

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

ORDERS RESERVED ON : 04.04.2022

PRONOUNCING ORDERS ON : 07.04.2022

Coram:

**THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH**

Second Appeal Nos.257 and 260 of 2012

MP Nos.1, 1 of 2012

**S.A.No.257/2012**

1.R.Selvaraj (died) ..1<sup>st</sup> Defendant/Respondent/Appellant

2.Tamilselvi.S.

3.Raghupathy.S.

4.Alamelu.R.

(Appellants 2 to 4 brought into record as legal heirs of the deceased sole appellant viz.,R.Selvaraj vide court order dt.16.02.2022 made in CMP Nos.1976 & 1985/2022 in S.A.Nos.257 and 260/2012 (NAVJ)

.Vs.

1.Amutha ..Plaintiff/Appellants/Respondents

2.Kumarasamy ..4<sup>th</sup> Defendant/2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

3.Tmt.Maniammal ..5<sup>th</sup> Defendant/3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent

Prayer in S.A.No.257/2012 : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 23.08.2011 made in A.S.No.2 of 2011 on the file of Sub Judge, Rasipuram in reversing the Judgment and Decree dated 23.12.2010 made in O.S.No.447 of 2004 on the file of the District Munsif Judge, Rasipuram.

**S.A.No.258/2012**

1.R.Selvaraj (died)

..1<sup>st</sup> Defendant/Respondent/Appellant

2.Tamilselvi.S.

3.Raghupathy.S.

4.Alamelu.R.

(Appellants 2 to 4 brought into record as legal heirs of the deceased sole appellant viz.,R.Selvaraj vide court order dt.16.02.2022 made in CMP Nos.1976 & 1985/2022 in S.A.Nos.257 and 260/2012 (NAVJ)

.Vs.

1.Periasamy

2.Amutha

..Defendants/Appellants/Respondents

Prayer in S.A.No.258/2012 : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 23.08.2011 made in A.S.No.3 of 2011 on the file of Sub Judge, Rasipuram in reversing the Judgment and Decree dated 23.12.2010 made in O.S.No.15 of 2000 on the file of the District Munsif Judge, Rasipuram.

For Appellants

in Both Appeals : Mr.K.V.Sundararajan

For Respondents

in Both Appeals : Mr.N.Manokaran  
for R1  
in S.A.No.257/2012

for R1, R2  
in S.A.No.260/2012

**COMMON JUDGMENT**

The issue involved in both the Second Appeals are common and hence they are taken up together, heard and disposed of through this Common Judgment.

2. The plaintiff in O.S. No. 15 of 2000 and the 1<sup>st</sup> defendant in O.S. No. 447 of 2004 is the appellant in these Second Appeals.

3.The appellant filed the suit in O.S. No. 15 of 2000 on the ground that he became the absolute owner of the property in Survey No. 352/1A measuring an extent of 42 cents along with a well, motor and electricity connection from one Ramasamy Gounder and his wife Perumayee through a registered sale deed dated 18.2.1998, marked as Ex. A1. The further case of the appellant was that he is in possession and enjoyment of the said property by paying the necessary kist and tax.

4.The grievance of the appellant was that the defendant who had their property on the western and northern side of the suit property were pressurising the appellant to sell his property. Since the appellant refused to sell the property, the defendant developed an enmity and consequently started preventing the appellant from enjoying his property. The appellant, left with no other option filed the suit seeking for the relief of permanent injunction against the defendant.

5.The 1<sup>st</sup> respondent/plaintiff filed a suit in O.S.No. 447 of 2004 against the appellant and others. The case of the 1<sup>st</sup> respondent was that the three items of suit property which were shown in the plaint schedule originally belonged to the family of Ramasamy Gounder. In the year 1943, Ramasamy Gounder and his family divided the property through a oral partition whereby certain portions of the property were allotted to the share of Ramasamy Gounder and certain other portions were allotted to the share of his son Kumarasamy. The 1<sup>st</sup> respondent/plaintiff purchased the first item of the suit property from the said Ramasamy Gounder through a sale deed dated 27.11.1997 which was marked as Ex.A1. Insofar as the second item of the suit property is concerned, the 1<sup>st</sup> respondent/plaintiff purchased the same from Kumarasamy through a registered sale deed dated 5.12.1997 marked as Ex.A2. The third item of the suit property was purchased from Kumarasamy, his wife and children through a registered sale deed dated 23.1.1998,marked as Ex.A3. The third item of the suit property was described as 20 cents of land out of 40 cents in Survey No. 352/1A along with the super structures therein, well, electricity connection and the right of pathway.

