Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.9-11 OF 2014

SALEM MUNICIPALITY **Appellant(s)**

Versus

P.KUMAR & ORS. **Respondent(s)**

WITH
CIVIL APPEAL Nos.12-14 OF 2014

O R D E R

The Salem Municipality and State of Tamil Nadu and others are in appeals aggrieved by the judgment and decree passed by the High Court of Judicature at Madras on 8.12.2010 thereby deciding three Second Appeals by the common judgment and order reversing the judgment and decree passed by the First Appellate Court of dismissal of the suits and restoring that of the Trial Court.

It was claimed by the plaintiff that initially, the lease was granted in favour of S. Vijayaranga Mudaliar on 19.11.1940 by the erstwhile Zamindar – Ms.Gnanambal. It was from the month of November 1940 to the month of June

1941.

Similar leases had been granted on 19.11.1942 in 1943 and 1946. In the lease deed area was described as "Chinneri Tank Bund Side -Waste dry" and "Chinneri Tank Bund Upper-dry".

It is significant that each of lease had been granted for eight months, each year continued from November to June next year, to expire before the commencement of rains in July as the land used to be submerged as it was situated in Chinneri Bund side.

It was claimed by the plaintiff that his predecessor in title, continued in possession of the land when the Act called the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (in short "the Act of 1948") came into force. The Act was published on 19.4.1949. Sections 1,2,4,5,7,8 58-A,62,67 68 came into force on 19.4.1949, as provided under Section 1(4) of the Act of 1948. The State Government enforced the other Sections on the appointed date i.e. 19.12.1950. Thereafter, the entire Pallapatti village vested in the State as notified under the

Act of 1948. Pursuant thereto, the possession of the entire village was taken over by the Government, which included the disputed land also, vide possession receipt dated 12.1.1951.

The original plaintiff –late P.C. Pachiappan purchased 4.91 acres of land from S. Vijayaranga Mudaliar. The suits are with respect to said land.

It transpires that late Vijayaranga Mudaliar had applied for a grant of Ryotwari Patta under section 11 of the Act of 1948. The prayer was rejected on the ground that land was not ryoti land and it was recorded as community land. Thereafter, settlement in the area was undertaken and was finally notified in the Gazette dated 21.12.1963. Thereafter, P.C. Pachiappan applied under section 11 of the Act of 1948 for grant of Ryotwari patta of the newly carved out Survey No.163 corresponding to old survey No. 779. Prayer for grant of Ryotwari patta of the disputed land was rejected vide order 5.11.1968 passed in DOS 739/68 (F-2) by Assistant Settlement Officers KDIS No. 737/1968. As recorded in the survey land

register, Exhibit B-2, prepared in the survey and settlement in 1959, the total area of the land 163 = 779 was 24.62 acres, recorded as Achuvan Eri (lake). Hence, it could not have been allotted.

A second application for ryotwari patta moved by Pachiappan was rejected as per government Order dated 11.5.1971. Review application was filed by Pachiappan. It was also rejected vide order dated 7.5.1973 on the ground that records of rights made it apparent that disputed land formed part of 'Achuvaneri' which is IV class irrigation source with wet ayacut registered under it and that it is retained as the tank in the interest of ayacutdars under it. It was also observed that the entire area comes into submergence and the land in question forms part of the irrigation tank.

Unfettered by the previous two rejections, Pachiappan again for the third time applied for issuance of patta on 21.6.1982. That application was ultimately rejected vide Ex. P-5 on 9.5.1984.

On 23.2.1984, by virtue of the Office Memorandum 255, the Transport Department of the State Government handed over Survey No.163

admeasuring 24.62 acres to Salem Municipality for construction of a new bus stand.

Pachiappan had filed a civil suit on 20.12.1984 registered as O.S.34 of 1985 in the Court of District Munsiff of Salem against the State of Tamil Nadu and M/s. Anna Transport Corporation for declaration of title and permanent injunction in respect of 4.91 acres of the land, out of survey No.163.

Yet another civil suit came to be filed by the same plaintiff as against Salem Municipality alone for declaration and injunction on 22.12.1989.

Thereafter, the fourth application was filed for obtaining ryotwari patta by Pachiappan on 26.3.1992. He had filed yet another writ petition No.3932/1992 for restraining the respondents from disturbing peaceful possession and enjoyment of the property.

