

Thangamani Vs. Ganesan

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Court : Chennai

Decided On : Jan-23-2014

Judge : The Honourable Mrs.Justice S.Vimala

Appellant : Thangamani

Respondent : Ganesan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

23. 01.2014 CORAM THE HONOURABLE MRS.JUSTICE S.VIMALA Second Appeal(MD)No.136 of 2010 and M.P(MD)No.2 of 2010 Thangamani ... Appellant Vs. Ganesan ... Respondent Prayer Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.88 of 2009 Indigent O.P.No.18 of 2007 on the file of the Principal District Judge, Thiruchirapalli, dated 27.11.2009 reversing the judgment and decree passed in O.S.No.1110 of 2002 on the file of the II Additional Subordinate Judge, Thiruchirapalli, dated 14.09.2007. !For Appellant ... Mr.K.Balasundaram ^For Respondent ... Mr.S.Deenadayalan :

JUDGMENT

(i) Though normally attestation would not amount to admission/knowledge of contents of documents, yet having regard to special relationship between the parties and specific interest in the property, whether attestation would amount to

admission/knowledge of contents of documents and if so whether the attesting witness would be bound by the principle of estoppel?. (ii) Judgment not inter-parties rendered in another suit, though cannot operate as res judicata, whether it is admissible in evidence as evidence of assertion of a right to property in dispute in the subsequent suit?. In other words, to what extent and for what purpose, the judgment not inter-parties rendered in the previous suit would be relevant in the subsequent suit in deciding the title to the property?. These are the issues arising for consideration in this second appeal which has been filed by the plaintiff. For the sake of convenience, the parties in this appeal have been referred as per the nomenclature assigned to them in the trial court.

2. The plaintiff filed the suit, against his brother (i.e) the defendant, in O.S.No.1110 of 2002 seeking the relief of declaration and injunction. The trial court decreed the suit by judgment dated 14.09.2007. The defendant preferred the appeal in A.S.No.88 of 2009 and by the judgment dated 27.11.2009, the first appellate court allowed the appeal and thereby the suit came to be dismissed. Challenging the dismissal of the suit, the present second appeal has been filed. 2.1. The second appeal was admitted on the following substantial questions of law:- a)Whether attestation by a person having interest in the subject matter of a deed operates as estoppels as stipulated under Section 115 of the Indian Evidence Act, 1872?. b)Whether a finding in an earlier suit is a relevant fact to the subsequent suit relating to the same subject matter within the meaning of Section 40 of Indian Evidence Act, 1872?.

3. Brief facts:- The suit properties consisting of two items, originally belonged to plaintiff's mother Silambayee, who inherited the same from her father. She executed a settlement deed in favour of the plaintiff on 03.05.1974 vide Ex.A1. This document is said to have been attested by the defendant, but it is denied by the defendant himself. This item of the property was mortgaged by the plaintiff and in the mortgage deed,(vide Ex.A2) the defendant is said to have signed as an attesting witness. The plaintiff's mother executed a registered will dated 22.07.1992 in favour of the plaintiff and the plaintiff claims title to the second item of the property by virtue of the Will filed as Ex.A5. 3.1. The defendant is stated to have sold part of Item No.1 of the suit properties in favour of one Rajalingam,

which compelled the plaintiff to file the suit in O.S.No.1650/84 and obtained a decree under Ex.A7. The plaintiff's mother executed a general power of attorney dated 02.05.1973 (Ex.A11) which was cancelled under Ex.A12-Cancellation Deed. It is stated that taking advantage of the power of attorney in favour of him, he attempted to transfer the patta in his name and that made the plaintiff's mother to cancel the power of attorney. When the patta proceedings were challenged, the High Court under Ex.A18 directed the parties to seek appropriate relief from the civil court. Thereafter, the plaintiff has filed the suit seeking the relief of declaration and injunction. 3.2. The defendant had disputed the title, not only of his brother, the plaintiff, but also of his mother over the suit properties. It is his case that the properties originally belonged to Krishnasamy Konar Vagera and under whom, the defendant worked as Pannai Agent. Recognising the meritorious service rendered by the defendant, the properties are stated to have been given as a gift. The validity of settlement deed as well as the Will are disputed. The defendant claims title and possession relying upon the patta proceedings and other revenue records.

