

**Devendran Vs. Ramalinga Padayatchi and ors.**

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**Court :** Chennai

**Decided On :** Jan-11-2012

**Judge :** M.Venugopal, J.

**Appeal No. :** S.A.No.383 of 1998

**Appellant :** Devendran

**Respondent :** Ramalinga Padayatchi and ors.

**Advocate for Def. :** Mrs.Mythili Suresh, Adv.

**Advocate for Pet/Ap. :** Mr.V.Raghavachari, Adv.

**Judgement :**

The Appellant/1st Respondent/1st Defendant has projected this instant Second Appeal as against the Judgment and Decree dated 18.12.1996 in A.S.No.184 of 1996 passed by the Learned Civil Judge (Senior Division), Kallakurichi in reversing the Judgment and Decree dated 22.06.1994 in O.S.No.656 of 1986 passed by the Learned Principal District Munsif, Kallakurichi.

2.The First Appellate Court viz., the Learned Civil Judge (Senior Division), Kallakurichi, in A.S.No.184 of 1996 on 18.12.1996 (filed by the 1st Respondent/Plaintiff) has inter alia observed that 'the trial Court has held that without seeking the relief of declaration the suit is not maintainable and further, this suit has been filed against the Defendants praying for the relief of injunction

not to interfere with the 1st Respondent/Plaintiff's enjoyment and possession of the suit property and also that the 1st Respondent/Plaintiff has no right to restrain the owner of the property viz., 1st Respondent/Plaintiff and accordingly, held that the suit filed praying for the relief of permanent injunction is maintainable and consequently, allowed the Appeal with costs, thereby, setting aside the Judgment and Decree of the trial Court, passed in the original suit.'

3.Before the trial Court, in the main suit, at the time of trial 1 to 5 issues have been framed for adjudication. On the side of 1st Respondent/Plaintiff, witnesses PW1 and PW2 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the Defendants, witnesses DW1 and DW2 have been examined and Ex.B.1 to Ex.B.4 have been marked.

4.The trial Court, on an appreciation of oral and documentary evidence available on record, has come to a resultant conclusion that without praying for the relief of declaration, the 1st Respondent/Plaintiff has filed only the suit of permanent injunction and as such, the suit is not maintainable and consequently, dismissed the suit, leaving the parties to bear their own costs.

5.Being dissatisfied with the Judgment and Decree of the trial Court in O.S.No.656 of 1986 dated 22.06.1994, the 1st Respondent/Plaintiff as an appellant, has filed A.S.No.184 of 1996 (formerly A.S.No.442 of 1994 on the file of Sub Judge, Villupuram) and after contest the 1st Appellate Court viz., Civil Judge (Senior Division), Kallakurichi, has allowed the Appeal with costs.

6.The Appellant/1st Respondent/1st Defendant, feeling aggrieved against the Judgment and Decree of the First Appellate Court in A.S.No.184 of 1996, dated 18.12.1996 has filed this Second Appeal, before this Court, as an aggrieved person.

7.At the time of admission of the Second Appeal, this Court has formulated the following substantial questions of Law for determination.

1)Whether the Court below ought not to have held that the Plaintiff cannot maintain the suit as against true owner, namely, the Defendants and the vendor of

the Plaintiff is incompetent to convey the property in favour of the Appellant?

2. Whether the Lower Appellate Court ought to have held that the burden of proving the validity of the Sale Deed under Ex.A.1 is upon the Plaintiff and in the absence of proof that his vendor had title to the property whether the Lower Appellate Court ought to have dismissed the suit?

3. Whether the Lower Court ought to have held that the pleading and evidence are at variance and the Plaintiff had filed the document under Ex.A.3 that relate to the year 1980 and as per his case, he had put up cow shed only in 1984 and under such circumstances, the Lower Appellate Court should have rejected relief of injunction?

8. The Contentions, Discussions and Findings on substantial questions of law Nos.1 to 3:

The Learned Counsel for the Appellant/1st Defendant submits that the First Appellate Court ought to have seen that the onus of establishing possession is on the 1st Respondent/Plaintiff and that the 1st Respondent/Plaintiff in the Plaint has averred that he has put up the Cow Shed during the year 1984, but, he produced the record relating to the period 1980-1981 and also that, no reliance can be placed on the said document to come to the conclusion that the 1st Respondent/Plaintiff is in possession of the suit property.