6. The grievance of the 1<sup>st</sup> respondent/plaintiff was that the said Ramasamy Gounder and his wife Perumayee with the help of the appellant started challenging the 1<sup>st</sup> respondent/plaintiff with regard to her right and title over the suit property and was preventing her from peacefully enjoying the property. Hence the suit was filed seeking

for the relief of declaration of title with respect to 2<sup>nd</sup> and 3<sup>rd</sup> item of the suit property and for permanent injunction with respect to all the properties.

7. The appellant who filed a written statement in O.S. No. 447 of 2004 basically challenged the claim made by the 1<sup>st</sup> respondent/plaintiff over the 3<sup>rd</sup> item of the suit property which is the land situated at Survey No. 352/1A. The appellant took a defence that when the 1<sup>st</sup> item of the suit property was sold in favour of the 1<sup>st</sup> respondent/plaintiff through sale deed dated 27.11.1997, a sketch was annexed along with the sale deed which clearly showed that 1.80 acres was conveyed in favour of the 1<sup>st</sup> respondent/plaintiff and the rest of the property was retained by Ramasamy Gounder. Similarly while executing the sale deed dated 5.12.1997, Kumarasamy had conveyed the entire property described in the 2<sup>nd</sup> item of the suit schedule measuring 2.20 acres in favour of the 1<sup>st</sup> respondent/plaintiff. The actual dispute was raised with respect to the 3<sup>rd</sup> item of the suit property wherein the appellant took a stand that Kumarasamy, his wife and children executed the sale deed dated 23.1.1998 in favour of the 1<sup>st</sup> respondent/plaintiff without any right or title over the said property. The appellant also challenged the so called family arrangement which was also marked as Ex.A10/B10 relied upon by the 1<sup>st</sup> respondent/plaintiff in this regard. The appellant claimed the right and title over the entire 42 cents in Survey No. 352/1A and completely denied the right and title of the 1<sup>st</sup> respondent/plaintiff in this property.

8.The Trial Court conducted separate trial and delivered separate judgments in both the suits. O.S. No. 15 of 2000 filed by the appellant was allowed through Judgment and Decree dated 23.12.2010. O.S. No. 447 of 2004 filed by the 1<sup>st</sup> respondent/plaintiff was dismissed in entirety through Judgement and Decree dated 23.12.2010. Aggrieved by the same, the 1<sup>st</sup> respondent/plaintiff filed two appeals in A.S. No. 2 of 2011 and A.S. No. 3 of 2011 before the Sub Court, Rasipuram and the lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed both the appeals through Judgment and Decree dated 23.8.2011 and thereby the suit filed by the appellant in O.S.No.15 of 2000 was dismissed and the suit filed by the 1<sup>st</sup> respondent/plaintiff was decreed as prayed for. Aggrieved by the same, these Second Appeals have been filed before this Court..

9. When the Second Appeals were admitted, the following substantial questions of law were framed by this Court:

a) Whether the Lower Appellate Court went wrong in relying upon the contents of the document dated 15.09.1975 (Ex.B10/Ex.A10), when there was no mention about the said document either in the sale deed dated 18.02.1998 (Ex.A1/Ex.B1) executed in favour of the appellant or in the sale deeds dated 27.11.1997, 05.12.1997 and 23.01.1998 (Ex.A1/B1, A2/B2 and A3/B3) executed in favour of the 1<sup>st</sup>respondent and also in the

pleadings and thereby, whether this document will prevail upon the registered document executed in favour of the appellant under (Ex.A1/Ex.B1)?

b) Whether the findings of the Lower Appellate Court can be termed as perverse due to improper appreciation of oral and documentary evidence available on record?

10. Heard Mr.K.V.Sundararajan, learned counsel for the appellant and Mr.N.Manokaran, learned counsel for the respondents. This Court carefully perused the materials available on record and the findings of the Courts below.

