



S.A.Nos.550 & 551 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On: 27.11.2025	Pronounced On: 21.05.2026
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CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.550 & 551 of 1999

In S.A.No.550 of 1999:

- 1.Rangasamy Pillai (Died)
- 2.Kesavan
- 3.Thiruvengadam
- 4.Rajalakshmi

(Appellants 3 to 4 brought on record as legal representatives of the deceased first appellant vide order dated 29.04.2024 vide memo dated 29.04.2024)

... Appellants

Vs.

- 1.Gowri Ammal
 - 2.Kumar
 - 3.Jagadeeswari
 - 4.Uma Maheswari
 - 5.Prema Ammal
 - 6.Minor Gopalakrishnan
- rep. By next friend & mother,
5th respondent

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 24.02.1995 and made in A.S.No.118 of 1993 on the file of the learned Subordinate Judge, Cuddalore, confirming the Judgment and Decree dated



S.A.Nos.550 & 551 of 1999

29.03.1993 and made in O.S.No.891 of 1989 on the file of the learned District Munsif Court at Panruti.

For Appellants

: Mr.T.R.Rajagopalan,
Senior Counsel for
Ms.Chitra Maragatham

For Respondents

: Mr.Chellamuthu Rangarajan

In S.A.No.551 of 1999:

- 1.Sundaram (Died)
- 2.Muthu
- 3.Bhuvaneshwari
- 4.S.Raja
- 5.S.Kothai

... Appellants

(Appellants 3 to 5 brought on record as legal representatives of the deceased first appellant vide order dated 07.07.2024 made in CMP.No.2154 of 2020)

Vs.

- 1.Gowri Ammal
- 2.Kumar
- 3.Jagadeeswari
- 4.Uma Maheswari
- 5.Prema Ammal
- 6.Minor Gopalakrishnan
rep. By next friend & mother,
5th respondent

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 24.02.1995 and made in A.S.No.116 of 1993 on the file of the learned Subordinate Judge, Cuddalore, confirming the Judgment and Decree dated



S.A.Nos.550 & 551 of 1999

29.03.1993 and made in O.S.No.891 of 1989 on the file of the learned District Munsif Court at Panruti.

For Appellants	: Mr.T.R.Rajagopalan, Senior Counsel for Ms.Chitra Maragatham
For Respondents	: Mr.Chellamuthu Rangarajan

COMMON JUDGMENT

These two second appeals arise out of the common judgment in A.S.No.116 of 1993 and A.S.No.118 of 1993 dated 24.02.1995 in confirming the judgment and decree of the court of the District Munsif, at Panruti, in O.S.No.891 of 1989 dated 29.03.1993.

2.The two sets of appeals arise out of a single suit for declaration and injunction filed by the respondents herein.

3.For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

4.O.S.No.891 of 1989 was presented for the following reliefs:-



S.A.Nos.550 & 551 of 1999

- (i) for a declaration of the plaintiffs' title to the suit properties,
- (ii) for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment; and
- (iii) for costs.

Case according to the plaint:-

5.The plaintiffs pleaded that the suit properties are ancestral properties of two brothers, Seetharama Pillai and Ranganatha Pillai. Seetharama Pillai is the husband of the first plaintiff and the father of the plaintiffs 2 to 4. Ranganatha Pillai is the husband of the fifth plaintiff and the father of the sixth plaintiff.

6.The property devolved on the two brothers from their grandfather, Kanchamala Pillai. Kanchamala Pillai had only one son, by name, Pachai Pillai. Kanchamala Pillai died 50 years ago. Pachai Pillai died 55 years prior to the presentation of the suit. On their death, Pachai Pillai's sons succeeded to the estate and were in possession and enjoyment of the same. They were paying kist and other revenue receipts. 10 years earlier to the suit, Seetharama



S.A.Nos.550 & 551 of 1999

Pillai passed away and soon thereafter, Ranganatha Pillai too, passed away in the year 1980.

7.The cause of action for the suit arose when the defendants, who have no right, title, or interest over the property, attempted to disturb the peaceful possession of suit property by the plaintiffs. The reason for the disturbance being that they had sought the plaintiffs to alienate the properties in their favour. As the plaintiffs refused to accede to their demand, they tried to take forcible possession of the property. Hence, a suit for the aforesaid reliefs.

8.Summons were served on the defendants. The 4th defendant filed a written statement, which was adopted by the other defendants.

Case according to written statement

9.According to the 4th defendant, the plaintiffs were never in possession and enjoyment of the property, nor have they shown on what basis they claim title to the suit properties. According to



them, the suit items belonged to one, Parasurama Pillai. He had 3 issues, namely,

- (i) Kumarasamy Pillai,
- (ii) Kanchamala Pillai, and
- (iii) Govindsamy Pillai.

Though their surnames were pillai, they were also known as udayars.

10.In a partition amongst them, the suit items were allotted to the first son, Kumarasamy Pillai. Govindaswamy Udayar was allotted S.No.588/4 and other properties were allotted to Kanchamalai Pillai. Kanchamalai Pillai mortgaged the properties allotted to him to one, Sadhasivam Reddiar. He accepted that 37 cents in S.No.588/3 belonged to the ancestor of the defendants, namely, Kumarasamy Pillai.

11.Kumarasamy Pillai had a son by name, Subburaya Pillai. Subburaya Pillai secured the suit properties by way of a settlement deed executed by Kumarasamy Pillai in his favour. Subburaya Pillai executed a 'WILL' on 29.07.1956, bequeathing the property to his two sons, Palanisamy and Kannan. Kannan died



S.A.Nos.550 & 551 of 1999

issueless. Therefore, Palanisamy became the absolute owner of the suit properties. The defendants 1 and 2 are the sons of Palanisamy. They had been in possession and enjoyment of the property. They sold suit item No.2 to the fourth defendant for a valid consideration of Rs.9,450/- on 01.12.1989. The fourth defendant got the remaining extent from the defendants 1 and 2, by way of an exchange deed, executed on the same day.

12.Insofar as the first item of the property is concerned, they pleaded that defendants 1 and 2 had been in enjoyment of the same. In addition, it was pleaded that in S.No.587/3, 46 cents belonged to Seetharama Pillai, the husband of the first plaintiff and the father of the plaintiffs 2 to 4 and that, the property laying on the eastern side of S.No.587/3, that is, S.No.587/2-0.46 belonged to Sundaram. For convenient enjoyment, the first defendant and Seetharama Pillai exchanged the property in S.No.587/3 and S.No.587/2. On these pleadings, the defendants sought dismissal of the suit.