9. The Learned Counsel for the Appellant/1st Defendant contends that when the title of the 1st Respondent/Plaintiff is denied, it is for the 1st Respondent/1st Plaintiff to prove the title as well as the possession and in the instant case, the 1st Respondent/Plaintiff has made an endorsement that they have not pressed the Issue Nos.1 and 2 relating to the title and the genuineness of Ex.A.1 Sale Deed, dated 29.01.1980 and indeed, the First Appellate Court ought to have dismissed the suit as not maintainable, particularly, when the validity of the Sale deed is the subject matter of the dispute.

10. The stand of the Appellant/1st Defendant is that the 1st Respondent/Plaintiff has sought the relief of injunction against the Appellant/1st Defendant and the

remaining Defendants, who are the real owners of the property. As a matter of fact, the suit for permanent injunction in law, is not maintainable against the true owner of the property. But, these vital aspects of the matter have not been appreciated by the First Appellate Court in a proper and real perspective.

11.It is the further contention of the Learned Counsel for the Appellant/1st Defendant that Jayaraman, Vendor of the 1st Respondent/Plaintiff has not been examined as a witness before the trial Court and further, it is not proved that Jayaraman is competent to convey the property to the 1st Respondent/Plaintiff and that the non-examination of the said Jayaraman is fatal to the proceedings. Indeed, the First Appellate Court should have dismissed the suit filed by the 1st Respondent/Plaintiff.

12.The Learned Counsel for the Appellant/1st Defendant cites the decision of the Honourable Supreme Court Anathula Sudhakar v. P.Buchi Reddy (Dead) by Lrs. And Others, (2008) 4 Supreme Court Cases 594, wherein it is held that 'where the Plaintiff's title is under a cloud and he does not have possession, the remedy is suit for declaration and possession, with or without consequential injunction etc.'

13.He also seeks in aid of the decision of this Court Chinna Nachiappan and another v. PL.Lakshmanan, 2007(4) CTC 70, wherein it is held that when plaintiff itself refers to serious title disputes between the Plaintiff and the Defendant, Plaintiff cannot seek for a bare permanent injunction and ought to pray for declaration of title also and that the suit is bad for absence of prayer for declaration of title.'

14.Yet another decision of this Court E.Sathidass v. C.Ponnuswamy and another, 2011 (1) CTC 801, is relied on the side of the Appellant/1st Defendant to the effect that a mere poring over and perusal of the aforesaid judgment would amply make the point clear that a Plaintiff by filing a mere injunction Suit cannot call upon the Court to conduct a broad based roving enquiry in respect of the title of the parties over the suit property and the Court also would not be justified in doing so. Once the Court comes to the conclusion that there is some serious title dispute or cloud relating to the title over the suit property, then the parties should be driven to the extent of filing a comprehensive Suit only.

15.The Learned Counsel also cites upon the Judgment of this Court dated 27.09.2011 in S.A.No.1213 of 2011 between Balasubramanian v. R.Rajammal and another, wherein in Para 6, it is inter alia observed and held hereunder:

6...The Hon'ble Supreme Court has laid down the guidelines to be followed in a suit for injunction the Judgment reported in Anathula Sudhakar v. P.Buchi Reddy, MANU/SC/2008: 2008 (4) SCC 594:2009 (2) Law Weekly, 546 and they are as follows:

To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is rised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. (b)As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. (c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar v. Alagammal, MANU/SC/0416/2005: 2005 (6) SCC 202). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for

mere injunction. (d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the Court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. As per the guideline, in the absence of any necessary pleading and framing of issue regarding the title the Court cannot investigate or examining the title in a suit for injunction. Further, even where there are necessary pleadings and issue was also framed, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction. In this case also the appellant questioned the title of the 1st respondent by contending that though the sale in favour of the 1st respondent was earlier in point of time the 1st respondent purchased the property through a Power Agent whose power was not registered and therefore the 1st respondent will not get any right to the property. The appellant admittedly purchased the property in the year 1995 and the 1st respondent purchased the property in the year 1991 and having regard to the question of title whether the purchase by the 1st respondent from the real owner through unregistered power is valid or not is a complicated question to be decided separately and considering that the lower appellate Court has rightly dismissed the suit filed by the appellant by granting liberty to the appellant to file a fresh suit with prayer for declaration. Hence, I do not find any reason to interfere with the Judgment and Decree of the lower appellate Court and no substantial question of law arises for consideration in the Second Appeal and the Second Appeal is dismissed.