4. The trial court framed the issues with reference to validity of the Settlement Deed as well as Will and gave a finding that both documents are true and valid. The trial court relied upon the evidence of PW2 Raman and PW3 Pappathi who have spoken about the execution of Will by Silambayee. 4.1. So far as the settlement deed is concerned, the trial court has relied upon the diary entries made by the defendant himself under Exs.A27 to 30. Relying upon the attestation made by the defendant under Ex.A2, the trial court gave a finding that if really the properties belonged to the defendant, he would not have signed as an attesting witness in a document which recites that the property belonged to his brother. Having found that Silambayee had grievance against the defendant as evidenced by cancellation of power deed under Ex.A12 and held the Will to be true.

5. The first appellate court while reversing the judgment gave a finding that the attestation of the document by the defendant would not amount to admission of contents of the document and therefore the settlement deed cannot confer any title upon the plaintiff especially when the parent document of title in the name of Silambayee has not been produced before the court. In other words, the finding is

that the title of the plaintiff's ancestor itself has not been proved. So far as the Will is concerned, it was disbelieved on the grounds that a) the note dictated by the Testator was not produced; b)PW2 attesting witness, did not say that the Testator was in a sound disposing state of mind; and c)there is no mention in the Will that the Will is the last Will of the Testator. These findings are under challenge in this appeal.

6. It is the case of the appellant/plaintiff that he was conferred with the title by virtue of Ex.A1-Settlement Deed and Ex.A5-Will, both executed by her mother. It is his further case that he was asserting title to the property through Ex.A2-Mortgage Deed and by obtaining a decree under Ex.A7, though obtained against one Rajalingam and not as against the defendant. But the fact remains that the Rajalingam therein in O.S.No.1650/84 claimed title through the defendant herein namely, Ganesan, brother of the plaintiff. 6.1. The defendant disputes the title of the plaintiff and his mother and claims title through one Krishnasamy Konar Vagera. It is contended by the learned counsel for the respondent that the plaintiff did not prove title to the suit property by producing the parent document of the title. Needless to point out that as per Section 58 of the Indian Evidence Act, admitted facts need not be proved. By what means and through which act, the defendant has admitted the title of the plaintiff would be explained in the later part of the judgment.

7. The learned counsel for the appellant contended that the defendant is estopped from disputing the title of the plaintiff in view of the fact that the defendant himself had been the power agent of his mother from 1973 to 1990 wherein, the property has been stated to be belonging to the mother. It is claimed that admission is the best piece of evidence and the admission of the defendant that he is aware of the power deed would go to show that he has impliedly admitted the title of his mother. This admission can be accepted as true and correct and it can be relied upon, as the admission is nowhere repudiated/retracted/explained. 7.1. The learned counsel for the appellant relied on the decision reported in 1997(1) MLJ445Sherwood Educational Society vs Abid Namazie and two others, in order to substantiate the contention that admission is the best piece of evidence. It has been held in the above case as follows:- ".It is settled law that the best evidence in

a case is the admission of the opposite party.". In any civil proceedings, an admission adverse to the party to the proceedings, whether made by that party or by any other person may be given in evidence against that party for the purpose of proving any fact stated in the admission. The justification for this proposition is that there is likelihood of truth in a statement adverse to the interest of its maker which is not the case when the statement is made in his own favour. No party would normally make a statement against his own interest and if it is made, one can presume that such statement made must be true. It would be relevant to quote the admission made by DW1 during cross examination that his mother executed the power deed in his favour, (which had been executed even as early as during 1973). It would be relevant to point out that notice dated 05.08.1990 was issued to the defendant, by the plaintiff's mother intimating that the defendant has exceeded the authority given under the power of attorney and that in fact he was trying to misappropriate the property using the right to act as the power agent. Moreover, the defendant has not produced any document to show that the so-called owner namely, Krishnasamy Konar Vagera was having any right over the property. No document has been filed to show that Krishnasamy Konar executed any document in favour of the defendant himself.