Gist of Additional Statement

13.Subsequently, the first defendant, with the permission of the Court, filed an additional written statement. This statement too, was adopted by the other defendants. Apart from restating the



S.A.Nos.550 & 551 of 1999

contentions raised in the original written statement, it was pleaded that the second item of the property was let out by the fourth defendant to one, Rajangam on 04.12.1989, under an unregistered lease deed, and that, Rajangam is a proper and necessary party to the suit. They urged that as Rajangam had not been impleaded as a party, the suit deserved to be dismissed for non-joinder of necessary parties.

14.On the basis of these pleadings, the learned Trial Judge framed the following issues:

- “1. தாவா சொத்து வாதிகளுக்கு பாத்தியம் என்பது சரியா?
2. தாவா முதல் இலக்கச் சொத்தை 1, 2 எதிர்வாதிகள் அனுபவிக்கிறார்கள் என்பது சரியா?
3. தாவா 2-ம் இலக்கச் சொத்து 4-ம் எதிர்வாதிக்கு கிரயத்தின் மூலமும், பரிவர்த்தனை மூலமும் பாத்தியம் என்பது சரியா?
4. வாதிகள் எதிர்வாதிகளுக்கு கிடைக்கும் இதர பரிகாரங்கள் எவையேனும் உண்டா?”

15.On the side of the plaintiffs, the first plaintiff, Gowri Ammal examined herself as PW1. She marked Ex.A1 to Ex.A17 to substantiate her case. The first defendant examined himself as



S.A.Nos.550 & 551 of 1999

DW1, and the third defendant as DW2 and one, Selvam as DW3.

They marked Ex.B1 to Ex.B24.

16.After an analysis of the evidence and documents, the learned Trial Judge decreed the suit as prayed for.

17.Aggrieved by the same, two sets of first appeals were preferred to the learned Subordinate Judge at Cuddalore. A.S.No.116 of 1993 was preferred by the defendants 1 and 2 and A.S.No.118 of 1993 was preferred by the defendants 3 and 4.

18.As the appeals assailed the judgment and decree in a single suit, the learned Subordinate Judge clubbed both the appeals. He dismissed them by way of a common judgment dated 24.02.1995. Aggrieved by the same, the present second appeals.

19.This Court vide order dated 30.04.1999, admitted the second appeals on the following substantial questions of law:-

“(1) When the plaintiffs have admitted the title of Parasuram Govindan, the common ancestor and having not proved allotment of the suit properties in their favour is the learned



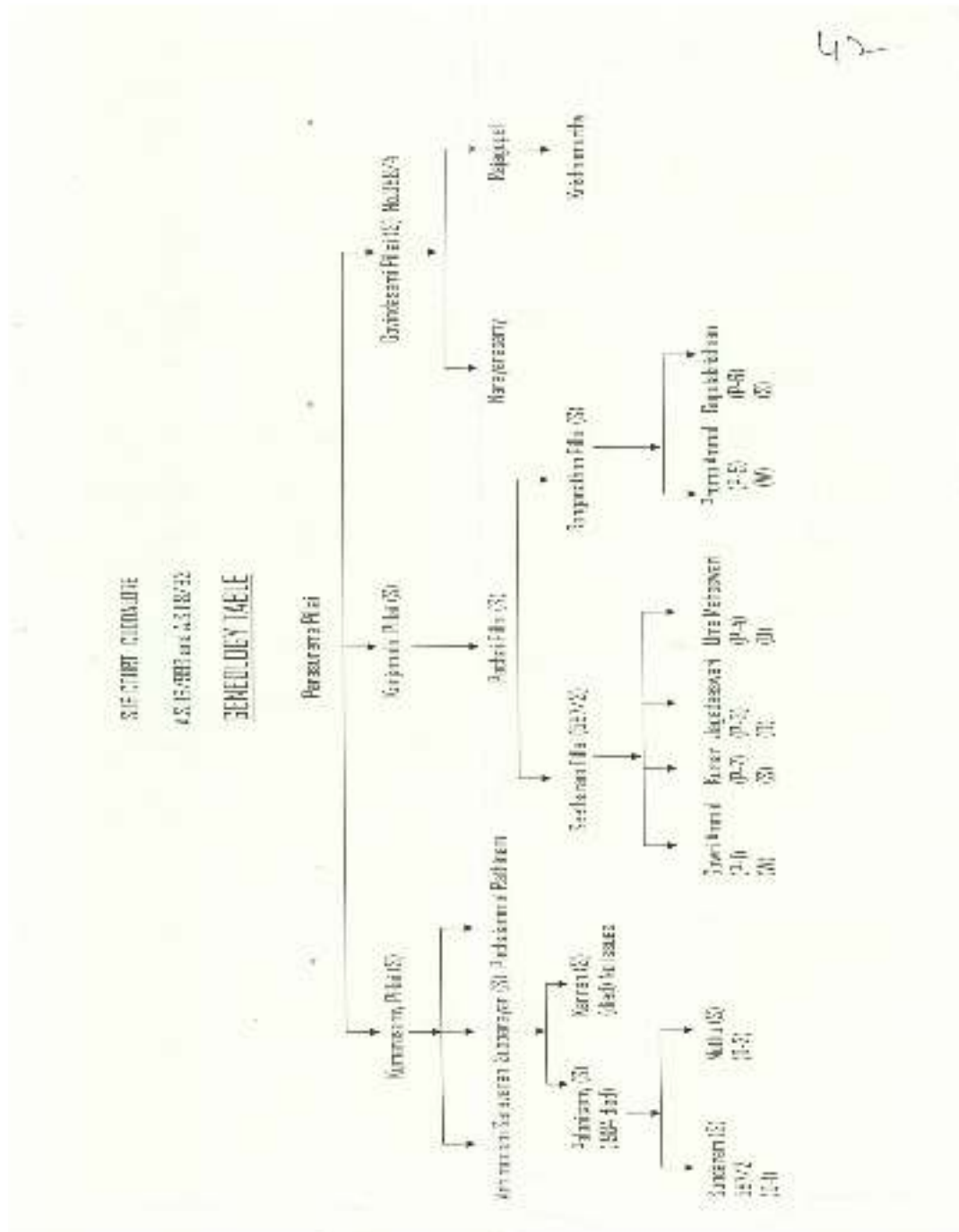
S.A.Nos.550 & 551 of 1999

*Subordinate Judge right in granting a Decree
when there is no place of ouster?*

*(2) When there are documents to show the title
of the plaintiffs from 1919, is the learned
Subordinate Judge right in rejecting the claim
of the defendants?"*

20.I heard Mr.T.R.Rajagopalan for Ms.Chitra Maragatham,
for the appellants and Mr.Chellamuthu Rangarajan for the
respondents.

