2023 STPL(Web) 273 SC
[2023 INSC 835]

SUPREME COURT OF INDIA
(HON'BLE MR. B.R. GAVAI AND C.T. RAVIKUMAR, JJ.)

APPAIYA

Appellant

VERSUS

ANDIMUTHU@ THANGAPANDI & ORS.

Respondent

Civil Appeal No. 14630 of 2015(@ SLP (C) No.10013 of 2015)-Decided on 20-09-2023.
Civil (Legally admissible document transferring the title)
Property Dispute: Legally admissible document transferring the title - Absence of any proven document conferring a better title to the respondent/defendant – Reversing decree in favour of plaintiff set aside.

JUDGMENT

C.T. Ravikumar, J.: - The captioned appeal by special leave is directed against the judgment dated 17.10.2012 passed by the Madurai Bench of the Madras High Court in Second Appeal (MD) No. 802 of 2004 whereby and whereunder it reversed the concurrent judgments of the courts below decreeing the suit with regard to the title and possession of the entire suit property and confined the plaintiff's (appellant herein), entitlement to title and possession to 96 cents purchased under Ext. A5 sale deed. To be precise, as per the judgment impugned, the judgment dated 03.07.2001 in A.S.No.65/97 of the Sub-Court, Periyankulam confirming the judgment and decree dated 30.09.1997 in O.S.No.104/96 of the District Munsifcum- Judicial Magistrate, Andipatti, was set aside to the aforesaid extent. The appellant herein was the plaintiff and the respondent Nos. 1 and 6 were respectively defendant Nos. 3 and 2, in the stated suit. Respondent Nos. 2 to 5 are the legal representatives of the deceased first defendant. The subject suit was filed seeking declaration that the entire suit property belonged to the plaintiff and for a consequential prayer for permanent injunction against the defendants.

2. The case of the appellant – (plaintiff) in nut-shell, relevant for the purpose of disposal of the appeal, is as follows :-

> On 09.08.1918, Vellaiya Thevar executed a mortgage deed for the loan availed from Irulappan, the father of appellant's vendor- Puliyankaladi, in respect of the suit property having an extent of 2 acres and 61 cents comprised in Survey No.845/1 of Thimmanayakanur village in Andipatti Taluk of Madurai District. Default in repayment of loan amount made Puliyankaladi to file O.S. No.519/1928 against sons of Vellaiya Thevar viz., Thavasi Thevar, Kuruppa Thevar, Subbaiah Thevar and Sangu Thevar and it was decreed in favour of Puliyankaladi. In order to satisfy the decree, they sold the property to Puliyankaladi as per Ext. A1 registered sale deed No.1209/1928 dated 27.08.1928. Puliyankaladi, thereafter executed a mortgage deed of the suit property in favour of Veluchamy and Vellamal. On 31.05.1961 he executed another mortgage deed in favour of Veluchamy and Velammal. The said mortgage deeds were redeemed by the appellant (plaintiff) on 24.06.1963. Ultimately, the appellant purchased the suit property from

Puliyankaladi and his family members namely, Irulan, Balakrishnan and Balakrishnan's minor children Senthilkumaran and Backialakshmi on 15.07.1963 as per sale deed No.1759/1963 of SRO, Andipatti. Since then, he has been in its possession and enjoyment. After mutating it in his name in the revenue records he obtained patta and has been paying kist to the government. The defendants are strangers having lands on the southern and northern sides of the suit property. They demanded him to sell the property to them and on being refused they turned inimical to him and started disturbing his peaceful possession and enjoyment of the suit property. On 05.06.1994, the defendants along with some others attempted to trespass into his property, but it was thwarted with the help of co-villagers.