In Writ Petition No.5642/1992 he prayed that respondent may be directed to consider an application for grant of ryotwari patta. However, both the writ petitions were dismissed as withdrawn. Earlier writ petition filed in 1984

was also dismissed with liberty to file a civil suit.

Third suit O.S.No.342/1996 (348/95) (renumbered as 2066/96) was filed as against Salem Municipality, Anna Transport Corporation and State of Tamil Nadu. He has prayed for the same relief in the third civil suit.

By virtue of the various leases granted to S.Vijayaranga Mudaliar, he became entitled to obtain ryotwari patta under Section 11 of the Act of 1948. Plaintiff entered into an agreement to purchase the suit property in 1951 which culminated into a sale on 29.9.1952. The suit property never formed part of the communal land of Achuvan Eri or its tank bund. Further, the extent of the Achuvan Eri as per the records is only 15.00 acres. The Plaintiff had remained in actual possession and enjoyment of suit property. In the year 1982, Forest Department attempted to commit a trespass in the suit property and put up a nursery. The plaintiff objected and obtained the stay orders from the Government of Tamil Nadu against trespass. The Forest Department withdrew

and was restrained from further work. The plaintiff also filed applications for grant of ryotwari patta in his favour and his predecessor in interest since 1940 onwards had prescribed his title by virtue of adverse possession also.

Earlier suit No. OS.34/1985 was dismissed in default, in the absence of both the parties. The application No.I.A. 583/94 for its restoration was pending. The cause of action arose in the year 1940, thereafter in 1952, when the sale deed was executed and again in the year 1984. Besides declaration and injunction, prayer was also made for demarcation of the property in question.

After the restoration of the suit of 1985, three suits were decided vide common judgment and decree dated 27.4.2000 passed by the Trial Court, Additional District Munsif of Salem. The suit was decreed on 27.4.2000. The appeals were allowed by the First Appellate Court i.e., First Additional District Court, Salem vide judgment and decree dated 30.1.2004. Aggrieved thereby, three-second appeals, which were preferred have been allowed by the impugned judgment and decree thereby restoring

that of the Trial Court.

The High Court has given the finding that there is nothing to doubt the various leases granted to S.Vijayaranga Mudaliar. Sale deed has also been relied upon, the documents A-1 to A-4 have been relied upon by the High Court. The High Court has drawn adverse inferences against the appellants for not producing record pertaining to the aforesaid documents A-1 to A-4. High Court has disbelieved documents B-9 of taking possession on 12.1.1951. Finding of possession has been arrived at in favour of the plaintiff. The High Court has also doubted the action of Salem Municipality of handing over only 19.64 acres area to the Transport Corporation for bus stand, whereas the entire land 24.62 acres has been given to the Salem Municipality by the Tamil Nadu Government. High Court has further stated that there is no estoppel created against the plaintiff by virtue of the facts mentioned in lease deeds. It has also not been explained by the defendants that how the area of 15 acres of water tank increased to 24 acres. Consequently, the High Court has set aside

the judgment and decree of the First Appellate Court and restored the judgment and decree passed by the Trial Court.

Shri Rakesh Dwivedi, Shri R.Venkataramani and Shri Gurukrishna Kumar, learned senior counsel appearing on behalf of the appellants urged that High Court has failed to consider the various provisions of the Act of 1908 as well as the Act of 1948. No right could have been created in the water tanks by virtue of the provisions contained in the said Acts. They have relied upon the definition of Ryot and Ryoti land in Section 3(15) and 3 (16) of the Act of 1908.

The ryoti land as defined in section 3(16) of the said Act specifically excludes beds and bunds of tanks. It was also urged that High Court has also failed to consider the impact of dismissal of the proceedings for obtaining 'Ryot Patta' under Section 11 of the Act, filed by the Predecessor in interest S.Vijayaranga Mudaliar and by the original plaintiff. The prayer of S. Vijayranga Mudaliar for grant of ryotwari patta has been rejected vide order dated 20.7.1953. Other four