11. Even during the course of arguments, this Court found that the Judgment and Decree of the trial Court with respect to the 1<sup>st</sup> and 2<sup>nd</sup> items of the suit property in O.S. No. 447 of 2004, does not require any interference since the appellant was not claiming any right over those properties. The actual dispute was only with regard to the 3<sup>rd</sup> item of the suit property situated at Survey No.352/1A measuring an extent of 42 cents. Therefore, this Court directed the counsel appearing on either side to address their arguments by focusing on the 3<sup>rd</sup> item of the suit property in O.S.No.447 OF 2004 and the dispute that will be taken up for consideration in the Second Appeal will confine itself only with respect to the 3<sup>rd</sup>

item of the suit property.

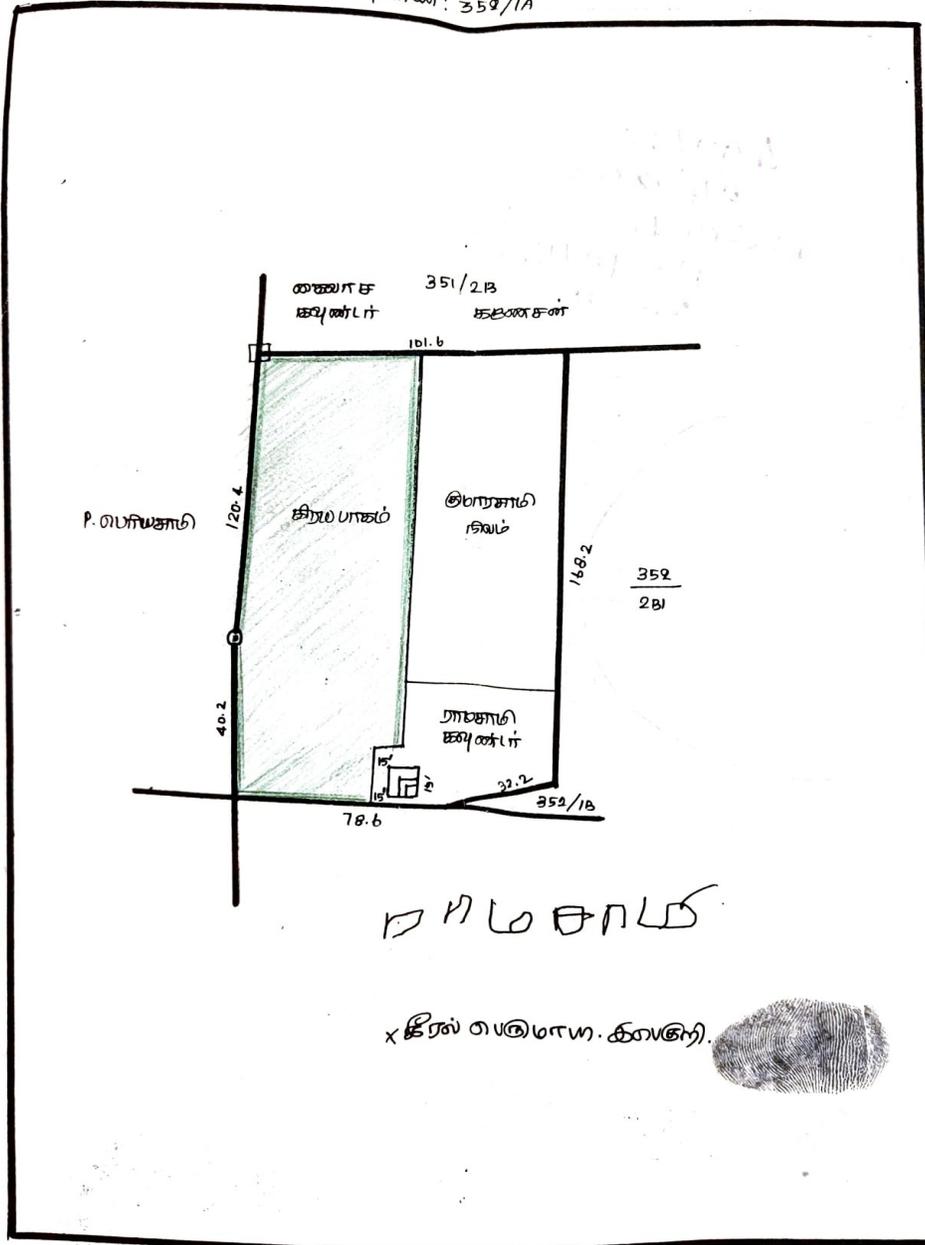
12. There is no dispute with regard to the fact that all the suit properties originally belonged to the family of Ramasamy Gounder. It is also an admitted fact that there was an oral partition wherein the joint family properties were divided among Ramasamy Gounder and his son Kumarasamy. The total extent of the property in Survey No. 352/1A is 4.42 acres and this has also not been disputed by both sides.