3. The first and the third defendants filed written statement in the suit mainly refuting the averment that the entire suit property belonged to Puliyankaladi and contending that it is incorrect and false and therefore, the plaintiff may be put to strict proof. The further case of the defendants was that out of the total extent of the property in Survey No.845/1, 75 cents belonged to Thavasi Andi Thevar, Veluthai Ammal and the first defendant, and son of Thavasi Andi Thevar, Veluthai Ammal and the first defendant executed a registered mortgage deed on 14.09.1961 in favour of Pomminayakkanpatti Palaniammal for Rs. 1000/-. Further, as per sale deed No.2178/1974 of Andipatti Sub- Registry the third defendant purchased 30 cents in Survey No.845/1 and its well, 1/5th Kamalaivari channel and ½ of the Kamalaivari channel on the western side and since then she has been in possession and enjoyment of the said extent. In short, according to them suit was instituted with an ulterior intention to grab the entire property comprised the Survey No.845/1.

4. Based on the pleadings the trial court framed the following issues:-

"1. Whether the plaintiff is entitled to permanent injunction?

2. Whether the sale of the plaintiff is a forged one?

3. Whether the mortgage deed dated 14.9.198 is genuine?

4. Whether the sale deed dated 13.9.1974 is genuine?

5. Whether the entire suit property is not under the possession of the plaintiff?

6. What relief the plaintiff is entitled to?"

5. Thereafter, an additional issue was framed as under:-

"1. Whether the plaintiff is entitled to declaration to the suit property?"

6. On the side of the appellant/plaintiff, he got himself examined as PW-1 and Exts.A1 to A8 were marked and on the side of the defendants three witnesses were examined and Exts.B1 to B14 were marked. Exts.C1 to C8 were marked as Court documents. After evaluating the oral and documentary evidence adduced, the trial Court held that the plaintiff is entitled to get declaration that the entire suit property belonged to him and as a consequence, the defendants and their men are to be restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property and decreed the suit accordingly. Evidently, the First Appellate Court in A.S.No.65 of 1997 filed by the defendants against the judgment and decree of the trial court in O.S.No.104/1996 did not frame any specific point(s) as enjoined under Order XLI, Code of Civil Procedure, 1908 (hereinafter, 'the CPC'), but observed that the issue to be considered is whether the appeal is to be allowed as prayed for by the appellants therein/defendants 1 and 3. Obviously, additional documents were filed by defendants 1 and 3 and

received in evidence as Exts.B15, B16 and B17 by the Lower Appellate Court. Even after appreciating such additional evidence, it found no reason to interfere with the judgment and decree of the trial Court and consequently, dismissed the appeal.

7. The unsuccessful defendants filed second appeal under Section 100 of the CPC which culminated in the impugned judgment. The High Court framed three questions as substantial questions of law and after an elaborate consideration, the High Court held all the substantial questions of law in favour of the appellants therein viz., defendant Nos. 1 and 3. As a necessary sequel, the concurrent judgments of the courts below decreeing the suit with regard to the title and possession were set aside to the extent mentioned above and the appeal was accordingly allowed.

8. The appellant/plaintiff assails the judgment of the High Court allowing the Second Appeal as above, on various grounds. The core contention of the appellant is that findings of facts concurrently recorded by the Court below are immune from challenge before the High Court in Second Appeal as the First Appellate Court is the final Court on facts. It is true that this position is well-settled. At the same time, this position is not devoid of exceptions. The very decisions relied on by the appellant viz., Vidhyadhar v. Manikrao & Anr.[*(1999) 3 SCC 573*] and Yadarao Dajiba Shrawane (D) by LRS v. Nanilal Harakchand Shah (D) & Ors.[*(2002) 6 SCC 404*] themselves would go to show that it is not an inviolable position of law.

9. The relevant paragraphs relied on by the appellants in those decisions themselves would make it clear that being concurrent findings on facts is no guarantee for an imprimatur from the High Court as under certain situations interference under Section 100, CPC after formulating substantial question (s) of law is permissible.

10. In Vidhyadhar's case (supra):-

> "23. The findings of fact concurrently recorded by the trial court as also by the lower appellate court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion."
>
> In Yadarao Dajiba Shrawane's case (supra):-
>
> 31. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts.

11. In the context of the contentions raised by the appellants relying on the decisions referred (supra) it is only apposite to look into the question, "what is substantial question of law".

