the defendants to the properties. The Revenue Surveyor had not been able to identify the suit property on the basis of the sale deed standing in the name of the plaintiffs. Objections have also been raised with respect to the report of the Advocate Commissioner. The defendants would submit that the Advocate Commissioner's report is contrary to the report given by the Revenue Surveyor. The Advocate Commissioner had contended that the suit properties could not be divided without drawing reference to the report of the Surveyor. Further, the learned counsel would submit that the Advocate Commissioner cannot file a report, which is contrary to the findings of the Revenue Surveyor.

(iii) The learned counsel for defendants would submit that the plaintiffs' contention is that the defendants' property was north of the Adheenam lands, but it is now shown as an eastern boundary. This contention stands vindicated by a perusal of Ex.B6, which is the sale deed dated 17.03.1987, in which the southern boundary was shown as a road which is formed from out of the Adheenam land. Therefore, the identity of the defendants' property stood proved. On the contrary, the plaintiffs have not been able to identify 1200 sq.ft purchased by their mother. It is also stated that survey numbers of the property had changed and the town survey numbers had come into existence as early as in 1985, which is evident from examining the Ex.B2 Sale deed. The defendants would submit that the land comprised in T.S.No.70/15 falls within the lay out known as Amaravathi Nagar and the property is plot No.48A and the plaintiffs have no claim to this property.

(iv) The learned counsel would rely on the following judgments:

(a) ***2019 (7) SCC 641[Gurnam Singh (dead) through Lrs Vs. Lehna Singh (Dead) through LRs.***

(b) The judgment of the Hon'ble Surpeme Court in ***Civil Appeal No.2176 of 2007 dated 09.04.2019 [Jagdish Prasad Patel (Dead) through Lrs Vs Shivnath and Others]***

The defendants would therefore pray for the dismissal of these second appeals.

Discussions:

20. The entire dispute revolves around the identity of the property. In order to appreciate the dispute properly, it would make useful reading to extract the schedule of the properties described in the sale deeds under which the plaintiffs and their predecessor-in-title as well as the defendants and their predecessor-in-title claim a right.

21. The plaintiffs trace their title to the property under two documents. Ex.A7 which is the document of the year 1938 i.e., 15.10.1938. Under this document, 5 cents comprised in S.No.197/1 has been sold by one Naina Naidu in favour of Thoonga Venkatasami Naidu. The boundaries that have been described in the sale deed are as

follows:

North by :Narasimma Maistry Land

South by : Thangavel Mudaliar Land

East by : Vel Mudaliar land

West by : Kannapa Mudaliar Land.

22. Thereafter, Venkatasamy Naidu had sold the property under Ex.A1 to Jaya Ammal, the mother of the plaintiffs herein. The sale deed would describe the property as abutting a pond (குட்டை), The sale deed would further state that the land is described as trough (பள்ளம்) and that they are selling the land only on account of its nature and the fact that it is of no use to them. The property is described in the vernacular as "(பள்ளமான மனை துண்டு)". Under this deed, an extent of 1200 sq.ft has been sold. Survey number has been described as S.No.197/1A. The properties have also been described with linear measurements and

the boundaries are as follows:

North by – Janakiraman Nadu's land

East by – Madathar's land meaning the property of the Thiruvaduthurai Adheenam Lands

South by – 197/1B

West by – Janakiraman Naidu's land.

From the description of the property in the schedule, it is clear that the property is at the northern end of Survey No.197/1 (Although sub divisions have been given, the property originally is comprised in S.No.197/1).

23. The defendants' trace their title to the property from Ex.A8=B1, which is a sale executed by K.Selvaraj, S/o. Kuppusamy Mudaliar and M.Krishnamoorthy, S/o.Munirathinam Naidu in favour of

Ranganathan, S/o. Munusamy Naciker. In the schedule to the sale deed, a post script has been added stating that the property does not have any access from the road and that it is situate 8 feet below the ground level and therefore, 8 ½ cents is sold at a lower price. This extent of 8 ½ cents is described as situate in S.No.197/1A, measuring 6 cents and 2 ½ cents in S.No.197/2, totalling measuring 8 ½ cents. The property is bounded on the

North – Razaksaibu land

West – Nainai Pillai land

East – Subbrayapillai land

South by – Thiruvaduthurai Adheenam Madathu's land

This 8 ½ cents of land was sold under two sale deeds by the said Ranganthan to Manicka Mudaliar and Murthy.