21.The admitted genealogy of the parties is as hereunder:-





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22.Mr.T.R.Rajagopalan urged that the Trial Court as well as the lower appellate court did not appreciate the vital documents under Ex.B1, Ex.B2, Ex.B10 and Ex.B11. He pointed out that under Ex.B1, partition had taken place between the father, Parasurama Pillai and his sons, Kumarasamy Pillai, Kanchamala Pillai and Govindasamy Pillai. Suit item No.1 had been allotted to Kumarasamy Pillai, the ancestor of the defendants 1 and 2.

23.Placing reliance upon Ex.B2, Mr.T.R.Rajagopalan urged that Kumarasamy Pillai's son, Subburayan had been benefited with a settlement deed and that he had, in turn, bequeathed the property under Ex.B3 to his sons, Palanisamy and Kannan. Relying upon these documents, he submitted that the defendants had proved their title over the first item of the suit property.

24.Insofar as the second item of the suit properties is concerned, Mr.T.R.Rajagopalan relied upon Ex.B19 and Ex.B20, namely, the exchange deed entered into between defendants 1 and 2 with the fourth defendant and the sale deed executed by defendants 1 and 2 in favour of the fourth defendant.



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25. After reading the plaint, he pointed out that the plaintiffs have not pleaded as to how they have come into the possession of the property and that, a suit for title cannot be decreed on the basis of the weakness in the case of the defendants. He stated that the plaintiffs have not produced any record other than the revenue records, whereas, the defendants have produced registered documents, and therefore, the courts below should have weighed in favour of the defendants and not in favour of the plaintiffs.

26. In support of his pleas, Mr.T.R.Rajagopalan relied upon the following judgments:

(i) State of Uttarakhand and Another Vs. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579;

(ii) City Municipal Council Bhalki Vs. Gurappa (Dead) by legal representatives and Another, (2016) 2 SCC 200;

(iii) Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others, (2014) 2 SCC 269; and



S.A.Nos.550 & 551 of 1999

**(iv) Corporation of the City of Bangalore
Vs. M.Papaiah and Another, (1989) 3 SCC
612.**

27.Mr.Chellamuthu Rangarajan pointed out that the plaintiffs had produced revenue records dating back several years, prior to the presentation of the plaint. This, when read with Ex.A10 and Ex.A11, would point out that the plaintiffs' predecessors had title and that they had been in possession and enjoyment of the suit property. He further urged that the defendants' predecessor, Subburaya Pillai had attested the document under Ex.A11, which indicates that the case, as projected by the plaintiffs, is true and genuine and the plea that Subburaya Pillai had taken possession of the property from Kumarasamy Pillai, is untenable. He urged that there is no necessity to implead the lessee of the fourth defendant, when the fourth defendant had already been made as a party to the proceedings. Finally, he urged that, no question of law arises for consideration in the second appeal and that, the trial court and the lower appellate court had rightly appreciated the evidence and had decreed the suit and hence, the appeal may be dismissed with costs.



S.A.Nos.550 & 551 of 1999

28.I have carefully considered the submissions made on either side and have gone through the records.

29.I shall first discuss Mr.T.R.Rajagopalan's plea on the lack of pleadings in the plaint. He drew my attention to the aforesaid judgments of the Supreme Court and pointed out that as sufficient pleadings have not been made, the suit has to fail.

30.I should point out here that the suit arises from a mofussil area. Right from the time when the law was being settled for this country by the Board of Privy Council, the courts have been directed to adopt a liberal approach in matters arising from such areas. The rationale was to overlook the technical drafting defects, which are common in rural areas, and to focus on substance and intent of the parties. (See, ***Mohd Zahoor Ali khan v. Mussumat Thakooranee Rutta Koer (1867) 11 MIA 468*** and ***Secretary for State for India-in-Council v. Laxmibai, (1922-23) 50 IA 49 = AIR 1923 PC 6***).

31.Mofussil pleadings are generally loose on account of the low level of legal literacy available in those parts of the country. A



S.A.Nos.550 & 551 of 1999

Civil Court and especially this court, sitting as a High Court, should not adopt a hyper technical interpretation of mofussil pleadings. If so done, it can lead to injustice. A broad, purposeful approach is warranted to advance substantive justice. (See, **Devasahayam v. P.Savithramma, (2005) 7 SCC 653** and **Des Raj v. Bhagat Ram, (2007) 2 SCC 641**)

32.As pointed out by Justice Krishna Iyer in **S.B. Noronah Vs. Prem Kumari Khanna, (1980) 1 SCC 52**, Indian Courts should not construe the pleadings with same rigidity as in the courts in England. Iyer, J. pointed out that pleadings have to be interpreted, not with formalistic rigor, but with latitude, and awareness of the low levels of legal literacy amongst litigants. I am aware, he dealt with the case of eviction, but his observations, which I extract hereunder, would apply to civil proceedings also:-

“Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept in cold storage when pleadings are construed.”

Hence, I will not see the plaint filed in a mofussil area in the same manner as I would have, if it had been a plaint filed in a



S.A.Nos.550 & 551 of 1999

metropolitan area. I will have to give it a liberal and broad construction it deserves.

33.The Code of Civil Procedure is a Code of fairness and reason. It has been so carefully drafted because it intends to ensure that no party can taken by surprise. Had the lack of pleadings made a material difference to the case, certainly, I would have agreed with Mr.T.R.Rajagopalan. In fact, Order VI Rule 2 demands a statement in a concise form of material facts. There is no requirement for the plaintiff to plead about all the documents and witnesses, which he/she would have to exhibit, produce and prove during the course of trial.