12. In the decision in Lankeshwar Malakar v. R. Deka[*(2006) 13 SCC 570*], it was held that in order to be substantial question of law, the test is whether it is of general public importance or whether it directly or substantially affects the right of the parties or whether the question is still open i.e., it is not finally settled by the Supreme Court, Federal Court or Privy Council.

13. In fact, in Santosh Hazari v. Purushottam Tiwari[*(2001) 3 SCC 179*] while exploring the meaning of the phrase "substantial question of law" this Court held:

> "12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means — of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with — technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. [1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju AIR 1951 Mad 969] :
>
> > "[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand, if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."
>
> and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:
>
> > "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.
>
> 13. In Dy. Commr., Hardoi v. Rama Krishna Narain [AIR 1953 SC 521] also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 110 of the Code.
>
> 14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it

laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

14. In the decision in SK. Bhikan v. Mehamoodabee[*(2017) 5 SCC 127*], this Court held that when court is called upon to interpret documents and examine their effect, depending upon the nature of controversy and the issues involved, it would constitute substantial question (s) of law.

15. Bearing in mind the aforesaid positions with respect to the exercise of power under Section 100, CPC, we will have to consider whether the reversal of the concurrent judgments of the Court below by the High Court as per the impugned judgment invites interference under Article 136 of the Constitution of India.

16. Obviously, the High Court framed three questions of law, as under:-

"1. Whether the courts below are right in law in construing

Ex.A.1 sale deed dated 27.08.1928 in favour of Puliyankaladi, the predecessor - in - title of the suit property as alleged by the plaintiff/ respondent contrary to the extent and boundaries described in the said sale deed?

2. Whether the courts below erred in law in presuming that the appellant/ first defendant has admitted the title of the predecessor viz., Puliyankaladi in view of Exs.A.2, A.3, A.4 and other deeds.

3. Whether the courts below have erred in law in casting the burden of proof on the appellants / defendants to prove that the plaintiff is not entitled to the entirety of the suit property in a suit for declaration of title by the plaintiff?"

17. As noted above, the High Court answered all of them in favour of the defendants and consequently reversed the concurrent judgments to the extent noted above. A scanning of the impugned judgment would reveal the main reasons for such reversal as under:-

(i) Exhibit A1, sale deed dated 27.08.1928 (produced as Annexure P1 in this appeal) was executed in favour of Puliyankaladi by the sons of Vellaiya Thevar. However, no document was produced by the plaintiff/the appellants herein, evincing as to how they obtained it under partition so as to have right to alienate it.

(ii) Exhibit A1 would not attract the presumption of genuineness provided under Sections 90 and the presumptive proof of ownership under 110 of the Evidence Act, 1872 for the reason that it is only a registration copy of the registered sale deed dated 27.08.1928 and its genuineness is disputed. Furthermore, in the light of the decision in R. Nainar Pillai and Anr. v. Subbiah Pillai[2007 SCC OnLine Mad 457/ (2008) 3 Mad LJ 219] to admit such a document in evidence and to presume it as genuine it requires corroboration by an independent witness.

(iii) Exhibits A2, A3 & A4 would not estop under Section 110 of the Evidence Act the appellants therein from disputing the title of the respondent therein - plaintiff as what was dealt with under Exhibit A1 is different from what were dealt with under Exhibits A2 to A4.

(iv) The Courts below did not place reliance on Exhibit B1, certified copy of the sale deed dated 02.07.1977 executed by the appellant's father and Perumal Nayakkar (mother of the plaintiff) in favour of Pommi Nayakkar to an extent of 52 cents from the suit property which comprised in Survey No.845/1 in Thimmarasanaickanur village, Andipatti Taluk, Madurai District.

(v) Vellaiya Thevar was entitled to only 96 cents and therefore in terms of Exhibit A5, the plaintiff (the appellant) is entitled only to 96 cents.

(vi) Both sides have produced kist rasid, chitta and patta.