prayers made by Pachiappan also stood rejected in the years 1968,1971, 1984 and 1994. In the absence of a grant of ryotwari patta and even otherwise, the land remained vested in the State Government. The finding as to possession of plaintiff recorded by the High Court is also perverse and is contrary to the revenue entries, the documents of settlement and other record of rights w.e.f. 1948 till 1995. The revenue records have been placed on record and in none of them, there is an entry of possession of Pachiappan. On the strength of sale deed executed in 1952, the name of Pachiappan had never been mutated. Since Predecessor S. Vijayaranga Mudaliar had no title, late Pachiappan could not have derived any right, title or interest from him. Having failed to prove the title of S. Vijayaranga Mudaliar and also his own title, the plaintiff was not entitled to obtain the decree in his favour. Apart from that, it was also urged that though such a suit was barred under the provisions of 1948 Act. Even if it is held to be maintainable for establishing of the rights of Ryot, plaintiff has miserably

failed to prove right, title or interest so as to seek declaration and injunction prayed for. The suits were rightly dismissed by the First Appellate court. Learned counsel have also referred to the decision in *State of Tamil Nadu Vs. Ramalinga Samigal Madam* (1985) 4 SCC 10. Even if the documents A-1 to A-4 are taken to be proved, plaintiff did not derive any sustenance from them for proving of right, title or interest over the land. The High Court has proceeded merely on the basis of adverse inference so as to confer a title in favour of the plaintiff whereas the plaintiff has miserably failed to prove his own case. They have also relied on Section 14A of the 1948 Act.

Shri Rajiv Dutta and Shri V.Giri, learned senior counsel appearing on behalf of the plaintiff contended that once documents A-1 to A-4 are found to be proved, right, title and interest stands proved not only of the predecessor-in-interest but that of the plaintiffs also. Finding of fact as to possession of plaintiff has been rightly recorded by the Trial Court. The

decision of the First Appellate Court has been rightly reversed by the High Court. The entitlement to obtain ryotwari patta has been proved. The claim for conferral of ryotwari patta has not been properly adjudicated by the concerned authorities. Civil suits were maintainable and have been rightly decreed.

It was also contended on behalf of plaintiff that difference in the area of the tank has not been properly explained and the area in question is not part of the tank, it was at the periphery of the tank. Thus, there was no bar under the Act of 1908 to give the same on lease to S.Vijayaranga Mudaliar and, as right, title and interest for obtaining of ryotwari patta had accrued to him, he could have alienated the property in the year 1952. Finding as to possession is also the question of fact and has been rightly arrived at by the Trial Court which has rightly been restored by the High Court. No case for interference is made out. For maintainability of the civil suit, they have relied upon the decision in *Dokiseela Ramulu vs. Sri Sangameswara Swamy Varu & Ors.*

(2017) 2 SCC 69. Lastly, they contended that the adverse inference has rightly been drawn by the High Court.

First, we take up the determination of question as to the nature of the land as the accrual of right, title and interest depends on that under both the Acts of 1908 and 1948. It is apparent from the lease deed placed on record by the plaintiff (Exh. A-2) dated 15.11.1940 that the land formed part of the Chinneri Tank Bund Side -Waste dry Chinneri Tank Bed Upper-dry Chinneri Tank Bund Side -Waste dry Chinneri Tank Bed Upper-dry and the lease was granted in Fasli 1350 corresponding to Gregorian calendar year of 1940 w.e.f. the month of November 1940 to June 1941. Similar other leases collectively marked A-2 are dated 19.11.1942, 1943 and 1946 w.e.f. the month of November to June. The leases were granted in the exercise of the powers under Section 51 of the Act of 1908. It is apparent from the leases that area in question is specifically depicted in the aforesaid lease deeds to form part of the tank.

Besides that, there are a plethora of revenue

entries placed on record indicating that the entire area 24.62 acres had been recorded as tank continuously right from 1950 till 1995.

The lease had been granted for eight months in the year 1940. The grant of lease for the aforesaid period excluding rainy season from July to October and evidence indicates that land formed part of the tank. Thus, we have no hesitation in rejecting the submission to the contrary raised on behalf of the plaintiff-respondent to the effect that land did not form part of the tank.