34.Reading of the plaint discloses that the plaintiffs pleaded the suit properties were ancestral properties, having devolved upon them, on account of death of their ancestors, and more recently of the husband of the first plaintiff and the husband of the fifth plaintiff. When a party claims that the property to be an ancestral one, the Court cannot insist upon production of registered documents for the same. Furthermore, the defendants are not taken by a surprise, as they too, admit to the ancestral nature of the



property. In facts, they plead, suit item No.1 as ancestral in nature.

Hence, essential averments, being present, the suit does not fall for lack of pleadings.

35.Insofar as the plea of non-joinder of parties is concerned, all that I have to refer to is Section 99 of the Code of Civil Procedure. Under the said provision, no decree shall be reversed or substantially varied nor an appeal be remanded for the mere reason of mis-joinder or non- joinder of any party or cause of action or any error, defect or irregularity in any proceedings in the suit, as long as it does not affect the merits of the case or the jurisdiction of the Court.

36.In a suit for title and injunction, when the lessor, namely, the fourth defendant has been arrayed as a party; a person, claiming to be a lessee under the lessor, cannot be treated as a necessary party to the suit. A lessee cannot have a higher defense than the lessor. When the lessor has filed a written statement and had been contesting the suit, the presence of Rajangam, the alleged lessee of the fourth defendant, in my view, is neither essential nor necessary. Hence, Section 99 of the Code applies in full force.



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37.Apart from that, I have gone through the grounds of appeal in A.S.No.116 of 1993 and A.S.No.118 of 1993. In both grounds of the appeals, the plea of non-joinder has not been raised. I should point out that Mr.T.R.Rajagopalan had, in fact, touched upon this issue, but did not place much emphasis on the same. Hence, the plea of non-joinder stands rejected.

38.I will deal with the second item of the property, before I turn to the first item.

39.The case of the defendants is based on Ex.B19 and Ex.B20. The suit came to be presented on 04.12.1989. The two documents relied upon by the defendants have come into force on 01.12.1989. A perusal of Ex.B20, shows that defendants 1 and 2 had alienated the property in favour of the fourth defendant, on 01.12.1989. Curiously enough on the very day, i.e., 01.12.1989, the fourth defendant and defendants 1 and 2 had entered into an exchange deed. In addition, a perusal of Ex.B19 shows that the defendants 1 and 2 have not traced their title to the property but



merely pleaded that they came in possession of the property ancestrally.

40.The documents, which came into force just before filing of the suit, have to be generally viewed with suspicion. A Court, will not place much reliance on such a document, as compared to the documents, which have come into being in the normal course. I should hasten to add that there is no bar on the admissibility of such a document. However, the court must view the documents carefully and analyse the same, in order to determine their authenticity. It is normal that a litigant does not rush to a court. He/she would try to resolve the issue without knocking its doors immediately. It is under such circumstances that the opposite party might create documents, in order to defeat them in the litigation.

41.Mere filing or marking of the document as an exhibit does not automatically prove that its contents are genuine. Civil Courts must judicially analyse its authenticity and the necessity for executing the document, just before filing of the suit. If I look at Ex.B19 and Ex.B20 from this perspective, I am afraid the contents of the documents do not have a ring of genuineness around them.



42.If defendants 1 and 2 were actually in possession and enjoyment of the property and had executed the sale deed in favour of the fourth defendant, the reason for executing an exchange deed, on the very same day as the sale deed, is puzzling. It gives an impression as if the documents had been brought about in order to get them reflected in the encumbrance certificate. It is natural that in a sale deed the title of the vendor is traced. However, Ex.B19 and Ex.B20 are, as brief, as it can be.

43.The plaintiffs claimed title on the basis of the revenue records and two mortgage deeds. The trial court had analyzed the issues involved in the suit from that perspective and decreed the suit. The lower appellate Court dismissed the appeal on the ground that the defendants had not proved their title to the suit property.

44.It is too well settled position of law that, in a suit for declaration of title, the burden always lies on the plaintiffs to establish a clear case for such a declaration, and for the mere weakness of the case of the defendants', the suit cannot be decreed.



45.I would go further on this aspect. Even if the defendants were to remain *ex-parte* in a suit for declaration of title, the court ought not to decree the suit. It should still call upon the plaintiffs to establish their title to the property. On that aspect, I am entirely in agreement with Mr.T.R.Rajagopalan. The judgment relied upon by him in **Vasavi Cooperative Housing Society Limited's** case settles this position.

46.In gist, the case of the plaintiffs is that the property belonged to their ancestor one, Kanchamala Pillai, and on his death, the property came to Kanchamala Pillai's son, Pachai Pillai. Pachai Pillai had two sons, namely, Seetharama Pillai and Ranganatha Pillai. The brothers passed away and the property devolved on the plaintiffs. As they feared interference from the defendants and since their title was being denied, they came forth with the suit for declaration and injunction.

47.On the other hand, the defendants claimed that the property belonged to one Parasurama Pillai, who had three sons, namely, Kumarasamy Pillai, Kanchamala Pillai and Govindasamy Pillai. In the partition effected between the sons of Parasurama



Pillai, the suit schedule mentioned property fell to the share of Kumarasamy Pillai. Kumarasamy Pillai had four sons, namely, Aadhimoola Pillai; Saravana Pillai; Dharmalinga Pillai and Subburaya Pillai and a daughter by name Pachaiammal Rathinam. In the partition effected between the brothers, the suit property fell to the share of Subburaya Pillai. Subburaya Pillai had two sons by name, Palanisamy and Kannan. Kannan died issueless and the entire property fell to the share of Palanisamy. Palanisamy was alive till the year of 1984 or thereabouts. On his death, defendants 1 & 2, who are his children, took over the estate and they are now in possession and enjoyment of the property.

48.In order to substantiate their case, the plaintiffs filed Exs.A10 and A11. The documents are of the year 1923 & 1924. Under Ex.A10, Kanchamala Pillai and Pachai Pillai, the father and son, and the predecessors of the plaintiffs, executed a mortgage deed in favour of one Lakshmi Narayana Chettiar.