18. In the light of the reasons that persuaded the High Court to reverse the concurrent judgments, as mentioned above, their sustainability is to be looked into with respect to the positions of law as noted hereinbefore, with respect to the scope of exercise of power under Section 100, CPC and with reference to the relevant provisions under the Evidence Act as also other relevant enactments.

19. We will consider whether the High Court was legally correct in holding that owing to the nonproduction of any document by the plaintiff (the appellant) evincing as to how the sons of Vellaiya Thevar obtained the suit property in a partition Exhibit A1, being a registration copy (secondary evidence), could not be admitted in evidence as proof of the contents of its original. At the outset, it is to be stated that while holding thus the High Court has failed to consider the relevant provisions under the Evidence Act and also the Registration Act, 1908 appropriately. If the relevant provisions under the said enactments were properly applied to the facts of the case, the High Court would not have placed reliance on R. Nainar Pillai's case (supra) to hold that since Exhibit A1 being a registration copy, the presumption of due execution of the original under Section 90 of the Evidence Act, particularly in the absence of independent witness would not be available. We say so because proper consideration of the provisions under Sections 61, 63, 65, 74, 76, 77 and Section 79 of the Evidence Act would have definitely brought out that it was absolutely unessential to consider the applicability of Section 90 as also Section 110 of the Evidence Act. Needless to say, that in such circumstances there would not have been any necessity to seek proof through an independent witness, as well.

20. At the outset, it is very much relevant to note that the finding of fact by the trial Court that Exts. A1 to A5 are all registered with Sub-Registrar's office was not disturbed, rather, agreed by the First Appellate Court. As a matter of fact, the High Court also did not reverse the said findings on facts. Indisputably, the appellant has produced the registered copy of (Exhibit A1) sale deed No. 1209/1928 dated 27.08.1928 executed by sons of Vellaiya Thevar in favour of Puliyankaladi. Section 61 of the Evidence Act provides that the contents of documents may be proved either by primary or secondary evidence. Section 63 which is an inclusive definition of secondary evidence provides under subsection (1) thereof that, "certified copies given under the provisions hereinafter contained" constitute secondary evidence. Certainly, cases falling under Section 65 form exception to the mandate under Section 64 that documents must be proved by primary evidence. Section 65 provides that secondary evidence relating to documents may be given of the existence, condition or contents of a document in the various cases given thereunder. Section 65, in so far as, it is relevant for the purpose of this case reads thus:-

"65. Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a)..

(b)..

(c)..

(d)..

(e) when the original is a public document within the meaning of section 74;

……

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible."

(Underline supplied)

21. Section 74 deals with documents which are public documents. Sub-section (2) thereof makes public records kept [in any State] of private documents within the purview of "public document" under Section 74. Going by Section 76, certified copies of public documents shall be given, on demand, by the public officer having the custody of public document , together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title. Such copies so certified shall be called certified copies in terms of Section 76.

22. It is to be noted that in the case on hand, a certified copy of Exhibit A1 sale deed dated 27.08.1928 was produced by the appellant. As noted earlier, the Courts below found that it is registered with the Sub-Registrar's Office. The contention of respondent(s) is that it is only a certified copy and not the original document. In the light of the aforementioned provisions under the Evidence Act there can be no doubt with respect to the permissibility for the production of such a certified copy as secondary evidence in law, in regard to the existence, condition or contents of a document. As per Section 77 of the Evidence Act such certified copies may be produced in proof of the contents of the public document concerned. Section 79 deals with presumption as to genuineness of certified copies. Section 77 and 79 of the Evidence Act reads thus:-

"77. Proof of documents by production of certified copies. — Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

79. Presumption as to genuineness of certified copies. – The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper."

23. In view of the provision under Section 79 of the Evidence Act, Section 57 (5) of the Registration Act assumes relevance in the context of the case and it reads thus:

> "57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.—
>
> (1)..
>
> (2)..
>
> (3)..
>
> (4)..
>
> (5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents."
>
> (Underline supplied)

24. Now, we will have to consider the cumulative effect of the aforementioned provisions as relates the certified copy of the sale deed No.1209/1928 dated 27.08.1928 (Annexure P1) produced by the appellant-plaintiff.