16. In response, it is the contention of the Learned Counsel for the 1st Respondent/Plaintiff that the 1st Respondent/Plaintiff has purchased the suit

vacant site as per Ex.A.1 Sale Deed, dated 29.01.1980, from the lawful owner viz., Jayaraman (Vendor) and also that the 1st Respondent/Plaintiff has been in enjoyment of the suit property by putting up a cattle shed and that since the Defendants out of enmity and fashion in the village have threatened the 1st Respondent/Plaintiff to interfere with the suit property, from 14.09.1986 and endeavouring to dismantle the shed put up by the 1st Respondent/Plaintiff, the 1st Respondent/Plaintiff has filed a suit for injunction restraining the Defendants and their men, in any way interfering with the possession and enjoyment of the suit property.

17.It is the further submission of the 1st Respondent/Plaintiff that the trial Court has dismissed the suit on a wrong appreciation of the facts and circumstances of the case and also oral and documentary evidence available on record. However, the Learned Counsel for the 1st Respondent/Plaintiff submits that the First Appellate Court has rightly held that on Defendants' side, it is not established that the vacant lands and house have not been divided and also, opined that the suit property, belonged to Jayaraman, who has been in enjoyment of the same and from him, the 1st Respondent/Plaintiff after purchasing the same, has been in enjoyment of the property and resultantly, held that the 1st Respondent/Plaintiff is entitled to get the relief of injunction as prayed for in the Plaint and allowed the Appeal with costs.

18.However, the Learned Counsel for the 1st Respondent/Plaintiff relies on the decision of this Court Muthu Goundar v. Poosari @ Palaniappan and 4 others, 1998 (I) CTC 477, at Pages 481 and 482 wherein at Para 15 it is laid down as follows:

15. I need not consider the agreement of sale executed by the plaintiff and one Shanmugam - P.W.2 under Exhibit A.2 dated 29.6.1981. However, Exhibit A.3 is a patta pass book which contains the name of Shanmugam and Chinnappan. Shanmugam is a lessor of the plaintiff who was examined as P.W.2. No doubt, there is a minor correction in the name of Chinnappan. However, the said document is issued by the competent authority which contains not only the name of P.W.2 but also the survey number, extent, village, kist payable etc., After going

through the Exhibit A.3 carefully, I am unable to accept the reason given by both the Courts below in rejecting the said document. No doubt in Exhibit A.4 and A.7 same number is mentioned. However, we are concerned with the fasli 1381 which is relevant to consider the case of the plaintiff. Exhibit A.5 relates to fasli 1381, wherein the name of Shanmugam is mentioned. The courts below rejected the kist receipts mainly on the ground that those kist receipts are carbon copy and not the original. It is not possible to reject those documents on the only ground that those documents are carbon copies and not the original. Exhibit A.9 is the settlement order passed in favour of grandfather of the P.W.2 relating to the suit property and Exhibit A.10 is also supports the case of the plaintiff. By analysing the necessary averments in the plaint, oral evidence of P.Ws.1 to 4, and Exhibits A.3,5,9 and 10, I am satisfied that the plaintiff has established his case with regard to his possession and enjoyment in the suit property. When the acceptable documents are available, it is Safe to accept and rely upon them rather than accepting the oral evidence. In our case the defendants have very much relied on the oral evidence and the Courts below have also committed an error in preferring the oral evidence let in on the side of the defendants than the acceptable valid documentary evidence let in on the side of the plaintiff. In the light of what is stated above, the finding of the Courts below are perverse and contrary to the evidence on records. I also hold that the reason given by the Courts below in not considering the documentary evidence let in on the side of the plaintiff also cannot be sustained.