49.Under Ex.A11, Kanchamala Pillai executed a mortgage deed in favour of M/s.EID Parry, situated at Nellikuppam in Cuddalore District. Apart from this, the plaintiffs filed Ex.A12 and



Ex.A13, namely, the settlement record for Survey No.588/3 and the patta granted for S.No.588/3, in the name of Seetharaman Pillai, their predecessor, during the UDR proceedings. Apart from these two primary documents, the plaintiffs also filed Exs.A1 to A6, being the revenue receipts issued from the year 1985 till 1991 in the name of the second plaintiff, Kumar.

50.It is pertinent to point out that, in Ex.A11, the sons of Kumarasamy Pillai, namely Aadhimoola Pillai and Saravana Pillai had signed the document as witnesses. Looking at the schedule, it is clear that Survey No.588/3, to an extent of 87 cents, was the subject matter of transaction, which is one of the suit schedule mentioned properties.

51.In assertion of their title, the defendants rely upon Ex.B1, which is a partition deed executed during the lifetime of Kumarasamy Pillai, to his four sons namely, Aadhimoola Pillai, Saravana Pillai, Dharmalinga Pillai and Subburaya Pillai. Ex.B2 is a settlement deed executed by Subburaya Pillai in favour of his then minor son, Palanisamy, who was represented by his mother and natural guardian, Thaiyalnayagi Ammal. Ex.B3 is a “WILL” written



S.A.Nos.550 & 551 of 1999

by Subburaya Pillai, which was attested by two witnesses, namely, Purushothaman and Chokkanathan. Though no death certificate had been filed to prove that Chokkanathan had passed away, the defendants had examined one Selvam, son of Chokkanathan as DW3, to bring forth before the Court that Chokkanathan is no more. They also presented Ex.B14 and Ex.B15, which are the documents executed by Palanisamy, the father of the defendants, in favour of M/s.EID Parry and the Identity Card showing that Palanisamy was a small farmer. In order to press home the point that Kumarasamy Pillai was entitled only to another property and not the suit schedule mentioned property, the defendants produced Exs.B16 to B18. Ex.B16 is a mortgage deed executed by their junior paternal uncle Govindasamy Pillai, in favour of one Nadesa Pillai.

52.With respect to the portion of extent of Survey No.588/3, whereunder it was shown that Kumarasamy Pillai is entitled to the eastern portion of the property under the mortgage. Ex.B17 and Ex.B18 are two sale deeds with respect to Survey No.587/3. Under Ex.B17, Seetharama Pillai had purchased 45 cents from one Kaliyaperumal Chettiar, and in the boundary recital, it was shown that the property belongs to one Palani. On the basis



S.A.Nos.550 & 551 of 1999

of these documents, the defendants urge that the plaintiffs are not the owners of the property, but the defendants are the owners thereof. Hence, according to them, the document executed under Ex.B19 and Ex.B20 are valid and the suit has to be dismissed.

53.Before I embark on a discussion, I have to appreciate the manner in which a civil proceeding, relating to a declaration of a title has to be dealt with. A Court, while dealing with a civil proceeding, deals so on the basis of the evidenciary rule of preponderance of probabilities, unlike in case of criminal proceeding, which goes on the basis of standard of proof beyond reasonable doubt.

54.What is then the principle of preponderance of probabilities? The test being, whether the plea raised by the plaintiff is more probable than its non-existence. The plaintiffs are required to prove that their case is more plausible than that of the defendants. In case, the proof let in by the plaintiffs and defendants are equally balanced, then the Court normally should come to the conclusion that the plaintiff has not met the standards required and should look against the plaintiff. It has been pointed out by Courts



and Jurists that, the nature of exercise undertaken by a Court is not with mathematical precision or appreciation as done in science.

It is the consideration of the Court, which involves the overall assessment of the evidences placed before it, keeping in mind reliability, credibility and the value of the evidence, in order to come to a conclusion which of the case projected by the parties is more probable. The conclusion is not absolute or scientific. I should refer here to Section 35 of the Specific Relief Act, which points out that a declaration of title could be binding only inter parties.

55.Ex.A10 and Ex.A11, were at least 60 years in age, when they surfaced before the Court. Under Ex.A11, the mortgage deed had been executed by the predecessors of the plaintiffs with respect to Survey No.588/3, 282/2 and 615/5 of the same village. The predecessors of the defendants, who were the nephew – cousins of the executants had attested the document. As a general principle, mere attestation of a document does not operate as an estoppel. An attesting witness is concerned primarily, to verify the fact of execution. That is to say, they stand before the Registering Authority, to state that the signature of the executant had been



S.A.Nos.550 & 551 of 1999

made in their presence. Such an attestation does not certify nor can be treated as consenting to the contents of the documents itself.

56.This general rule has certain exemptions. The earliest of the case where attestation of a document was used as estoppel was in ***Kandasami Pillai Vs. Rangasami Nainar (died) and others, (1912) 23 MLJ 301.***

57.This case was dealt with by a Division Bench consisting of Sundara Aiyar and Sadasiva Aiyar, JJ. No less than a person Mr.Seshagiri Aiyar, later on a Judge of this Court and the head of the Civil Bar, had argued against the proposition. The case arose under the following circumstances:-

57(i).The plaintiff had purchased the property from the second defendant. Earlier to the sale, the first defendant had purchased the same property in a Court auction sale. It was urged by the plaintiff that the first defendant was a benamidar and the real owner of the property was the second defendant. The first defendant resisted the suit asserting his own title to the property. It was argued that Section 317 of the Code of Civil Procedure (then



S.A.Nos.550 & 551 of 1999

prevalent, not the 1908 Code) bars the suit as Section 317 prohibited any civil action against auction purchasers on the ground that the purchase was made by them on behalf of another.

57(ii).It was pointed out by the plaintiff that the first defendant had attested the sale deed that had been executed by the second defendant in his favour. The first defendant had urged that he had attested the document without any knowledge of the contents thereof. Relying on the judgment in **Sarat Chunder Dey Vs. Gopal Chunder Laha, (1887) ILR 11 Mad 234 (PC)**, Justice Sundara Aiyar, held that the attestation made by the first defendant was intended to re-assure the plaintiff while taking a sale deed from the second defendant that he is not objecting to the transfer of title. On these grounds, the Court held that he is estopped from going back on the same. Justice Sadasiva Aiyar went a step further and held that, having regards to the ordinary course of conduct of Indians in the Madras Presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated *prima facie* as a representation by him that the title and other facts relating to title recited the document are true and will not be disputed by him as against the obligee under the



document. Having held so, Justice Sadasiva Aiyar agreed to the view of Justice Sundara Aiyar and held that the attestation was binding.