8. Even though the defendant did not admit, having signed as an attesting witness under Ex.A1 Settlement Deed, he has not specifically disputed the attestation in the mortgage deed. Learned counsel for the respondent pointed out, the averment made in paragraph 4 of the written statement under which it is specifically stated that the defendant did not attest the alleged settlement deed. In paragraph 5 of the written statement, it is stated that mortgage deed is a collusive one. When an attempt was made to show that the signature of the defendant under Ex.A1 and A2 was that of him by comparing the signature available in the summons, acknowledgments, vakalat and other documents, the defendant has disputed the signature not only under Exs.A1 and A2 but also in the affidavit and counter filed by him. Under such circumstances, how to believe the evidence of the defendant that the signature as found in Exs.A1 and A2 was not that of him, is the issue to be considered. The truthfulness or otherwise should be discerned only by looking into the surrounding circumstances. It would be appropriate to point out the admitted entries made by the defendant in the Diaries which are marked as Exs.A27 to A30.

Exs.A27 and 30 pertain to power deed dated 26.05.1973 executed by his mother in favour of him. Ex.A29 pertains to document dated 03.05.1974 which is the settlement deed executed by the mother in favour of the plaintiff Ex.A1. Ex.A28 pertains to submission of the house plan to the municipal office on 29.01.1974. It would be relevant to make a mention that this action mentioned under Section A28 was the one directed to be performed under the power of attorney executed by the mother in favour of the defendant. All these entries would clearly go to show that the defendant had treated those entries as special and important. It also implies that he had knowledge about the execution of the power deed by the mother in favour of him and also about the execution of settlement deed in favour of his brother by the mother. Therefore, in all probabilities, he ought to have signed in Ex.A1-Settlement Deed as an attesting witness as contended by the plaintiff. The defendant has not explained as to the source of information for him to write that date in the diary, if he has not signed as an attesting witness.

8.1. What is the value of the attestation under Exs.A1 and A2 made by the defendant is the issue to be considered. It is the contention of the learned counsel for the appellant that the attestation would amount to admission and consent and therefore, the plaintiff is relieved of the responsibility from proving the title. On the other hand, it is the contention of the learned counsel for the respondent that the attestation would not amount to admission of the contents of the document. Therefore, it is necessary to consider the effect/impact of attestation said to have been made by the defendant under Ex.A1/Ex.A2.

8.2. In order to appreciate the contentions raised with regard to the effect of attestation, it is necessary to understand the meaning of the word 'attested' The word 'attested' is defined in Section 3 of the Transfer of Property Act. ".attested"., in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:].". registered". means

registered in 4[5[any part of the territories]. to which this Act extends]. under the 6[law for the time being in force regulating the registration of documents:". 8.3. The definition of the word 'attest' as given in the Law Dictionary also is explanatory of the definition given above and therefore, it would be relevant to quote it. The word 'attest' means; (1) to bear witness; testify; and (2) to affirm to be true or genuine; to authenticate by signing as a witness. ".To attest". is to bear witness to a fact. In order to constitute a valid attestation, the essential conditions are, (1) There must be two attesting witnesses; (2) Each of them must have seen the executant sign or affix his mark to the instrument; and (3) Each of the two attesting witnesses must have signed the instrument in the presence of the executant. (4) The witnesses had an animus to attest. In other words, animus attestandi is an essential element to be proved. 8.4. A person may sign in a document in different capacity and all those persons who sign in a particular document need not be an attesting witness. In *Abdul Jabbar v. Venkatasastri*, : [1969]. 3 SCR513 the Supreme Court has pointed out who could not be an attesting witness even though those persons have signed in the document as a witness. 8.5. The Hon'ble Supreme Court also pointed out that If a person puts his signature on the document for some other purpose. e.g., to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.' 'It is to be noted that the word 'attested the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put the essential conditions of a valid attestation under Section 3 are (1) Two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgment of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature animo attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature. If a person puts his signature on the document for some other purpose. e.g., to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.' 8.6. The Hon'ble Supreme Court also has held that, a party to a document cannot be an attesting witness, for, the object of attestation is protection against fraud and undue influence (*Harish Chandra vs. Bansidhar* AIR 1965 SC1738. In English Law