19.It is to be noted that the 2nd Defendant has been deleted from the suit. Also, 4 and 5 Defendants, being the Legal Representatives of the deceased 3rd Defendant, have not appeared in the suit and therefore, they have been set Ex parte.

20.Ex.A.1 is the Registered Sale Deed in respect of the suit property dated 29.11.1980, executed by Jayaraman for himself and for his minor son aged 5, to and in favour of the 1st Respondent/Plaintiff, for a consideration of Rs.5,000/-. At this stage, a perusal of Ex.A.1 Registered Sale Deed dated 29.11.1980 shows that there is no reference to any parental document or as to how the predecessors of vendor Jayaraman has got the property and that too in what manner.

21.Ex.A.2 is the Sale Deed dated 05.08.1927, executed by Muruga Padayatchi and his wife Sundarammal, to and in favour of Chinnu Padayatchi. Ex.A.3 and Ex.A.4 are the House Tax Receipts in the name of the 1st Respondent/Plaintiff relating to the year 1980 to 1985, 1986-1987, 1987-1988, 1990-1991, 1991-1992 and 1992-1993.

22.Admittedly, the suit property is a vacant site in Kallakurichi Taluk, Pootai Village, Natham Survey No.477/9 with thatched shed therein. But, Ex.A.1 Registered Sale Deed dated 29.11.1980 speaks of land ad-measuring 2160 sq.ft.

23.Ex.B.1 is the Partition Deed, dated 21.07.1975, entered into between Sasnniyasi Padayatchi sons (1)Jayaraman(Vendor of the 1st Respondent/Plaintiff) (2)Devendran (3)Seenivasan (4)Gunasekaran (1 to 3 Defendants in the suit). After the death of the 3rd Defendant Gunasekaran, his Legal Heirs 4 and 5 Defendants have been arrayed as parties to the suit.

24.A perusal of the recitals of Ex.B.1 Partition Deed dated 21.07.1975 shows that the Vendor of the 1st Respondent/Plaintiff viz., Jayaraman and his brothers viz., Defendants 1 to 3 have already partitioned the movable properties in front of certain mediators and now, they are dividing the ancestral properties as ABCD schedule.

25.Ex.B.2 is the Moochalika Agreement dated 21.07.1975 between the Vendor of the 1st Respondent/Plaintiff viz., Jayaraman and his three brothers (Defendants in the suit). This agreement speaks of the fact that they have only divided the lands and they are going to execute a partition agreement and that there is a common thatched house and two vacant sites in Village Chavadi as common and they have not been divided and since presently, it is not convenient for them to divide and after the death of the mother, they have agreed to divide the same and therefore, they have not included the same in the Partition agreement and only after the life time of her mother, they have to divide the aforesaid properties based on their convenience.

26.The First Appellate Court in his Judgment in Appeal in Para 10 has among other things observed that if really, Ex.B.2 Moochalika Agreement dated

21.07.1975, has been written earlier, viz., on the same date of Ex.B.1 Partition Deed dated 21.07.1975, then, certainly it would have been made mention of in Ex.B.1 Partition Deed dated 21.07.1975 and also that no witness (other than relatives) has been examined to Ex.B.2 Moochalika Agreement dated 21.07.1975 etc., and has accepted the version of the 1st Respondent/Plaintiff and that Ex.B.2 Moochalika Agreement dated 21.07.1975, is not a true one and also has been created for the purpose of the suit, etc.

27.In Ex.B.1 Partition Deed dated 21.07.1975, the suit property viz., vacant site does not find a place. The Learned Counsel for the 1st Respondent/Plaintiff submits that the vendor of Ex.A.1 Sale Deed dated 29.11.1980 viz., Jayaraman is now colluding with the Defendants and the suit property has been given to the vendor of the 1st Respondent/Plaintiff viz., Jayaraman by means of oral partition and since the 1st Respondent/Plaintiff is a valuable purchaser of the suit property by virtue, Ex.A.1 Registered Sale Deed dated 29.11.1980, executed by Jayaraman to and in favour of the 1st Respondent/Plaintiff, there is no reference in the said document as to how Jayaraman, the vendor of the 1st Respondent/Plaintiff got the title to the suit property. Per contra, the recitals of Ex.A.1 Sale Deed dated 29.11.1980 refers to the execution of Sale Deed in respect of the vacant site of 2160 sq. ft viz., 0.05 cents by the vendor of the 1st Respondent/Plaintiff viz., Jayaraman for himself and on behalf of his 5 year minor son Senthil to and in favour of the 1st Respondent/Plaintiff.