Now, we come to the question whether any right can be acquired on such a land. When we consider the relevant provisions contained in the Act of 1908 and definition as defined Ryot under Section 3(15) and Ryoti Land under 3(16). The same is extracted hereunder:

> **“Section 3 (15) - “Ryot” means a person who holds for the purpose of agriculture ryoti land in an an estate on condition of paying to the landholder the rent which is legally due upon it.”**
>
> **Explanation:**

> **A person who has occupied ryoti land for a continuous period of twelve years shall be deemed to be a ryot for all the purposes of this Act.**
>
> **Section 3 (16)- "Ryoti land" means cultivable land in an estate other than private land but does not include;**
>
> **(a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels:**
>
> **(b) threshing floor, cattle-stands, village-sites and other lands situated in any estate which are set apart for the common use of the villagers.**
>
> **(c) lands granted on service tenure either free of rent or on favourable rates or rent if granted before the passing this act or free of rent if granted after that date, so longs as the service tenure subsists."**

It is apparent from the definition of 'ryot' as defined under Section 3(15), means a person who holds the land for the purpose of agriculture. It is necessary for such a 'ryot' to hold 'ryoti Land' in an estate. Ryoti land has been defined in Section 3(16) as cultivable land in an estate other than private land but does not include beds and bunds of tanks and of supply, drainage, surplus or irrigation channels. Thus, as the area

in question formed part of the tank was clearly not ryoti land as per the said definition in Section 3(16). As such, the predecessor in interest - S.Vijayaranga Mudaliar or plaintiff could not be said to be 'ryot' holding 'ryoti' land.

The provisions contained in the 1948 Act have been enacted to bring about agrarian reforms and to abolish the intermediaries, zamindars, and Jagirdars etc. As a matter of fact, a lot of agrarian reforms have taken place by the enactment of Abolition Act, as mandated by Article 39 (b) and (c) of the Constitution. By virtue of the provisions contained in Section 3 of the Act, on issuance of notifications with effect from the notified date certain consequences ensues automatically. It is provided in Section 3(b) that entire estate including with all communal lands; porambokes, other then ryoti lands; rivers and streams; tanks and ooranies (including private tanks and ooranies and irrigation works] etc., shall stand transferred to the Government and vest in them, free of all encumbrances.

Section 3 is extracted hereunder:

"Section 3: With effect on and from the notified date and save as otherwise expressly provided in this Act:

(a) the Tamil Nadu Estates Land (Reduction of Rent) Act, 1947 Tamil Nadu Act XXX of 1947 [in so far as it relates to] matters other than the reduction rents and the collection of arrears of rent and the Tamil Nadu Permanent Settlement Regulation, 1802 Tamil Nadu Regulation XXV of 1802, the Tamil Nadu Estates Land Act, 1908 Tamil Nadu Act 1 of 1908, and all other enactments applicable to the estate as such shall be deemed to have been repealed in their application to the estate]

(b) the entire estate including all communal lands; porambokes; other nonryoti lands; wastelands; pasture lands; Lanka lands; forests; mines and minerals; quarries; rivers and streams; tanks and ooranies (including private tanks and ooranies and irrigation works] fisheries and ferries, shall stand transferred to the Government and vest in them, free of all encumbrances and the Tamil Nadu Revenue Recovery Act, 1864, the Tamil Nadu Irrigation Cess Act, 1965, and all other enactments applicable to ryotwari areas shall apply to the estate;

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered forthwith take possession of the estate, and all accounts, registers, pattas muchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof;

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta-

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;
(ii) if such person is a landholder pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;

(e) the principal or any other landholder and any other person, whose rights stand transferred under clause (b) or cease and determine under clause (c), shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act]
(f) the relationship of landholder and ryot, shall, as between them, be extinguished;
(g) any rights and privileges which may have accrued in the estate to any person before the notified date, against the principal or

> **any other landholder thereof, shall cease and determine, and shall not be enforceable against the Government or such landholder and every such person shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act.]"**

It is also provided in Section 3(c) that all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall against the Government cease and determine.

It is apparent that under Section 3 of the Act of 1948 vesting is automatic by virtue of the statutory provisions and government is empowered to take possession as provided under Section 3 (a) only saving in the proviso to section 3(d) is that in case any person is prima facie entitled to ryotwari patta and during pendency of his application, for the settlement, was not to be dispossessed. In the case of the landholder, it is provided that if the decision is pending before the Settlement Officer and the Tribunal on appeal, the State before taking possession has to prima facie consider whether landholder is entitled to ryot

patta. Another consequence of vesting as clearly provided in Section 3(f) of Act of 1948 is that the relationship between the landholder and Ryot shall stand extinguished.