58. I should point out here that, while sitting with Sankaran Nair, J., Sadasiva Ayyar, J. reiterated this view in ***Narayana Aiyar and others v. Rama Aiyar, (1915) ILR 38 MAD 396***. This view found acceptance in the hands of another illustrious Judge, Justice C.V.Kumaraswami Sastri in ***Nayakammal v. Munuswami Mudaliar, (1924) 20 LW 222***. Justice Kumaraswami Sastri observed,

“I have rarely come across a case where a person having an interest present or contingent in the property has attested the deed without enquiring into its contents.”

59. The Privy Council, while calling upon this practice of attestation be given up, did not overrule the view taken by the Madras High Court. This was in ***Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri, (1916) 31 Mad LJ 563***.

60. Justice M.M.Ismail (as he then was), after a detailed survey of all the precedents, came to a conclusion that the positions



S.A.Nos.550 & 551 of 1999

laid down by these verdicts have to be followed. This was in

Ramaswamy Gounder, Chinnasami Gounder v.

Ananthapadmanabha Iyer, 1967 SCC Online MAD 269. The view

taken by Justice Ismail was found acceptance in the hands of

another Division Bench of this Court in **Jagannatham Pillai v.**

Kunjithapatham Pillai, AIR 1972 MAD 390 and in **Kanagavalli**

Ammal v. Ulaganatha Pillai, 1977 TLNJ 174.

61. At this stage, I should point out that another Division Bench in **K.A.Selvanachi v. Dr.S.R.Sekar, (2003) 1 CTC 745 (DB)** referred to the aforesaid verdicts and took a view that mere attestation of a document does not by itself impute knowledge of the contents thereof and does not create an estoppel.

62. A careful perusal of **Selvanachi's** case shows that in paragraph 9 of the said judgment, the Division Bench had taken a view as if the verdicts rendered by Sadasiva Ayyar, J. in **Kandasamy's** case and **Narayana's** case were so done sitting singly. However, as pointed out earlier, both the judgments were of Division Benches, which were subsequently followed by the learned Single Judge and in turn, approved by another Division Bench. To



make it clear, **Kandasamy's** case was rendered by the Division Bench of Sundara Ayyar, J. and Sadasiva Ayyar, J. and **Narayana's** case was rendered by Division Bench of Sankaran Nair, J. and Sadasiva Ayyar, J.

63. To complete the narration, I will now refer to the judgment reported in **Parasuram Mudaliar v. Devaki Bai, 1979 TNLJ 326**. This judgment was rendered by another eminent Single Judge of this court, Justice Sathiadev.

64. Let us look at the case in detail. It was a case where the property belonged to a lady 'K'. She and her husband begot four children, three daughters and a son. On her death, her husband executed a settlement deed in favour of the son. The daughters attested the deed.

65. Two contentions were placed before Justice Sathiadev. One was that the property belonged to K's husband and not to K. Secondly, as the three daughters had attested the settlement deed, they had surrendered their rights in favour of their brother, the beneficiary under the settlement deed.



(a) On the first aspect, His Lordship came to a conclusion that, since the settlement deed itself conceded the right of K, the plea that the settlor, K's husband was the owner of the property has to be rejected.

(b) On the plea of attestation acting as an estoppel, the learned Judge did not dissent from the view that the law on estoppel would operate in case of attestation. He noted, on facts, that the attesting witness was examined as a witness and she had stated that she had signed the document without being aware of the contents. This is clear from the penultimate paragraph of the notes at Page No. 328, wherein he held that when the attesting witness satisfactorily explains to the Court as to why she attested the document, there is no scope for legal inference. It was a case where the presumption was explained on facts.

66. The attention of the Division Bench in **Selvanachi's** case had not been drawn to the view taken by the Supreme Court in **Badri Narayanan v. Rajabhagyathammal, (1996) 7 SCC 101**. The Supreme Court had referred to the views taken by Justice Sadasiva Ayyar and of the one taken by Justice Sathiadev in the aforesaid cases. The Supreme Court had approved the view of



S.A.Nos.550 & 551 of 1999

Justice Sathiadev. The Court did not overrule the view taken by Justice Sadasiva Ayyar but held that the attestation amounts to presumption of fact, whose efficacy and evidentiary value depends on the facts of the given case. Hence, the law on presumption that has been laid down in **Kandasami Pillai's** case continues to be in force.

67. Hence, the consistent view right from 1912 downwards is that, where a person has admittedly a tangible interest in the property, affected by a deed, attests a document, a **presumption** arises that he knew of its contents and consented to the same. It is always open to a party to let in evidence to show why that presumption would not apply to his case.

68. The situation that arises when attestation is made by one brother in a document executed by another brother was a subject matter of consideration in **Matadeen Roy Vs. Mussodun Singh, (1868) 10 W.R. (C.R.) 293**. The Calcutta High Court specifically dealt with the effect of attestation. The Court held:-

“when the plaintiff put his name as a witness to his brother’s signature to a deed conveying the whole of the property, the Court might



reasonably infer that he knew that his brother was selling the whole of the property. If he knew that his brother was selling the whole of the property as his own, and allowed him to do so without objection, it would be an evidence against him either that the whole of the property did belong to his brother or that he was acquiescing in his brother's act of selling the whole".

69. Therefore, the attestation made by closely knit relative to a document executed by another relative cannot be given the same treatment as a document which is attested by utter strangers.

70. If the property had been allotted in partition under Ex.B1 to Kumarasamy Pillai, it would obviously be difficult for any of his sons, including Aadhimoola Pillai and Saravana Pillai, to attest the mortgage deed executed by Kanchamala Pillai in favour of the third party, M/s.EID Parry, for the very same property said to have been allotted to their father. Further, the distance of time between Ex.B1, Ex.A10 and Ex.A11 is not too long. It is a couple of years. The assertion by descendants, namely, Defendants 1 and 2 herein, as pointed out earlier, has come about after six decades.



S.A.Nos.550 & 551 of 1999

Hence, on appreciation of the evidences, this court would go with Ex.A10 and Ex.A11 rather than relying upon Ex.B1.