28.At this stage, a perusal of the Plaint significantly shows that there is no reference to the effect that the vendor of the 1st Respondent/Plaintiff viz., Jayaraman has got the suit property in oral partition, in the family. However, in the Written Statement of the 3rd Defendant adopted by the 1st Defendant, in para 6, it is categorically pleaded that the 1st Respondent/Plaintiff has no right to the suit property and further in Para 3, it is mentioned that the execution of Sale Deed by Jayaraman, to and in favour of the 1st Respondent/Plaintiff is an invalid one and that the 1st Respondent/Plaintiff has to file a suit seeking the relief of declaration.

29.It is the evidence of PW1 (1st Respondent/Plaintiff) that at the time of purchase of the suit property through Ex.A.1 Sale Deed dated 29.11.1980 for Rs.5,000/-, it

remained as a vacant site and that he has obtained a parental document viz., Ex.A.2 Sale Deed 05.08.1927 from his vendor Jayaraman and that Defendants 1 to 3 are the brothers of his vendor Jayaraman and his vendor Jayaraman has got the suit property under partition in the family and it is wrong to state that he has not enjoyed the suit property.

30.It is the further evidence of PW1 that he has put up a cattle shed two years before the year 1986 and that it is wrong to state that Ex.A.2 Receipts are unrelated to the suit property and further that after his purchase through Ex.A.1 Sale Deed dated 29.11.1980, the Defendants have come to the suit property to remove the cattle shed.

31.The evidence of PW2 is to the effect that Jayaraman and his brothers have divided the lands through Partition and executed documents and the vacant site has been partitioned orally and the site has been allotted to the share of Jayaraman and that Jayaraman has enjoyed the suit property by putting up a haystack and later, Jayaraman has sold the suit property for Rs.5,000/- to the 1st Respondent/Plaintiff and that he has signed as a witness in Ex.A.1 Sale Deed and it is wrong to state that no partition has taken place in respect of the suit property between Jayaraman and his brothers.

32.DW1 (deleted 2nd Defendant) in his evidence has deposed that his brothers are (1)Jayaraman (2)Devendran (3)Seenivasan (4)Gunasekaran (Defendants) and Gunasekaran has expired and 4 and 5 Defendants are his heirs and in the family, Partition has taken place in respect of the land and documents have been written and Ex.B.1 is the Partition Deed dated 21.07.1975 and apart from his lands in Ex.A.1 for their family, one thatched house and two vacant sites have remained and since the 1st Defendant has been employed in the Army and another brother has been studying B.A., Degree course and also that only two brothers have been married and his mother has been alive, it has been decided to partition the thatched house and two vacant sites after the death of her mother and therefore, Ex.B.2 Moolchika Agreement dated 21.07.1975 has been written by his maternal uncle Athimoolam, who has signed as a witness in Ex.B.1 Partition Deed, dated 21.07.1975.

33.It is the evidence of DW1 (in cross examination) that Jayaraman, 1st Respondent/Plaintiff's vendor has sold the lands which he has obtained through partition and that he is working as a Teacher.

34.DW2 in his evidence has deposed that he has written Ex.B.2 Moochalika Agreement dated 21.07.1975 and in Ex.B.1 Partition Deed, dated 21.07.1975, it is not mentioned that Ex.B.2 Moochalika Agreement has been written earlier and the writing of Ex.B.2 Moochalika Agreement details are not known to the Writer of Ex.B.1 Partition Deed dated 21.07.1975 and that he is the maternal uncle of the 1st Defendant, 2nd Defendant (deleted later), 3rd Defendant (deceased) and the vendor of the 1st Respondent/Plaintiff viz., Jayaraman.