24. Under Ex.B2 dated 19.12.1985, Ranganathan sells half of the cents of 8 ½ cents, i.e., 4 ¼ cents to Moorthy. The boundaries are

described as follows:

North by : Razaksaibu land

South by : Thiruvaduthurai Adheenam land

East by : Subbrayapillai' land

West by : The properties sold by Ranganathan(vendor) to Manicka Mudaliar.

25. On the very same day, under Ex.B3, Ranganathan sells the western portion of 4 ¼ cents to Manicka Mudaliar. The boundaries are described as follows:

North by : Razaksaibu land

South by : Thiruvaduthurai Adheenam land

East by : Lands sold to Moothy

West by : lands belonging to Kamala Ammal.

It is seen that under this sale deed, the western boundary was shown as

Kamalammal whereas under Ex.B1, the sale deed in favour of Ranganathan, the western boundary was that of Naina Pillai.

26. Manickam Mudaliar in turn had sold 4 ¼ cents under two sale deeds dated 16.03.1987. Under Ex.B5, Manickam Mudaliar had sold 2 cents in favour of one Devendran. The property sold was the western portion of the land purchased by Mancika Mudaliar under Ex.B3. The properties described have been comprised in T.S.No.70 as per the records and T.S.No.70/15 as per the patta. The boundaries are as follows:

North by : Razaksaibu land

East by : Land belonging to Moorthy

West by : Land belonging to Kamalammal

South by : Remaining lands of Manicka Mudaliar.

27. The remaining extent of 2 ¼ cents which is in the southern

end was sold on the very next day under Ex.B6 to the same Devendran. The boundaries are described as follows:

North by – Devendran Land

East by – Moorthy land

South by – Road formed from out of Adheenam land

West by - Kamalammal land

28. The second defendant has purchased the property sold to Moorthy under Ex.B7 dated 21.09.1992 and under this sale deed, the property measuring 4 ¼ cents comprised in T.S.No.70/15 is described within the following boundaries:

North by – Uthamar's land

South by – Road

West by – Devendran's land

East by - Thiruvaduthurai Adheenam land under the lessee K.Vasu.

29. The eastern boundary, which under Ex.B2 was described as Subbrayapillai land, has all of a sudden been described as the property belonging to Thiruvaduthurai Adheenam land. It is seen that in all the earlier sale deeds Exs.B1, B2, B3, B5 and B6. Adheenam's land has been shown as the southern boundary. Thereafter, the second defendant has purchased the property sold to Devendran under Ex.B9-Sale Deed dated 30.01.1995 and the boundary is described as two items of property. The first item of property is described as comprised in S.No.70/15 and the second item is described as comprised in S.No.70/30. The first item measuring 1835 sq.ft is bounded on the

North by T.S.No.1

South by T.S.No.70/1

East by T.S.No.70/11

West by T.S.No.70/4.

The second item measures 0.01.69 ares and is bounded on the

North by T.S.No.1

South by T.S.No.70/1,

East by T.S.No.70/15

West by T.S.No.70/1.

30. It has to be noted that the property that has been conveyed under this Sale Deed is the property that had been purchased by Devendaran under Exs.B5 and B6, totally measuring 2 + 2 ¼ cents = 4 ¼ cents. The very description of the boundaries of the two items of properties in Ex.B9 does not tally with the description given in Exs.B5 and B6 and conveniently the names of the owners of the lands forming the four boundaries have been omitted to be mentioned in this document. Further, from the measurements given in Ex.B9, it is clear that under this deed, the vendor has conveyed more than what he had purchased under Exs.B5 and B6.

31. Having described the flow of title of he plaintiffs and the

defendants respectively, we have to now peruse the suit schedule in the two suits. In O.S.No.3413 of 1993, the property is described as comprised in S.No.197/1A measuring 1200 sq.ft bounded on the

North by : Janakiraman's land

South by : Lands in S.No.197/1B

East by : Thiruvaduthurai Adheenam land

West by : Land belonging to Janakiraman's land.

The property that is described in O.S.No.5333 of 1993 is an extent of 4 ¼ cents comprised in S.Nos.197/1 and 197/2, T.S.No.70/15 bounded on the

North by – Uthaman's land

South by – Road

East by - Thiruvaduthurai Adheenam land

West by – Devendran's land

The very description of the property is erroneous, since the property in the west belonging to Devendran had been purchased by the second defendant himself under Ex.B9 in the year 1995. The description would further indicate that the property which is now shown as the suit property is the property purchased by the second defendant under Ex.B2 from Moorthy. The description given in the defendants' suit and the description of the property given in the plaintiffs' suit does not tally when comparing the boundaries.