25. While considering the said question it is very relevant to refer to point Nos. 8 and 9 raised on behalf of the defendant No.3 viz., respondent in this appeal. They read thus:-

> "8. Exhibit A1 is an ancient document in terms of Section 90 of the Evidence Act and the presumption is limited to Extent that it was executed.
>
> 9. The execution of document not in dispute and there is no need to raise presumption u/s 90."

26. Point Nos.8 and 9 as stated above raised by the defendant in this appeal would reveal that he did not dispute the execution of Ext.A1 sale deed No.1209/1928 dated 27.08.1928. A bare perusal of Ext.A1 would reveal that the subject property involved in the transaction effected thereunder is the property in Survey No.845/1, having an extent of 2 acres and 61 cents situated at Thimmarasanaickanur village in Madurai District. Therefore, the question is whether the appellant/plaintiff has proved the contents of Ext.A1 in terms of the Evidence Act.

27. The relevant aspects which are to be borne in mind while considering the aforesaid question are that indisputably Ext.A1 is a registered copy of the sale deed No.1209/1928 dated 27.08.1928 of SRO Andipatti and its execution is not in dispute. It was marked through PW- 1. Evidently, contentions, rather objections were raised on behalf of the respondent as to its admissibility in evidence and as per the impugned judgment the objections were upheld by the High Court to certain extent on manifold reasons. It was contended before the High Court and upheld by the High Court that Ext.A1 is only a registration copy of sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti, and its original title deed in the name of Puliyankaladi was not marked as an evidence. Further the High Court held that Puliyankaladi obtained the property as per Ext.A1 sale deed from sons of Vellaiya Thevar namely, Thavasi Thevar, Kuruppa Thevar, Subbaiah Thevar and Sangu Thevar but no document evincing partition conferring exclusive title on them to alienate the property was produced. Certain other reasons based on the provisions of Section 90 and 110 of the Evidence Act, were also assailed for not acting upon the registration copy of Ext.A1.

28. In the aforesaid context it is relevant to note that the sons of Vellaiya Thevar, named above, sold the property having an extent of 2 acres and 61 cents comprised in Survey No. 845/1 of Thimmarasanayakanur Village to Puliyankaladi in the circumstances specifically mentioned thereunder, as per registered sale deed No. 1209/ 1928 dated 27.08.1928. It is nobody's case that the siblings of Vellaiya Thevar challenged Ext.A1 in any court of law till 15.07.1963, the day on which Puliyankuladi as per Ext.A5 sale deed No.1759/1963 of SRO Andipatti sold it to appellant/plaintiff. Add to it, its execution is not in dispute, as noted earlier. Evidently, what was sold under Ext. A5 registered sale deed by Puliyankaladi to the appellant/plaintiff is the same property comprised in Survey No.845/1 of Thimmanayakanur village of Madurai District having an extent of 2 acres and 61 cents as disclosed under the said sale deed. In short, what is discernible from the materials on record is that both Exts.A1 and A5 sale deeds were not subjected to any kind of challenge till today. At any rate, no document revealing successful challenge against those registered documents are brought on record by the respondent-defendant.

29. Having regard to all the aforesaid circumstances and in the light of the various provisions of the Evidence Act mentioned hereinbefore we will firstly consider the question whether the appellant/plaintiff had succeeded in proving the contents of Ext.A1. Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz., as to its existence, condition or contents may be given by producing its certified copy. Ext.A1, indisputably is the certified copy of sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Subsection (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original. There is no case that foundation for letting in secondary evidence was not laid and as noted earlier, both the trial Court and the First Appellate Court found it admissible in evidence. Thus, the cumulative effect of the aforementioned sections of the Evidence Act and Section 57(5) of the Registration Act would make the certified copy of the sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti, produced as Ext.A1 admissible in evidence for the purpose of proving the contents of the said original document. When this be the position in the light of the specific provisions referred hereinbefore under the Evidence Act and the Registration Act, we have no hesitation to hold that the finding of the High Court that the certified copy of Ext.A1 owing to the failure in production of the original and proving through an independent witness is inadmissible in evidence, is legally unsustainable. In the other words, the acceptance of the admissibility of Ext.A1 found in favour of the appellant/plaintiff by the trial Court and confirmed by the First Appellate Court was perfectly in tune with the provisions referred hereinbefore and the High Court had committed an error in reversing the finding regarding the admissibility of Ext.A1.