also attestation implies that the attesting witness was present at the execution and can testify that the deed was executed voluntarily by the proper person (Freshfield vs. Reed 1842 9 M&W404. 8.7. Having seen the meaning of the word 'attestation' and who could be an attesting witness, then it would be necessary to look into the mode of proof of an attested document. Proof of an attested document must be in accordance with Sections 68 to 71 of the Indian Evidence Act. Mere attestation does not operate as estoppel for the attestation does not fix an attesting witness with the knowledge of the contents of the document. Attestation does not by itself implies consent, though there may be circumstances which show that the attesting witness had knowledge of the contents of the documents attested and consented to. It was held in the case of Alamelu Ammal and others vs. Govindasamy Naicker 2003 (2) MLJ99 that where a person having a tangible interest in the property affected by a deed attest the deed, his attestation will tantamount to proof of consent. In the above judgment, the judgment of the Division Bench of the Madras High Court reported in 1977 TNLJ174 Kanakavalli Ammal Vs. Ulaganatha Pillai, has been relied upon where under it has been held as follows:- ".It is an accepted principle of law that mere attestation of a document would not by itself impute knowledge of the contents or the recitals therein. But this principle cannot be taken to be axiomatically true, for there are attestations and attestations and they vary in accordance with the circumstances and facts of each case. If in a given case the attestation by a person interested in the property which is dealt with under the challenged document attests it under circumstances and events which would impute knowledge of the recitals therein, then the said attestor having approbated the document and the transaction by such an active participation and involvement, cannot reprobate later to suit her or his convenience.". 8.8. Therefore, it is for this Court to find out as to whether the circumstances and events exist in this case which would impute knowledge of the recitals therein, to the defendant. In other words, the court has to find out apart from the signature in the document whether there are other circumstances available which could be construed as amounting to knowledge regarding contents of the document. The following circumstances would go to show that attestation in this case would amount to knowledge and consent. 1)the defendant is the brother of the plaintiff; 2)the plaintiff claims title through his mother; 3)the plaintiff claims title through Ex.A1-Settlement Deed

dated 03.05.1974 ; 4)there had been a power of attorney in favour of the defendant right from the year 1973 executed by his mother under Ex.A11 dated 02.05.1973. This power of attorney had been executed in respect of properties covered under Ex.A1- settlement deed and Ex.A5-Will. 8.9. Therefore, these facts would go to show that the defendant might have had dual interest in the property. The defendant would have the legitimate expectation that he would inherit the property as a legal heir. Moreover, he had a subsisting interest in the property as power of attorney. Because of the close-knitted relationship between the plaintiff and the defendant, he ought to have remained interested in finding out the contents of the document. The relationship between the parties, the status of the defendant as power of attorney and the future possibility of the defendant inheriting the property as a legal heir would have certainly sounded a note of caution to the defendant and the defendant having noted those events in the diary, can safely be presumed to have knowledge regarding the contents of the document. Therefore, he is estopped from disputing the title of the plaintiff or his mother. It would be appropriate to point out the ingredients of estoppel which is given in nutshell in the following decision reported in AIR 1924 PC213Mitra Sen Singh vs Janki Kuar. ".The law of India is compendiously set forth in Section 115 of the Indian Evidence Act, Act I of 1872. It will save a long statement by simply stating that section, which is as follows: When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed to deny the truth of that thing.". 8.10. The defendant by his conduct and act intentionally permitted his brother and mother to believe that they are the owners of the property and therefore he is estopped from disputing the validity of settlement deed and the Will. 8.11. At this stage, it would be appropriate to quote the observation of the Madras High Court made in Jayarama Chandra Iyer vs. Thulasi Ammal and others, (1975) 2 MLJ167 with regard to the effect of attestation by a person having existing interest in the property. It has been held that if an attestor has an existing interest in the property dealt with in the document, the attestation has been taken in order to bind him as to the correctness of the recitals therein. 8.12. While dealing with the question as to, whether the attestations of the next presumptive reversioners are sufficient proof, under the circumstances, of

their consent to and ratification of the alienations of the respective properties, the Madras High Court considered the ordinary course of conduct of Indians, when they take attestation from a person having interest in the property. The decision reported in *Kandasami Pillai v. Rangasami Nainar* (1912) 23 M.L.J.