71.I do not want to rest my conclusion only on the basis of attestation of a document. Let us take a sheet anchor of the case of the defendants. It is Ex.B1. Ex.B1 is a document that was executed by the sons of Kumarasamy Pillai, namely, Aadhimoola Pillai, Saravana Pillai, Dharmalinga Pillai and Subburaya Pillai. In this document, there is no tracing of title by the executants.

72.The execution of Ex.B1 was with respect to one branch of Parasurama Pillai's family alone. There is no reference as to how the property came down to Kumarasamy Pillai from Parasurama Pillai. The admitted genealogy extracted above shows that the common ancestor of the plaintiffs and defendants, Parasurama Pillai, had three sons, namely, Kumarasamy Pillai, Kanchamala Pillai and Govindasamy Pillai. Ex. B1, on which the defendants place a stout reliance upon, is a deed *inter se* the sons of Kumarasamy Pillai. Unless and until Ex. B1 had been preceded by a document that a partition took place between the three sons of Parasurama Pillai and in that partition the property had been



allotted to Kumarasamy Pillai, the defendants' predecessors cannot claim exclusive right over the property. In addition, no records have been produced by the defendants that they had been in possession and enjoyment of the property exclusively, post Ex. B1. Hence, the attestation under Ex. A10 and Ex. A11 by persons who were parties to Ex. B1 becomes a relevant consideration.

73. It is in this context, the defendants seem to rely upon Ex.B16 of the year 30.09.1903, a document executed by Govindasamy Pillai, the last son of Parasurama Pillai in favour of one Nadesa Pillai. In this document, a portion of Survey No.588/3 is the subject matter of mortgage. However, as to how the defendants came to the possession of this document has not been explained. That is to say, the subject matter of mortgage is falling to the family of Kumarasamy Pillai, whereas the executant of the document is Govindasamy Pillai. Nadesa Pillai is a stranger to the family.

74. In addition, the legal aspect of boundary recital stated in a document to be used for the purpose of coming to the conclusion of title, not only arises with respect to Ex.B16, but would have to be dealt with respect to the documents under Ex.B17 and



S.A.Nos.550 & 551 of 1999

Ex.B18 also. Ex.B17 and Ex.B18 do not relate to the suit Survey No.588/3, but to the Survey No.587/3.

75. Fortunately for me, this position too has been settled by a Division Bench of this Court in ***V.A.Amiappa Nainar (died) and others Vs. Anamalai Chettiar (died) and others, 1971 SCC OnLine Mad 30***. A Division Bench consisting of Chief Justice Veeraswami and Justice Raghavan, as called upon to decide the issue of admissibility of boundary recitals in a document which is not inter parties. The plaintiffs, in that case, sought for declaration and recovery of possession of the suit property, asserting ownership on the basis of long possession and recognition by the Government in the year 1880. The defendants questioned the plaintiffs' title and the alleged continuous possession and also the relevancy of the boundary recitals with respect to the suit property, which was not inter parties. The Division Bench analyzed Sections 11, 13(a), 32(3) and 32(7) of the Indian Evidence Act, and concluded that recitals as to boundaries in documents not inter parties are inadmissible in evidence. The Bench held that the only method by which recitals in a document not inter parties could be admitted in evidence is by



examination of the executant of the document in which such recitals as to boundaries are found.

76. Consequent to this discussion, the Bench approved the views taken in ***In re Poddapaneri Narayanappa, 1910 M.W.N. 688*** and overruled the contra position laid down in ***Rangayyan and another Vs. Innasimuthu Mudali and others, AIR 1956 Mad 226***. The Bench positively approved the views of Wadsworth, J., in ***Thyagarajan Chetty Vs. Narayana Thevan, AIR 1940 Mad 450***, whereunder the learned Judge held that the only method by which recitals in a document, not inter parties could be admitted in evidence is by examination of the executant of a document in which such recitals as to boundaries are found.

77. The executant in Ex.B17 and Ex.B18 are Kaliyaperumal Chettiar. I am alive to the fact that the suit came to be presented at least 25 years after the execution of Ex.B17 and Ex.B18. There is a possibility that the said Kaliyaperumal Chettiar might have gone to meet his maker. There is no evidence to that effect. Even assuming he had, this did not prevent the defendants from examining any person belonging to the said family to substantiate their case.



S.A.Nos.550 & 551 of 1999

Therefore, on the basis of Ex.B1, Ex.B16 to Ex.B18, I cannot conclude that the position that has been taken with respect to Survey No.588/3 by the plaintiffs in Ex.A10 to Ex.A13 is improbable.

78.Since the document not inter parties cannot be relied upon in evidence, unless and until, the executants are examined, I would necessarily have to conclude that reliance placed by plaintiffs on Ex.B15 to Ex.B17 also cannot be entertained. Hence, I am of the view that the plaintiff have proved their title with respect to Survey No.588/3.

79.Insofar as first item of the suit property is concerned, which is Survey No.588/2, the plaintiffs have only produced the revenue records.

80.Per contra, the defendants rely upon Ex.B2 and Ex.B3, under which Subburaya Pillai had executed a settlement deed in favour of his son, Palanisamy and had executed a sale on 29.07.1956. Mere filing of revenue records will not confer any title on a person. This position has been settled by the Supreme Court in



S.A.Nos.550 & 551 of 1999

Prahlad Pradhan and others Vs. Sonu Kumhar and others,

(2019) 10 SCC 259. Referring to the earlier judgments of that Court, Justice Indu Malhotra held, revenue records do not create or extinguish title. It is only meant for fiscal purposes.

81. Turning to the records filed by the defendants, they have presented a certified copy of the settlement deed in Document No.13/1956. The original has not been presented for examination by the Court. The reason for non-filing of the original has also not been properly explained. Further, the document merely refers to an earlier document, which is a partition deed, yet again not a title deed, it will not be a sufficient proof indicating title.

82.The plaintiffs', on the contrary, have filed Exs.A1 to A6 and A9, to show that for a few years prior to the filing of the suit, they had been satisfying the revenue demands. While they are not entitled for a declaration of title, on the basis of these documents, this Court comes to a conclusion that they were in possession and enjoyment of the property.