32. Another factor that cannot be lost sight of is that the suit property in O.S.No.3413 of 1993 is a vacant site measuring 2 ½ cents. The defendants have described 4 ¼ cents as a vacant land which is covered by Old S.No.197/1, S.No.197/2 and T.S.No.70/15. The Town Survey Land Register certificate produced as Ex.B12 measuring 0.01.69 ares shows the property as one with a building and a vacant land. Es.B12, B13 and B15 would indicate that the property in respect of which the TSLR certificate and the property tax had been issued is

Plot No.48A of Amaravathi Nagar. The Advocate Commissioner's report in Ex.C1 and the Surveyor's report accompanying it clearly states that the suit property does not come within the Amaravathi Nagar Lay out. The Advocate Commissioner's report submitted before the lower appellate Court would indicate that as per the revenue records, the Survey Nos.197/1A and 197/1B does exist. The report also states that the property on the east belongs to Adheenam, which has now been leased out for use of a play ground. However, all the documents filed by the defendants to show possession only describe the property as situate in Amaravathi Nagar Lay out. The lower appellate Court has failed to note down the discrepancies in the eastern boundary in the sale deed Ex.B7 where for the first time, the eastern boundary has been shown as that of the Adheenam's land, whereas in the parent documents, the Adheenam's land has been shown as on the south. There is no explanation as to how the Adheenam's land is shifted to the east.

33. The above narration has now placed in perspective the manner in which title to the properties has changed hands. Therefore, the substantial questions of law have to now be answered.

34. The first substantial question of law "(a) *Whether the approach of the First Appellate Court in a Suit for declaration of title was rendered erroneous and suffered from an illegality in as mich as the said court failed to frame proper issues which arose for consideration in the Appeal and failed to deal with the same".*

35. The provisions of Order 41 Rule 31 (a) C.P.C mandates that a judgment of the appellate court shall state "the points for determination". It is on the points so determined that the decision has to be arrived at and such a decision should be taken by providing proper reasons. In the instant case, the appellate has not set out the

proper points for consideration which had arisen in the appeals. The points for determination that had been framed by the learned VI Additional City Civil Judge, Chennai in his common judgment are as follows:

1. *Whether the finding of the trial Court that the respondent is having better title to the suit property than the appellants is correct?*
2. *Whether the decree and judgment of the trial Court in both the suits are in accordance with law or liable to be set aside?*

The failure to raise proper points for consideration assumes significance since the trial Court had raised issues as to whether the plaintiffs were not entitled to declaration and recovery of possession and whether this claim of the plaintiffs has been barred by limitation. The lower appellate Court has proceeded on the basis that the suit has been decreed, as the trial Court had found that the plaintiffs have a better title than the defendants whereas the trial Court has gone into each and every sale that has been marked on either side and considered the description of the properties given in the schedule, extent and the survey numbers in which it is comprised to arrive at the conclusion that the property to which the defendants claim a right is different from the property in respect of which the suit O.S.No.3413 of 1993 had been filed and which fell to the share of the plaintiffs through their mother, who had purchased the same under Ex.A1. The lower appellate Court has not taken into consideration the documents under which each party places reliance to justify their title to the property. The Hon'ble Supreme Court in the judgment reported in ***(2020) 4 SCC 313[Malluru Mallappa Vs Kuruvathappa]*** has observed that the " judgment of the lower appellate Court has to set out points for consideration, record the decisions thereon and give its own reasons". The learned Judges observed that it is mandatory for the appellate Court to frame points for determination. The reasons for the above is on account of the fact that the lower appellate Court is the final Court of fact as well as law. The Hon'ble Supreme Court goes on to state that even where the lower appellate Court affirms the judgment of the trial Court compliance of the provisions of Order 41 Rule 31 is mandatory. Therefore, the substantial question of law No.(a) is answered in favour of the plaintiffs.

36. The second substantial question of law (b)" *Whether the finding of the First Appellate Court, viz, that the Appellants herein did not file revenue records in support of their title deed, is sufficient to ignore the valid and subsisting registered Sale Deed in the name of the mother of the 1st Appellant."*

As discussed in the earlier paragraphs, the suit property is a vacant site. The plaintiffs have produced documents to show title to the suit property. They have also produced the applications that have been made by them for grant of patta and this correspondence have been marked as Exs.A10 to A13. P.W1, in his cross cross examination, has given reasons for producing documents showing possession as follows:-

> *"அந்த சர்வே எண் இடம் பள்ளமாக இருந்தால் யாரும் குடியிருக்க முடியாது அதனால் அப்படி குடியிருந்ததற்கு ஆவணம் தாக்கல் செய்யவில்லை."*