301, at p. 306 is relied upon, wherein, it is said that, ".having regard to the ordinary course of conduct of Indians in this 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 in the document, are true and will not be disputed by him as against the obligee under the document.". 8.13. In the case of *Vadrevu Ranganayakamma v. Vadrevu Bulliramayya* (1879) 5 C.L.R. 439 at p. 447, the Privy Council said ".But it frequently occurs in Indian documents that a man signs as a witness to show that he is acknowledging the instrument to be correct.". 8.14. Hon'ble Justice Sadasiva Aiyar said ".I may respectfully add that, in my pretty long experience as a Judicial Officer, if the attester of a document has an existing interest in the property dealt with in the document, it has been always the case that his attestation has been taken in order to bind him as to the correctness of the recitals therein.". 8.15. In *Gopaul Ghunder Manna v. Gour Monee Dossee* (1866) 6 W.R. (C.R.) 52, the learned Judges clearly decided that a reversioner attesting a conveyance by a Hindu widow cannot impeach the sale afterwards, thus treating the attestation as tantamount to assent. In short, they say that the effect of his being an attesting witness to the conveyance shows the acquiescence on his part in the act of the widow. 8.16. In *Matadeen Roy v. Mussodun Singh* (1868) 10 W.R. (C.R.) 293, the implication of attestation made by one brother made in a document executed by another brother. The observations made are; ".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 and his own, and allowed him to do so without objection, it would be evidence against him either that the whole property did belong to his brother or that he was acquiescing in his brother's act of selling the whole.". This again is a clear authority for the proposition that attestation by a person, who has an interest, raises the prima facie presumption that he knows the contents and acquiesces in

the disposition of the property by the deed he attests. 8.17. When there are circumstances which permit the court to raise a presumption that the attesting witness had knowledge regarding contents of documents, then the burden of proof is shifted to the other side to show that the attesting witness could not have got knowledge regarding the contents of the document. The plaintiff has proved the circumstances which would permit the court to raise such a presumption. But the defendant did not adduce evidence to rebut the presumption. The legal position has been laid down in the decision reported in *Kandasami Pillai v. Rungasami Nainar* (1912) 23 M.L.J.

301 wherein, it has been held that, a presumption is raised, when an adult man of full mental capacity attests a deed and when such a man has admittedly, a tangible interest in the property affected by the deed, that his attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attestor did not know all the recitals in the deed and did not consent to the alienation made by the deed, to prove the contrary. I do not intend to lay down that the attestation of a casual witness who had then no interest in the property affected by the deed must estop him for all time and when he afterwards acquires an interest in the property affected by the deed.....". 8.18. From the reasons stated above, it would be clear that the plaintiff has proved title to the suit property and he is entitled to declaration.

9. The next contention of the learned counsel for the appellant is that the claim of the plaintiff over the property had been decades together which is evidenced by the judgments filed relating to earlier litigation and therefore, there is no impediment for the court to uphold the title of the plaintiff. But it is the contention of the learned counsel for the respondents that the judgments are not inter-parties and therefore, the judgments are not binding upon the respondent and therefore the claim of the plaintiff cannot be upheld based upon the past judgments alone. 9.1. Strictly speaking, even though the judgments relied upon are not inter-parties, but the party therein in the previous suit claims right through the respondent herein. The respondent herein has admitted knowledge regarding the existence of those judgments. Even otherwise, the extent to which those judgments are binding

has to be considered. 9.2. There is evidence to show that the plaintiff has consistently claimed right over the property and he has been fighting the litigation in the court. The plaintiff has relied upon the judgment in O.S.No.1650/84 dated 25.11.1991 and judgment in O.S.No.719/85 dated 06.03.1998, judgment in A.S.No.144/98 dated 21.04.1999 and judgment in O.S.No.443/2000 dated 28.10.2003 (against Municipal Corporation) to show that there had been incessant assertion of right by him. 9.3. To have the effect of res judicata, a judgment inter-parties alone can be admitted in evidence. For other purposes (i.e) where the judgment is sought to be used either to show that there had been exercise of right or admissions made or how the property was dealt with earlier or the conduct of parties, the judgment may be used under Section 11 or 13 as relevant evidence. As held in the case of AIR1964 Patna 66, Mahabir Mahtou Vs. Sonmati Kuer, if the previous judgment deals with right asserted or denied or recognised, it would be relevant under Section 43 of the Evidence Act, but when it deals with a transaction consisting of certain facts, it would be relevant under Section 13. 9.4. Admittedly, those judgments cannot be relied upon for the purpose of showing that the plaintiff has established the title as the defendant herein is not a party. However, those judgments can be relied upon to show that there had been an assertion of right over the property by the plaintiff and he was successful in establishing that right. .