35.Generally, in a simple suit for injunction which relates to possession only the question of title will not be a substantial and direct issue for determination. It is well settled principle in law that the relief of injunction as prayed for in the suit by a litigant is to be decided by finding out as to who is in possession as on day of filing of the suit. One cannot ignore an important fact that a finding on title is not to be recorded in an injunction suit, unless there are essential and necessary pleadings and also appropriate issue relating to title (either specifically or impliedly). Even if there are necessary plea and issue, if the subject matter relates to Question of Fact and Law and pertaining to title, a Court of law will relegate the litigants to file a comprehensive suit for declaration of title instead of deciding the issue in a suit for bare injunction.

36.In the instant case on hand, before the trial Court, 1 and 2 Issues viz., whether the suit property belongs to the 1st Respondent/Plaintiff and whether the Sale Deed dated 29.11.1980, alleged by the 1st Respondent/Plaintiff is a true one?, whether it has valuable consideration and a valid one, have not been pressed by the 1st Respondent/Plaintiff for determination.

37.But the Appellate Court has framed the aforesaid two issues as Point Nos.1 and 2 for determination in A.S.No.184 of 1996 and has dealt with the same. As stated earlier, though the 1st Respondent/Plaintiff has purchased the vacant site as per Ex.A.1 Sale Deed dated 29.11.1980 from Jayaraman (brother of Defendants 1 to 3) for a valuable consideration of Rs.5,000/- it is clear that apart

from Jayaraman, other Defendants 1 to 3 viz., his brothers have got a right in the suit property as Co-owners. Since, the title of the 1st Respondent/Plaintiff is questioned by the Defendants 1 and 3 Defendants (as per Written Statement) and also, when a plea also raised before this Court that the 1st Respondent/Plaintiff's vendor Jayaraman has no right to sell the family property viz., the suit property, then, this Court is of the considered view that the 1st Respondent/Plaintiff should have only filed a suit for Partition or for any other appropriate relief as the case may be. Without seeking the relief of either partition or any other appropriate relief, the mere suit filed for bare injunction by the 1st Respondent/Plaintiff is not per se maintainable before the trial Court, in view of the title of the 1st Respondent/Plaintiff being denied/disputed by the Defendants. Viewed in that perspective, the contra view taken by the First Appellate Court viz., the Learned Civil Judge (Senior Division), Kallakurichi and resultantly, allowing the Appeal filed by the 1st Respondent/Plaintiff is not per se correct in the eye of law. Furthermore, Ex.A.3 pertains to the year 1980 whereas the 1st Respondent/Plaintiff has put up a cow shed only during the year 1984 as per the case projected by him, in the considered opinion of this Court. Thus, it is held by this Court that the suit filed by the 1st Respondent/Plaintiff against the Defendants is not maintainable in law inasmuch as the 1st Respondent/Plaintiff's vendor Jayaraman is not competent to convey the suit property in favour of the 1st Respondent/Plaintiff and further, it is held by this Court that the First Appellate Court should have held that onus of establishing Ex.A.1 Sale Deed is on the 1st Respondent/Plaintiff and by not establishing the same should have dismissed the suit. Also, this Court holds that Ex.A.3 House Tax Receipts do not relate to the suit property. Accordingly, the substantial questions of law 1 to 3 are answered against the 1st Respondent/Plaintiff and in favour of the Defendants. In the result, the Second Appeal is allowed, leaving the parties to bear their own costs. Resultantly, the Judgment and Decree of the First Appellate Court dated 18.12.1996 in A.S.No.184 of 1996 passed by the Learned Civil Judge (Senior Division), Kallakurichi, are hereby set aside, for the reasons assigned by this Court in this Appeal to promote substantial cause of Justice. The suit O.S.No. 656 of 1986, filed by the 1st Respondent/Plaintiff on the file of the Learned Principal District Munsif, Kallakurichi, is dismissed. Liberty is granted to the 1st Respondent/Plaintiff to file a

suit for Partition or for any other appropriate relief before the competent forum and to seek appropriate remedy in the manner known to law and in accordance with law, if so advised.

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