30. When the execution of Ext.A1 was not disputed by the respondent (in fact in the circumstances it was indisputable) and when the contents of the original sale deed bearing No. 1209/1928 dated 27.08.1928 of SRO Andipatti was proved by production of the certified copy there was absolutely no reason to look for the application of Section 90 or 110 of the Evidence Act, in the instant case. For the purpose of proving the admissibility and evidentiary value of Ext.A1 or Ext.A5 in the circumstances involved in the instant case, there was absolutely no requirement to look into Section 90 or Section 110 of the Evidence Act. In this context it is relevant to note that once the title of plaintiff's vendor Puliyankaladi acquired under Ext.A1 sale deed is established and purchase of the same property by the plaintiff, of course his father on his behalf, under Ext.A5 registered sale deed is upheld by the High Court there was no reason or justification to interfere with the concurrent judgments of the Courts below. Before dealing with this question further, in the fitness of things we will refer to another aspect. A bare perusal of the impugned judgment of the High Court would reveal that virtually, the High Court also, in troth, agreed with the admissibility of Exts.A1 and A5. The High Court held that 96 cents were purchased under Ext.A5 by the appellant/plaintiff. In paragraph 14 of the impugned judgment the High Court held:-

> "However, even though the first appellant property/plaintiff has prayed for declaration to the entire suit property as admitted by the appellant/ defendant that the title of the plaintiff Puliyankaladi purchased the property from Velaiya Thevar and his property is only entitled to 96 cents and as said the first respondent/ plaintiff has titled over the 96 cents as per sale deed Ex.A.5 and not grant that and accordingly, he is entitled to the title as well as the possession."

31. If Ext.A1 was not taken as a certified copy admissible for proving the contents of its original and accordingly, taken the contents of its original as proved where is the question of accepting Ext.A1 sale deed creating title to Puliyankaladi to sell the property covered thereunder to the plaintiff under Ext.A5 sale deed, as held in paragraph 14 of the impugned judgement. In this context it is also relevant to note that except Ext.A1 sale deed there is no other proven document conferring title to Puliyankaladi to effect transfer of property having an extent of 2 acres and 61 cents comprised in Survey No. 845/1 of Thimmanayakanur village in Madurai District. In short, the very action on the part of the High Court in declaring that the appellant herein/the plaintiff got title over 96 cents as per Ext.A5 sale deed and therefore, he is entitled to the title as well as possession over the said extent, in the aforesaid circumstances amounts to confirmation of the admissibility and evidentiary value of Exts.A1 and A5 as held by the Courts below.

32. Now a perusal of the impugned judgment would reveal that the High Court held that the Ext.A1 would not cover the entire extent of 2 acres and 61 cents comprised in Survey No.845/1 of Thimmanayakanur village in Andipatti Taluk of Madurai District. We are at a loss to understand as to how the High Court came to such a conclusion when Ext.A1 in unambiguous terms describes the property transacted thereunder as land comprised in Survey No. 845/1 of Thimmanayakanur village having an extent of 2 acres and 61 cents. A perusal of Ext.A1 would also reveal that it specifies the boundaries within which the said extent of property lies. The recital in Ext.A1 that describing the property as property in Survey no. 845/1 having an extent of 2 acres and 61 cents along with 3/5th share of well and other plants standing in its four boundaries would not and could not be taken as something which would reduce the actual extent of the property under transaction i.e., 2 acres and 61 cents comprised within the boundaries mentioned thereunder. In this context, it is also to be noted that Puliyankaladi, who purchased the aforesaid extent of the property under Ext.A1 sale deed, had sold the very same property to appellant/plaintiff as per Ext.A5 sale deed No. No.1759/1963 dated 15.07.1963 going by the description thereunder. As stated earlier, going by Ext.A5 the extent of the property transacted thereunder also having an extent of 2 acres and 61 cents comprised in Survey No.845/1 of Thimmanayakanur village. Hence, once Ext.A5 was held as valid and in existence there can be no reason to confine the title passed thereunder to 96 cents when based on Exts.A1 and A5 courts below held that the appellant/plaintiff is