Section 3(g) of the Act of 1948 specifically provides that right which may have accrued in the estate to any person before the notified date shall not be enforceable against the government and such person shall be entitled only to such rights and privileges as are recognised or conferred on him as provided under the Act of 1948.

Section 11 deals with rights of a ryot in an estate to apply for a ryotwari patta in respect of ryoti land which was properly included or ought to have been properly included in his holding.

Section 11 is extracted hereunder:

> **<u>"Lands in which ryot in entitled to ryotwari patta:</u>**
> **"11. Every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of ;**
>
> **(a) all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in his**

holding and which are not either Lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of this act; and

(b) all Lanka lands in his occupation immediately before the notified date, such land having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July 1939.

Provided that no person who has been admitted into possession of any land by as landholder on or after the 1st day of July 1945 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

Explanation: No lessee of any Lanka land and no person to whom a right to collect the rent of any land has been leased before the notified date, including an ijaradar or a farmer of rent, shall be entitled to a ryotwari patta in respect of such land under this section."

Section 12 deals with the right of the landholder in zamindari estate and Section 13 deals with the landholder of Inam estate with which we are not concerned in the present case. Plaintiff has claimed the right, title and interest as ryot, not as landholder.

Section 14-A was inserted by amendment Act 49 of 1974. The provisions contained in Section 14-A is extracted hereunder;

> **“Ryotwari patta not to be granted in respect of private tank or oorani:**
>
> **14-A.(1) Notwithstanding anything contained in this Act, no ryotwari patta shall be granted in respect of any private tank or oorani.**
> **(2) Any ryotwari patta granted in respect of any private tank or oorani under this Act before the date of the publication of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1974, in the Tamil Nadu Government Gazette, shall stand cancelled, and for purposes of compensation under this Act the private tank or oorani shall be deemed to be land in respect of which neither the landholder nor any other person is entitled to ryotwari patta under this Act.”**

Section 14-A(1) makes it clear that Notwithstanding anything contained in this Act, no ryotwari patta shall be granted in respect of any private tank or ooranies. Even if any patta has been granted the same shall stand cancelled and the land of the private tank or oorani shall be deemed to be land of neither the landholder nor any other person is entitled to ryotwari patta under the Act.

It is apparent from the conjoint reading of the provisions contained in Sections 3(15) and 3 (16) of the Act of 1908 and the provisions contained in Section 3, 11 and 14-A of the Act of 1948 that the land of the tank is not 'ryoti land' as such no rights of 'ryot' could accrue in the person by holding the land on temporary arrangement of lease granted for 8 months in a year when water was not there in the tanks. Such bodies are protected by virtue of the aforesaid provisions carved out under the Acts of 1908 and 1948. The amendment made in 1974 in Section 14-A makes it clear that even if any ryot patta has been granted to any incumbent even with respect to private tank or ooranies that shall be inoperative and stand cancelled.

In the instant case, it is apparent that not only S.Vijayaranga Mudaliar the vendor of plaintiff had applied for a grant of patta under the provisions of Section 11 of the Act of 1948, but the same very prayer had been unsuccessfully made four times by the original plaintiff. All such prayers made in 1953, 1968, 1971, 1982 and

1994 had been rejected. It is not in dispute that ryotwari patta had not been granted. In the order passed rejecting review in 1973, there is categorical finding that land is comprised in the tank and area was liable for submergence and formed part of the irrigation tank. Once the claim of the original plaintiff had been rejected, it was incumbent upon him to file a suit for establishing his rights, if any. He could not have waited till 1984, after initial rejection of the prayer in 1953. Again, could not have waited till December 1984 after the rejection order was passed in 1968 and again on 11.5.1971 and review had been dismissed on 7.5.1973. In the absence of grant of ryotwari patta and even otherwise in view of the fact that land formed part of tank reserved for common use, no right accrued to the plaintiff to claim ryotwari patta as his predecessor was not 'ryot' and the disputed land was not 'ryoti Land'. Apart from that, vendor of the plaintiff did not hold land for 12 continuous years, as such no right, title or interest accrued to the

vendor of the plaintiff or to the plaintiff. The Trial Court, as well as the High Court, have committed patent illegality in ignoring the aforesaid prohibition contained in the provisions of the Act of 1908 as well as of the Act of 1948.