13. Out of the total extent of 4.42 acres, 1.80 acres was conveyed in favour of the 1<sup>st</sup> respondent/plaintiff by Ramasamy Gounder and his wife Perumayee through a registered sale deed dated 27.11.1997. In the said sale deed, there is a specific reference to the oral partition between the said Ramasamy Gounder and his son Kumarasamy and there is no reference to any family arrangement that is alleged to have taken place in the year 1975. A sketch was annexed along with this sale deed and for proper appreciation, the same is extracted hereunder:

മുല്ലം: 1510 ക്കടവ്  
 മല: 204450.

കിരാരം { റ്റം: 4-8.  
 മല: 211101 ക്കടവ് 2012

40 റ്റം: 352/1A



P. മധുസൂദനൻ

കിരാരം മധുസൂദനൻ. കടവ്



NOT TO SCALE

14. While describing the boundary, it was specifically stated that this property of 1.80 acres is in the western side of the rest of the property in the same survey number belonging to Ramasamy Gounder and Kumarasamy. The above sketch shows the portion belonging to Kumarasamy and the portion belonging to Ramasamy Gounder on the eastern side.

15. The 1<sup>st</sup> respondent/plaintiff purchases an extent of 2.20 acres from Kumarasamy through a registered sale deed dated 5.12.1997. Even in this sale deed, there is only reference to the oral partition between Ramasamy Gounder and Kumarasamy and there is no reference to any family arrangement that is said to have taken place in the year 1975. While describing the boundaries, it has been specifically stated that this 2.20 acres of land is in the northern side of the land belonging to Ramasamy Gounder (even though by mistake it has been mentioned as “தெற்கு”). This mistake is apparent since the “தெற்கு” portion has already been described as the properties belonging to Karupattiyar Thottam and the lands belonging to Ganesan). It is seen from this sale deed that there is no reference to any property belonging to Kumarasamy on the southern side of the property that was conveyed under this sale deed.

16. The above said Kumarasamy executed a sale deed dated 23.1.1998 in favour of the 1<sup>st</sup> respondent/plaintiff wherein he along with his wife and children conveyed an

extent of 20 cents out of 40 cents in Survey No. 352/1A. This is the sale deed which is the reason for the controversy. Even in this sale deed, there is only reference to the oral partition between Ramasamy Gounder and Kumarasamy and there is no reference to the family arrangement that is alleged to have taken place in the year 1975. While describing the boundaries, it is stated that this property is in the east west and south of the property that was already conveyed through the sale deed dated 5.12.1997 through which 2.20 acres was conveyed in the same survey number.

17. After the above sale deed was executed, a rectification deed also came to be executed on 23.1.1998, marked as Ex.A11 wherein the description of the property in the earlier sale deed dated 5.12.1997 was sought to be rectified as follows:

**பிழைத் திருத்தலுக்கு பின்பு சரியான சொத்து பத்திரம்**

சேலம் ரிடி.நாமகிரிப்பேட்டை சப்ரிடி..நாமகிரிப்பேட்டை தேர்வுநிலை பேர்ராட்சிக்கு உட்பட்ட அரியாக்கவண்டம்மட்டி கிராமத்தில் எங்களுக்கு மேற் சொன்னவிபரப்படி பாத்தியப்பட்டு அனுபவித்துக் கொண்டு வந்து சர்வே எண் : 352/1 நிலமும், சர்வே எண் : - 352/2ஏ நிலமும் இணைக்கப்பட்டு நிலஉடைமைப் பதிவு மேம்பாட்டுத் திட்டத்தில் பட்டா எண் : - 425. சர்வே எண் : - 352/1ஏ நெ.பஞ்சை உறக்டேர் 1.79.0 க்கு ஏக்கர் 4.42 தீர்வை ரூபாய் 2.73 என்று உட்பிடுவ செய்யப்பட்டு உள்ளதில், கருப்பட்டியார் தோட்டத்து கணேசன் நிலத்துக்கும். .. (தெற்கு) சென்றாயன் தோட்டத்து செங்கோடக் கவண்டர் வகையரா நிலத்துக்கும் (மேற்கு) ராசாயிக்கவண்டர் நிலத்துக்கும், கிழமேலாகச் செல்லும் பஞ்சாயத்துப் பாதைக்கும். .. .... (வடக்கு) உங்களுக்கு பாத்தியப்பட்ட ஏக்கர் 1.80 நிலத்துக்கும் ..... (கிழக்கு) இதன் மத்தியில் புஞ்சை ஏக்கர் 2..20 இரண்டு ஏக்கர் இருபது செண்ட் உள்ள நிலம் பூராவும். ௫ 4 சர்வே எண் : - 352/1ஏ நிலத்திலுள்ள கிணறு,1.லும், ௫ 4 கிணற்றில் எஸ்.சி-71-ல் இணைத்துள்ள 7½ உசுபி மின்சார மோட்டார்.1.லும் அதன்சகல மிஉ 4.ரி சாமான்களிலும் செக்யூரிட்டி டிபாசிட் உட்பட பொதுவில் பேர் பாதி பாத்தியமும், ௫ 4 கிணற்றுக்கு ஏற்பட்ட வாரி, வாய்க்கால், ஏத்தல் முதலான சகல பாத்தியங்களும், சுதந்திரங்களும்.

இதில் கண்ட நிலத்துக்கு தென்புறம் செல்லும் கிழமேல் பஞ்சாயத்துப் பாதையின் வழியாக ஆட்கள், கால்நடைகள் , வண்டி, வாகனாதிகள், லாரி, டிராக்டர், டெம்போ மற்றும் சகல நவீன வாகனங்களுடன் போகவர ஏற்பட்ட தடபாத்தியமும் பின்னும் இதில் கண்ட சொத்துக்கு முலதஸ்தாவேஜுகளின்படி ஏற்பட்ட சகல பாத்தியங்களும் உரிமைகளும் ஆகமேற்சொன்னவைகள் பூராவும்.

1. Sd/-
2. ஒம்/.
3. Sd/-
4. ஒம்/.

18.It is clear from the above that the description of the boundary on the southern side of the property was rectified and consciously the words "lands belonging to Ramasamy Gounder" has been struck of.

19. Ramasamy Gounder and his wife Perumayee execute a registered sale deed dated 18.2.1998 in favour of the appellant and conveyed 42 cents in Survey No. 352/1A in favour of the appellant. The description of the boundaries is perfectly in line with the earlier sale deed dated 27.11.1997 and 5.12.1997. The real controversy involved is as to whether Ramasamy Gounder had the right and title to convey 42 cents to the appellant under the oral partition or he was entitled only for 20 cents and the balance 20 cents was actually owned by his son Kumarasamy which he had conveyed to the 1<sup>st</sup> respondent/plaintiff through sale deed dated 23.1.1998.

20.There was no reference to the family agreement dated 15.9.1975 in any of the sale deeds that were marked in the suits. In fact, even when the suit was filed in O.S.

No. 447 of 2004, there was no reference to the family arrangement. This document was introduced for the first time by amending the plaint in the year 2005 pursuant to the orders passed in I.A.No. 33 of 2005. A careful reading of the family agreement dated 15.9.1975 shows that the parties have agreed to enjoy the properties in Survey No. 352/1A in a particular manner. There is no reference to any oral partition that took place between the parties, in this document. The core dispute revolves around this document and it has to be seen how far this document can be acted upon and whether Kumarasamy can trace his right with respect to 20 cents of land in Survey No. 352/1A and which he conveyed to the 1<sup>st</sup> respondent/plaintiff. It must also be seen as to how far it will affect the oral partition that had already taken place between Ramasamy Gounder and his son whereby Ramasamy Gounder had acquired rights for the entire 42 cents in Survey No. 352/1A which was conveyed to the appellant.