entitled to title and possession over the entire extent. The discussion and conclusions as above would take us to the next question whether the High Court, on reappreciation of evidence, was legally and factually correct in reducing the extent to which the appellant/plaintiff is entitled to, by virtue of Ext.A5 sale deed. In view of the admissibility of Exts.A1 and A5 the courts below were right in casting the onus of proof on the defendants as indisputably, the appellant/plaintiff had discharged his burden of proof. The High Court came to the conclusion that the oral and documentary evidence on the part of the defendants were not properly appreciated by the courts below and it resulted in the grant of decree in favour of the appellant/plaintiff in respect of the entire extent of the suit property.

33. A scanning of the concurrent judgments of the courts below would reveal that the High Court has again committed an error as the courts below had given sound reasons for not accepting the evidence on the part of the defendants. Taking note of the fact that Ext.A5 was registered on 15.07.1963 the courts below considered the question(s) relating their evidentiary value and whether they could outweigh the evidence on the part of the appellant/plaintiff, in extenso. When once Ext.A1 is found as genuine and as one legally admissible for the purpose of proving the contents of the original sale deed No.1209/1928 of SRO, Andipatti and one transferring the title to the extent covered thereunder to Puliyankaladi who is the vendor of the appellant/plaintiff, in the absence of any proven document conferring a better title to the respondent/defendant, as held by the courts below, there was no reason to reverse the concurrent findings of the courts below. On analysing the evidence on the part of the respondent/defendant the trial Court found that defendant(s) did not produce any document proving that the defendant had any right over the suit property prior to the mortgage of the property effected by Puliyankaladi in the year 1959 under Ext.B2. The trial Court, therefore, rightly held that the oral and documentary evidence of the appellant/plaintiff clearly established that till 1959 the suit property belonged to Puliyankaladi and thereafter, the appellant/plaintiff purchased the property from Puliyankaladi as per Ext.A5, in the circumstances mentioned thereunder. Since Ext.A5 legally establishes the contents of the original sale deed No.1209/1928 of SRO, Andipatti the same should confer the right over the entire property covered by Exts.A1 and A5 to the appellant/plaintiff . In fact, this alone was declared by the trial Court and the order of injunction was nothing but a natural sequel to such declaration. The First Appellate Court confirmed the judgment and decree granted by the trial Court. On a careful and anxious consideration of the impugned judgment we find no ground to sustain the reversal of the concurrent judgments of the courts below by the High Court in exercise of the power under Section 100 CPC, as no ground justifying such exercise exists in the instant case. The upshot of the discussion is that the High Cout in exercise of the power under Section 100 CPC, ought not have interfered with the findings of the trial Court judgment and decree of the trial Court which were confirmed by the First Appellate Court. Accordingly, the impugned judgment of the High Court invites interference.

34. In the result the appeal stands allowed. The judgment of the High Court in S.A.(M.D.) No. 802 of 2004 dated 17.10.2012 is accordingly set aside and the judgment of the Sub-Court, Periyankulam in A.S.No.65/97 confirming the judgment and decree dated 30.09.1997 in OS No.104/1996 of the District Munsif-cum- Judicial Magistrate Court, Andipatti is restored.

35. The Appeal is allowed as above. In the circumstances of the case, there will be no order as to cost.

SUPREME COURT OF INDIA
2023 STPL(Web) 273 SC
[2023 INSC 835]
Appaiya Vs. Andimuthu@ Thangapandi & Ors.
Civil Appeal No. 14630 of 2015(@ SLP (C) No.10013 of 2015)**-Decided on 20-09-2023**