D.W1 has admitted that he is unaware as to how the property devolved on Selvaraj and Krishnamurthy. The lower appellate Court has failed to appreciate that Ex.B12-patta has been obtained by the defendants pending the suit. The witness would also admit that Jayaammal had purchased the suit property 4 months prior to the purchase by Ranganathan and that Jayammal had purchased 2 ½ cents comprised in S.No.197/1. In this cross examination on 10.06.2015, the witness has stated that Ex.B12-patta relates to the property purchased by them from

Devendran. The lower appellate Court has failed to appreciate that the description of the property purchased from Devendran and the property which has been projected as the suit property in O.S.No.5333 of 1993 is not one and the same. The property was purchased from Devendran under a sale Deed 30.01.1995. In this sale deed, the description of the property and the four boundaries does not tally with the sale deed under which Devendran had purchased the property from Manicka Mudaliar, ie. Exs.B5 and B6. The fact that the witness has conceded that the patta relates to the property purchased from Devendran, the lower appellate Court has erred in relying upon the documents to come to the conclusion that the defendants have proved their possession to the suit property. Therefore, the substantial question of law No.(b) is answered in favour of the plaintiffs.

37. The third and fourth substantial questions of law are *(c)Whether the approach of the First Appellate Court in a Suit for*

declaration of title was rendered erroneous on account of its reliance upon revenue records put forth by the Respondents, instead of reliance upon subsisting and registered title deeds in the name of the mother of the 1st appellant? and (d)Did not the First Appellate Court fall in error in not appreciating the settled position of law that no revenue records and/or subsequent documents can confer any title or extinguish/annul title conferred upon the existing owner. viz, the mother of the 1st Appellant, through valid and subsisting registered Sale Deeds? .

The lower appellate Court has placed great reliance on the fact that the plaintiffs have not been able to establish the subdivision of Survey No.197/1 as S.No.197/1A and S.No.197/1B. In this regard, the documents and the Surveyor's report clearly mentions that the Survey Nos.197/1A and 197/B and S.No.197/2 does exist as per the revenue records. Further, it is an axiomatic principle of law that where boundaries and measurements are given, reliance has to be placed on the boundaries rather than the survey number. The survey number are only used for sake of identification. They independently do not confer title on the property. The Hon'ble Supreme Court in the judgment reported in ***(1997) 7 SCC 137[Balwant Singh and Another Vs. Daulat Singh(Dead) by Lrs and Others]***, wherein in paragraph 21(7), it has been held as follows:

> *"21. "7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."*

Therefore, the lower appellate Court has failed to appreciate the fact that the plaintiffs have filed Exs.A1 and A7 which are their parent documents to prove their title to the suit schedule properties which admittedly is a vacant site. Therefore, the substantial question of law

Nos.(c) and (d) are answered in favour of the plaintiffs.

38. Therefore, the lower appellate Court erred in reversing the well considered judgment and decree of the trial Court totally overlooking the below facts:

> *(a) Exs.A1 and A7 which are the title documents under which the plaintiffs' claim title to the property.*
>
> *(b) That the suit property is a vacant site and therefore, possession follows title.*
>
> *(c) The property purchased by the defendants is situate in Amaravathy Nagar. The Commissioner's report clearly states that the suit property is not situate in Amaravathy Nagar.*
>
> *(c) The sale deed produced on the side of the*

defendants does not correlate to the suit property. Under Exs.B1, B2, B3, B5 and B6, the southern boundary has been shown as the property of the Thiruvaduthurai Adheenam's property and all of a sudden, when the property is purchased by the defendants from Moorthy under Ex.B7 for the first time, the eastern boundary is shown as Thiruvaduthurai Adheenam's land to bring it in sync with the description of the suit property. There is no explanation as to how the property of the Adheenam has suddenly changed as the eastern boundary of the plaintiffs' land.

(d) Ex.B12 does not relate to the property purchased by the defendants from Moorthy which

> *is the property that has been projected as the suit property in O.S.No.3413 of 1993 and O.S.No.5333 of 1993. From the evidence of D.W1, it is clear that Ex.B12 relates to the property which has been purchased by the second defendant from Devendran.*

Therefore, the judgment and decree passed by the learned VI Additional City Civil Judge, Chennai is set aside and the judgment and decree of the trial Court in O.S.No.3413 of 1993 and 5333 of 1993 is confirmed. Accordingly, the second appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2024

Index : Yes/No
Speaking order/non-speaking order
srn

P.T.ASHA.,

srn

S.A.Nos.88 and 89 of 2021
and C.M.P.Nos.1945 and 1947 of 2021

27.03.2024