21. This Court will now deal with the findings of the Trial Court in this regard. The Trial Court took into consideration the earliest available document which is the sale deed dated 27.11.1997 that was executed in favour of the 1<sup>st</sup> respondent/plaintiff by Ramasamy Gounder and his wife conveying 1.80 acres of land. The Trial Court took into consideration the sketch that was annexed along with this document and found that Kumarasamy did not have any right or title over the 42 cents that was separately demarcated and was shown to belong to Ramasamy Gounder. This document specifically made reference to the oral partition and at this point of time, there was no dispute

among the parties. The Trial Court further found that the 1<sup>st</sup> respondent/plaintiff as aware about this fact and inspite of the same, proceeded to purchase 20 cents of land from Kumarasamy through sale deed dated 23.1.1998.

22. The Trial Court also took into consideration the consistent stand taken in all the documents where there was only reference to oral partition. All of a sudden during the pendency of the suit, the family agreement dated 15.9.1975 was introduced. If really this document was available from the year 1975, the Trial Court found that there was no reason as to why it did not find any mention in any of the sale deeds executed by Ramasamy Gounder and his son Kumarasamy. Therefore the Trial Court doubted the very genuineness of Ex.A10 by assigning sufficient reasons. The Trial Court found that this document has been subsequently created during the pendency of the suit and that it goes completely contrary to the earlier stand taken by the parties that there was a oral partition.

23. The Trial Court also took into consideration the other documents relied upon by the 1<sup>st</sup> respondent/plaintiff and found that the same does not establish the possession of the 1<sup>st</sup> respondent/plaintiff.

24.The Trial Court also took into consideration the rectification deed dated 23.1.1998 which came to be executed on the same day when Kumarasamy conveyed 20

cents in favour of the 1<sup>st</sup> respondent/plaintiff and found that it was a clear afterthought through which the original stand taken in the sale deed dated 5.12.1997 with respect to the boundaries was sought to be amended. The Trial Court further found that the report filed by the Advocate Commissioner along with the sketch will not help the case of the 1<sup>st</sup> respondent/plaintiff and it cannot be used to establish the right and title in the property. The Trial Court also took into consideration the documents marked on the side of the appellant and found that the appellant is in possession and enjoyment of the suit property.

25. The Trial Court individually dealt with the oral evidence of Kumarasamy who was examined as DW-3. He had stated in his evidence that there was no oral partition between him and his father. The statement runs contrary to the available documents which were executed by Kumarasamy. The Trial Court found the evidence of DW-3 to be totally unreliable.

26. The mistake committed by the Trial Court was that the entire suit filed in O.S. No. 447 of 2004 was dismissed and it should have been decreed for the 1<sup>st</sup> and 2<sup>nd</sup> items of the suit properties and the dismissal should have confined itself only with regard to the 3<sup>rd</sup> item of the suit property.

27. The Lower Appellate Court while reversing the Judgment of the Trial Court has placed heavy reliance upon Ex.A-10 family agreement. The Lower Appellate Court gave a finding to the effect that the plaint was amended in the year 2005 and averments were added in the plaint and the family agreement dated 15.9.1975 was introduced by the 1<sup>st</sup> respondent/plaintiff and for the amended plaint, no additional written statement was filed by the appellant. This was put against the appellant and it was taken that this document was admitted and hence the document can be relied upon. The learned counsel for the 1<sup>st</sup> respondent/plaintiff attempted to support this finding of the Lower Appellate Court by relying upon the judgement of the Hon'ble Supreme Court in ***Gian Chand and Brothers and Another Vs. Rattan Lal alias Rattan Singh*** reported in ***(2013) 2 SCC 606***. The learned counsel submitted that it was obligatory on the part of the appellant to have specifically dealt with the amended plaint and file an additional written statement denying the document. It was contended that the non-filing of the additional written statement will tantamount to admitting this document and hence the Lower Appellate Court was right in relying upon Ex.A10.

28. This Court is not convinced with the reasons assigned by the Lower Appellate Court and the submissions made by the learned counsel for the 1<sup>st</sup> respondent/plaintiff, to place reliance upon Ex.A10. It is the plaintiff who introduced this document for the first time during the pendency of the suit and there was absolutely no reference to this document in any of the earlier documents or even when the suit was filed in O.S. No. 447

of 2004. It must be borne in mind that this is an unregistered document which can be created at any point of time using an old stamp paper. The availability of old stamp papers in the market is an open secret and a document can always be created by utilising an old stamp paper. It is important to note that the very genuineness of the document marked as Ex.A10 was under question since it popped up all of a sudden in the year 2005 and more particularly, after the suit was filed in the year 2004. The appellant was a third party purchaser and his vendors namely Ramasamy Gounder and his wife Perumayee had died even during the pendency of the suit. Therefore, there was no occasion for the appellant to even examine them about the veracity of Ex.A10. Even though PW-3 was examined to prove this document since he stood as a witness, that by itself will not establish that this document can be acted upon by the Court.