Coming to the question of possession, the High Court has discarded B-9 proceedings taking possession on 12.1.1951. Though, there was absolutely nothing to doubt factum of taking over the possession. It is also apparent that the land formed part of tank which used to go in submergence during the rains from the month of July to October, it was not capable of being possessed continuously. No patta was granted to the vendor of the plaintiff for a complete year at any point of time, it was from November to June. The four lease deeds for the period of four years are for 32 months i.e. 8 months each year, have been placed on record of 1940, 1942, 1943 and 1946, no other lease has been produced indicating that he was holding land for 12 years or any lease of the land as on the date when the

Act of 1948 came into force or on the appointed day. Even the vendor was not in possession of the land as the entire estate of the village stood vested in the state, as per the notification issued on 12.1.1951, possession had been taken. Thus, there was absolutely nothing to hold that possession continued with the vendor of the plaintiff. After the purchase was made by Pachiappan in 1952 there is not even single revenue entry placed on record indicating that he ever remained in possession at any point of time or cultivated the land. On the other hand, various documents to the contrary have been placed on record by the appellant.

Firstly, there are copies of settlement register indicating the land comprised in new survey No. 163 corresponds to 779 old and same is recorded as Poramboke (common land) for common use. Entire area 24.62 acre had been recorded as Poramboke. There is yet another settlement entry of 1959 which records that Survey No.163 had been carved out of 779 in an area 24.62 acre and area has been recorded as

Achuveri i.e., lake and also Porampoke i.e., for the common use. The document records the fact that Pachiappan's application for grant of ryotwari patta has been rejected on 5.11.1968. Survey Map of the village also records that the old survey number 779 has vested in the State. When we consider Exh B-13, Fasli 1379 = 1969 year (Gregorian) the land has been recorded as Chinneri (small lake). In the remarks column possession of several persons is recorded as a trespasser, but not that of the plaintiff - Pachiappan. Similar is the position in the entry of various Fasli 1380 = 1970, 1381 = 1971, 1382 = 1972, 1383 = 1973, 1384 = 1974, 1386 = 1976, 1390 = 1980, 1391 = 1981 till 1405 = 1995. The entries in remarks column shows neither ownership nor tenancy as observed by this Court in *Beohar Rajendra Singh v. State of M.P. and others*,1970 RN 16 (Supreme Court).

Other documents are also placed on record indicating that area is Chinneri (lake) of common use. Thus, there was absolutely no material or ground available to the High Court

to set aside the finding of possession recorded by the First Appellate Court and for discarding the B-9 of taking possession in 1951 as that was supported by corresponding revenue entries and statutory presumption of correctness is attached to such entries though such presumption is rebuttable. However, there is absolutely no evidence adduced on record by the plaintiff to rebut the statutory presumption of correctness of document of record of rights. Thus, trial court, as well as the High Court, has acted in a perverse manner in discarding the overwhelming evidence merely on the ground that document A-1 to A-4 stands proved. The High Court could not have inferred in favour of the plaintiff, as no right accrued to the plaintiff or to his predecessor-in-interest on the basis of the aforesaid document A-1 to A-4. The High Court has unnecessarily drawn adverse inference just in order to give a finding of the genuineness of the document A-1 to A-4. We take these documents as proved and proceed to deal with the case on that basis.

When we consider the documents A1 to A-4, taken as proved, not only they fail to advance the cause espoused by the plaintiff but rather negates it. Ex.A-2 are the 4 pattas placed on record by the plaintiff granted in favour of S.Vijayaranga Mudaliar as predecessor interest of 1940, 1942, 1943 and 1946. The lease deed itself records that land was comprised in the tank and formed part of the tank. Thus, no right or title or interest could have accrued to the plaintiff over the said land.