10. The learned counsel for the respondent strongly relied upon the observations made in paragraphs 19, 26 and 27 of the judgment of the first appellate court and wanted confirmation of the judgment of the first appellate court. There is an observation in paragraph 26 that the plaintiff has not filed any prior document of title. In view of the conduct of the respondent in admitting the title of the plaintiff's mother by acting upon the power deed executed by the mother, he is estopped from disputing the title and therefore the non filing of the document by the plaintiff is not fatal.

11. The defendant contends that the Will under Ex.A2 is also not proved on the ground that; a) The note dictated by the Testator was not produced; b)PW2 attesting witness, did not say that the Testator was in a sound disposing state of mind; and c)There is no mention in the Will that the Will is the last Will of the Testator. These contentions are untenable. It is not necessary that in every case

the note prepared for the purpose of writing the will must be produced before the court unless the parties are called upon to produce it and once again it is subject to the availability. 11.1. Every Will need not contain a clause that it is a last Will of the Testator. Till yet another Will is executed, the existing Will remains as a last Will. 11.2. The mental status of the propounder of the Will, need not be proved by express verbal statement alone. It can be proved by other circumstances which would indicate the mental status. The attesting witness has spoken about the execution of Will by Silambayee. It is the evidence of the plaintiff that he was protecting his mother till her death. It is stated in the evidence that the mother gave instruction regarding the disposal of the property and after writing the same in a plain paper and later in the document it was read over to the mother by the document writer and the mother admitted the same to be correct. This part of the evidence go to show that the mother was in sound disposing state of mind. PWs 2 and 3 have supported the evidence of PW1. 11.3. The strained relationship between the defendant and the propounder of the Will is explicit through the cancellation of power deed. Moreover, the mother has alleged that the son has attempted to misappropriate the property by misusing the power of attorney executed by her. Therefore, there is nothing unnatural in the mother having preferred the plaintiff to confer title upon him. Therefore, the plaintiff has proved title to Item No.2 of the suit property.

12. The learned counsel for the appellant submitted that Item No.1 being a vacant site, possession follows title and in support of the proposition, the decision reported in 2001 (3) CTC393 Murugaiyan and two others vs. Subbaiyan, relied upon. ".The plaintiffs have title. Possession follows title."

13. Relying upon the observation in paragraph 19, the learned counsel for the respondent contended that patta stands in the name of the defendant and therefore, the defendant has established the title. Answer to the contention is found in paragraph 26 of the first appellate court judgment itself, where the first appellate court indicated that patta is not a document for title. Therefore, the defendant cannot claim any title based upon patta. The defendant failed in proving the title to the suit property. The defendant as DW1 has admitted in cross examination that her mother was residing in the suit property and the plaintiff was

staying along with the mother. Therefore, the plaintiff's possession over Item No.2 is also an admitted fact.

14. The plaintiff has established the title and possession over the suit properties and hence the dismissal of the suit by the first appellate court has to be set aside and the suit has to be decreed.

15. In the result, the substantial questions of law raised are answered in favour of the plaintiff and the second appeal is allowed. The judgment and decree in A.S.No.88 of 2009 (Indigent O.P.No.18 of 2007 on the file of the Principal District Judge, Thiruchirapalli) dated 27.11.2009 reversing the judgment and decree passed in O.S.No.1110 of 2002 on the file of the II Additional Subordinate Judge, Thiruchirapalli, dated 14.09.2007 is hereby set aside. The suit in O.S.No.1110 of 2002 is decreed. Consequently, M.P(MD)No.2 of 2010 is closed. No costs. NB2 To 1) II Additional Subordinate Judge, Thiruchirapalli. 2) Principal District Judge, Thiruchirapalli.

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