29. This Court must keep in mind the crucial fact that Ex.A-10 which was an unregistered document was attempted to be put against registered sale deeds and a new right was sought to be created in favour of Kumarasamy for an extent of 20 cents in Survey No. 352/1A. At this juncture, a reference can be made to the Judgement cited by the learned counsel for the appellant in ***Maya Devi v. Lalta Prasad*** reported in ***(2015) 5 SCC 588***. The relevant portion in the judgment is extracted hereunder:

*“15. Both the Courts below have preferred the view that the Appellant, who has been in possession from the date of the execution of the registered GPA in her favour, has been introduced into the scene in order to defeat the interests of the respondent, which is a perverse approach for reasons that shall be presently explained. The documents purportedly in favour of the respondent- decree- holder are unregistered and the alleged*

*payment made by him to Shri Prem Chand Verma is in cash. Therefore, there is no justification for favouring the view that the alleged transaction between Shri Prem Chand Verma and the respondent-decree-holder was genuinely prior in time to the execution of the registered power of attorney in favour of the appellant Smt. Maya Devi by Smt. Nirmal Verma, and the former simultaneously and contemporaneously was put into possession of the property by the latter.”*

30. The Hon'ble Supreme Court has held that the probative value of a document has to be assessed strictly when it creates a new right in favour of a party. Such a document must be proved beyond doubts when it is put against registered documents where the same parties are involved and the unregistered document does not even find a mention in those registered documents.

31. This Court has to deal with this issue by getting into the fundamentals by placing reliance upon the definition of the term “proved” as defined under Section 3 of the Indian Evidence Act, 1872. For proper appreciation, the definition of “proved” is extracted hereunder:

“**ஞ்சுகள்தன**”. ஓற கயஉலணாளயணலலு தெ யீசுகள்தன றாநதே, யகலநச உடிகளணைநகைபே லாந அயலலநசள தெகடிகந னை லாந ஊடிரசல தெடணைநள னைலலு நஓணைலு டிச உடிகளணைநசள னைள நஓணைலநதேந ளு யீசுகுயெடெந லாயல ய யீசுரனநலே அயதே டிரபால, ரனேநச லாந உணைராளலயதேநள டிக லாந யீயசலணைறயயச உயளந, லு யஉல ரயீடிக லாந ளரயீயீடிகளணைலுடே லாயல னைநஓணைலள.

32. To simply understand the above definition, it only means that anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of

a fact or proposition and the proof of matters of fact in general are our senses, the testimony of witnesses, the documents and the like. Proof does not mean proof to rigid mathematical demonstration, because that is impossible and it must only mean that such evidence as would induce a reasonable man to come to the conclusion. The degree of certainty which must be arrived at before a fact is said to be proved is what has been described in this section. The definition of proof centres around probability. It is beyond cavil that the Court while dealing with civil cases applies a standard of proof governed by preponderance of probabilities. It will be very relevant to take note of the Judgment of the Hon'ble Supreme Court in ***NG Dastane Vs. SN Dastane*** reported in ***(1975) 2 SCC 326***, wherein the Hon'ble Supreme Court has succinctly explained how to balance the probabilities and the same is extracted hereunder:

*"The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a factsituation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue".*

33. When the above test is applied to the facts of the present case, this Court finds that the Trial Court has properly analysed the tenability of Ex.A-10 and given a finding that this document cannot be acted upon and the fact stated therein has not been proved. Ex.A-10 which is said to have come into existence in the year 1975 did not find place in any of the registered documents executed by Ramasamy Gounder and Kumarasamy. Their consistent stand was that there was an oral partition 22 years before those registered documents were executed. Even at the time of filing the suit in O.S. No. 447 of 2004, there was no mention about this document and all of a sudden it comes into existence in the year 2005. If the facts of the present case are placed before a prudent man, what will be his decision regarding the tenability of this document, is the test to be applied even by a Court. The prudent man will be bewildered by the fact that this document of the year 1975 was not even mentioned in any of the earlier documents and what was mentioned was only the oral partition. He will be further taken aback by the fact that the 1975 document does not mention about the oral partition. He will develop further doubt about this document since this document alters the position that has already been taken by the respective parties in the registered documents. On balancing all these probabilities, he will only come to a conclusion that such a document did not really exist and it has been created subsequently to defeat the claims of the parties to the registered documents. This Court must also come to the very same conclusion as that of the prudent man. Accordingly, Ex.A-10 is held to be unreliable and the contents therein is held to be not proved and it cannot prevail upon the registered documents executed

between the parties. The first substantial question of law is answered accordingly in favour of the appellant.