83.As early as in 1924, the Privy Council in **Midnapur Zamindary Company, Limited Vs. Naresh Narayan Roy, (1924) 20 LW 770**, held that a person in possession cannot be disturbed except by due process of law. Relying on this view taken by the Privy Council, Justice R.C.Lahoti, speaking for himself, Justice B.N.Srikrishna and Justice G.P.Mathur in **Rame Gowda (dead) by lrs. Vs. M.Varadappa Naidu (dead) by lrs. (2004) 1 SCC 769**, approved the view of the Full Bench of the Allahabad High Court in **Yar Muhammad and another Vs. Lakshmi Das and others, AIR 1959 All 1 (FB)**, wherein the Full Bench had declared as follows:-

“Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause.”

84. The Court in **Rame Gowda’s** case, cited supra, reiterated the tests which may be adopted as a working rule for determining attributes of “settled possession”, as laid down by the



Supreme Court in **Puran Singh and others Vs. State of Punjab,**

(1975) 4 SCC 518. They are as follows:-

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.



S.A.Nos.550 & 551 of 1999

85.The subject matter of Suit Item No.I is Survey No.588/2, which is an agricultural land. Hence, the test laid down by the Supreme Court in this case applies in full force. The Trial Court and the Lower Appellate Court had inadvertently overlooked the fact that the plaintiffs had not produced any title documents with respect to Survey No.588/2. Hence, the relief of declaration, insofar as that portion is concerned, would have to be interfered with.

86.The revenue records produced point out to the possession of the plaintiff, at least from Fasli 1388 onwards (Fasli 1388 corresponds to CE 1979). Ex.A9 shows that Subburaya Pillai had also been benefited with Patta bearing Patta Nos.421 and 355 for S.Nos.226/3 and 226/4, which correspond to the present S.Nos.588/2 and 588/3. These documents show that the predecessors of the plaintiffs had been in continuous possession and enjoyment of the property, at least a decade before filing of the suit. The documents produced in the name of Palanisamy Pillai under Ex.B7 relate to Patta Nos.437, 494 and 555. They do not correspond to the suit properties.



S.A.Nos.550 & 551 of 1999

87.Let me now look at the authorities cited by Mr.T.R.Rajagopalan.

88.In ***State of Uttarakhand and Another v. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579***, the court had come to the conclusion that, though the plaintiff had pleaded he had succeeded to the property as “Mahant” and “Manager” of the Temple, the plaint failed to state whether he claimed title through his forefathers and, if so, who were they and whether the Temple had been constructed out of their own resources and when. The plaintiff had failed to prove any allotment to his forefathers by the State, and whether the concerned Temple was a public Temple or a private Temple had also not been pleaded. The family pedigree of the plaintiff to the property had also not been demonstrated. It was in those circumstances, the Court came to the conclusion in paragraph No.19 of the judgment that as material details set forth had not been pleaded, the suit itself is untenable and ought to have been rejected at threshold.

89.The Court also came to a conclusion that on the basis of ***Gurdwara Sahib Vs. Gram Panchayat Village Sirthala, (2014)***



1 SCC 669 that a court cannot grant a declaration of ownership on the basis of adverse possession. I should point out here that the Supreme Court itself had overruled the said proposition in ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others, (2019) 8 SCC 729***. As material pleadings were missing in the case, the Supreme Court came to the conclusion that the suit is untenable. Furthermore, that was a case where declaration of title was sought for a property situated in the midst of a thick forest. First, as already pointed out, this being an appeal based on a mofussil pleading, it requires a liberal consideration. Secondly, an analysis of the documents shows that the plaintiffs' case is probable. Finally, the essential pleadings being available on record, I am not in a position to apply this verdict.

90.In ***City Municipal Council Bhalki v. Gurappa (Dead) by legal representatives and Another, (2016) 2 SCC 200***, the Court set forth the principles, which I have already set forth above. When it is duty of the plaintiff to prove his title independently, for the defects in the case of the defendant, a decree cannot be passed. I have pointed out above in the principles of preponderance of



S.A.Nos.550 & 551 of 1999

probabilities that the case of the plaintiffs is more probable than the one projected by the defendants.

91.In ***Corporation of the City of Bangalore v. M.Papaiah and Another, (1989) 3 SCC 612*** the Court held that a court cannot declare title merely on the basis of the revenue records.

92.I should further remember that I am sitting in Second Appeal under Section 100 of the Code of Civil Procedure. Even though I have to look into the evidences and come to a conclusion whether or not the trial Court and the lower appellate Court have approached the case in the right manner, I am not entitled to re-appreciate the evidence and take a totally different conclusion, as Mr.T.R.Rajagopalan wants me to do.

93.In the result, the questions of law that were framed by this court are answered as follows:-

Question No.1 - When the plaintiffs have admitted the title of Parasuram Govindan, the common ancestor and having not proved allotment of the suit properties in their favour, is the learned



Subordinate Judge right in granting a Decree when there is no place of ouster?

The documents filed by the plaintiffs establish independent enjoyment by their predecessors Kanchamalai Pillai and Pachai pillai and therefore, this question of law is answered against the defendants and in favour of the plaintiffs.

Question No.2 - When there are documents to show the title of the plaintiffs from 1919, is the learned Subordinate Judge right in rejecting the claim of the defendants?

Apart from Ex.B1, the defendants have not produced any other document to show their continuous possession over the property. This question of law, too, is answered against the defendants/appellants and in favour of the plaintiffs.

88.In the light of the above discussions, this Court concludes as follows:-

- (i) The plaintiffs have failed to prove title with respect to Survey No.588/2 but have proved their lawful possession;
- (ii) The plaintiffs have proved their title and possession with respect to Survey No.588/3.



S.A.Nos.550 & 551 of 1999

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94. The decree for declaration of title with respect to Item No.I of the suit schedule property is set aside. The relief of injunction granted is confirmed. The Appeals are dismissed with respect to suit Item No.II in its entirety. In fine, the Second Appeals are partly allowed. No costs.

21.05.2026

nl / krk

Index	:	Yes / No
Neutral Citation	:	Yes / No
Internet	:	Yes / No
Speaking Order	:	Yes / No

To

1.The Subordinate Judge,
The Sub Court,
Cuddalore.

2.The District Munsif,
The District Munsif Court,
Panruti.



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S.A.Nos.550 & 551 of 1999

V.LAKSHMINARAYANAN, J.

nl / krk

S.A.Nos.550 & 551 of 1999

21.05.2026