34.The learned counsel for the 1<sup>st</sup> respondent/plaintiff vehemently contended that Kumarasamy had already executed a sale deed in favour of the 1<sup>st</sup> respondent/plaintiff on 23.1.1998 conveying 20 cents in Survey No. 352/1A and the sale deed in favour of the appellant was only subsequent on 18.2.1998. Therefore, the appellant cannot be held to be a bonafide purchaser. In the considered view of this Court, the point for consideration is as to whether Kumarasamy had the right to convey 20 cents of land in favour of the 1<sup>st</sup> respondent/plaintiff. Since this Court has already held that Ex.A10 cannot be relied upon, the consequences of the same is that Kumarasamy has no right or title to convey 20 cents of land to the 1<sup>st</sup> respondent/plaintiff. It is only Ramasamy Gounder who had the right and title to convey 42 cents of land in Survey No. 352/1A in favour of the appellant and this document being executed subsequently does not in anyway take away the right of the appellant and the sale deed dated 23.1.1998 does not convey any right or title in favour of the 1<sup>st</sup> respondent/plaintiff and it will not come in the way of the right and title of the appellant with respect to the 42 cents of land which forms part of the 3<sup>rd</sup> item of the suit property in O.S. No. 447 of 2004 and which is the suit property in O.S. No. 15 of 2000.

35.The Lower Appellate Court was completely swayed by Ex.A-10 and this document was taken to be the basis for rendering a finding in favour of the 1<sup>st</sup> respondent/plaintiff with respect to the third item of the suit property. To add weight to this finding, the Trial Court has relied upon the report of the Advocate Commissioner and found that the property has been split into two parts and that the Advocate Commissioner was not allowed to measure the property. In the considered view of this Court, the report of the Advocate Commissioner will have no relevance since the main issue is with regard to the right and title of Kumarasamy in the third item of the suit property. This cannot be decided with the help of the report of the Advocate Commissioner. The Lower Appellate Court erroneously placed reliance upon the report of the Advocate Commissioner to decide on the right and title of the third item of the suit. Hence, this Court holds that the findings of the Lower Appellate Court with respect to the third item of the suit property in O.S. No. 447 of 2004 and the suit property in O.S. No. 15 of 2000, are perverse and the same is as a result of improper appreciation of the oral and documentary evidence. The second substantial question of law is answered accordingly.

36. In view of the above discussion, this Court has absolutely no hesitation to interfere with the Judgment passed in A.S. No. 2 of 2011 and A.S. No. 3 of 2011, dated 23.8.2011. Insofar as A.S. No. 3 of 2011 is concerned, the entire Judgment and Decree is set aside and the Judgment and Decree of the Trial Court is restored and consequently O.S. No. 15 of 2000 is decreed as prayed for. Insofar as A. S. No. 2 of 2011 is

concerned, the Judgment and Decree passed by the Lower Appellate Court is set aside only with respect to the third item of the suit property in O.S. No. 447 of 2004. With respect to the 1<sup>st</sup> and 2<sup>nd</sup> items of the suit properties, the same is decreed in favour of the 1<sup>st</sup> respondent/plaintiff.

37. In the result, both the Second Appeals are allowed in the above terms. Considering the facts and circumstances of the case, there shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

07.04.2022

Internet: Yes  
Index: Yes  
KP

To

1. Sub Judge, Rasipuram.

2. District Munsif Judge, Rasipuram.

3. The Section Officer  
V.R. Section  
High Court.  
Madras.

*S.A.Nos.257 & 260 of 2012*

**N.ANAND VENKATESH,J.**  
KP

**Pre-Delivery Common Judgment in**  
**Second Appeal Nos.257 and 260 of 2012**

**07.04.2022**