Apart from that, when we consider sale deed A-1, executed by S.Vijayaranga Mudaliar in favour of original plaintiff Pachiappa, the recital in the sale deed is that though patta was granted in his name he could neither cultivate nor able to look after the same, as such, he has decided to sell the land. In Exh.A-3 rent register of Fasli 1369 = 1959. It only records the rent not the factum of lease or possession or cultivation by S.Vijayaranga Mudaliar. A-4 is document of the year 1949 that records the name of S.Vijayaranga Mudaliar but

in that, no cultivation is recorded of S.Vijayaranga Mudaliar. It records only how much was the cess of land. No case is made out in favour of vendor of the plaintiff on the basis of the entry of amount of land cess or land revenue of the year 1949. Merely recording the cess or revenue in the year 1949 or even assuming it was paid by the vendor in 1949, is not going to confer title in favour of vendor, particularly when the area was comprised in the tank. In case any lease had been granted for the period of 1947 to 1949 ought to have been placed on record but no such lease deeds except for four years have been placed on record. Thus, the finding recorded by the High Court as to possession is clearly perverse and contrary to the revenue records and the Gazette notification of vesting of land in State issued in 1951.

It is no doubt true that under Section 114 of the Evidence Act, there is a presumption of continuance of a state of affairs once shown to have prevailed. It is open to the court under

Section 114 to presume the continuity of any fact once shown to have prevailed. Such presumption of continuity can be drawn not only forward but backward also. Court can presume that such state of affairs might have existed in past also unless discontinuity is proved. In the instant case, it is not shown by any affirmative evidence on record in the form of revenue record that the plaintiff's vendor was in possession on the date of abolition and thereafter plaintiff remained in possession at any point of time. This Court has observed in *Sir Bhimeshwara Swami Varu Temple v. Pedapudi Krishna Murthi and Ors.*, AIR 1973 SC 1299 that by stray entry no such presumption arises. On the other hand, the successive five attempts made by the plaintiff and his vendor failed to obtain ryotwari patta as no right in such land existed neither accrued. The plaintiff due to failure to obtain ryotwari patta and even otherwise as land formed part of tank has failed to prove entitlement to be treated as Ryot. No right, title or interest has accrued to the

plaintiff to obtain any ryotwari patta or for obtaining decree in the suit.

It was urged before us on behalf of the appellant that suit was barred by limitation by virtue of provisions contained in Article 58 of the Limitation Act 1963. The suit was required to be filed within three years. We need not go into the question. We have found on merits that absolutely no case is made out in favour of the plaintiff. Thus, he was not at all entitled for any relief.

The High Court has considered another aspect of the difference in area, it has opined that earlier it appeared that land was 15.00 acres only later on how the area was increased to 24.62 acres has not been explained by the defendants. The aforesaid reasoning recorded by the High Court is totally based upon the ignorance of the material aspects and evidence, as a matter of fact earlier dispute land was comprised in survey no. 779 and which corresponding to new s.no. 163 in 24.67 acres, said area has been continuously recorded in the

revenue papers and register of settlement, right from the beginning. After 1948 till 1995, no cogent document indicating the disparity in the area has been filed by the plaintiff. Even assuming that the finding recorded by the High Court is correct, it passes comprehension how that helps the case of the plaintiff. Plaintiff has to succeed only on the strength of his case and when temporary leases had been granted to his vendor within the area of tank as mentioned in the lease deeds which was reserved for the common use, no right could have accrued. The High Court has ignored and overlooked this material aspect. In case, the area has increased from 15 acres to 24.62 acres and has not been explained how the plaintiff can claim any right in the land which formed part of water body is not understandable as the case of the plaintiff is not at all or buttressed by the aforesaid discrepancy even if it exists. Moreover, the entire area of 24.63 acres has been recorded as Chinneri (tank) and poramboke i.e., for common use.

Now, we deal with last ground raised by learned senior counsel on behalf of the plaintiff based on provisions contained in section 64 of the Act of 1948. Section 64 deals with the right of the owner, occupier not to be affected by temporary dispossession/discontinuance of possession. Section 64 is extracted hereunder:

> **"Rights of owner or occupier not to be effected by temporary discontinuance of possession or occupation:**
>
> **64. Where a person-**
>
> **(a) is entitled to the ownership of to the possession or occupation of any land or building immediately before the notified date, but has transferred his right to the possession or occupation thereof or has been temporarily dispossessed or deprived or his right to the occupation thereof; and**
>
> **(b) has not on that date lost his right to recover the possession or occupation of such land or building;**
>
> **He shall, for the purposes of this Act, and subject to the provisions thereof be deemed to be the owner, or to be in possession or occupation, of such land or building;**
>
> **Provided that any lawful transferee**

> **of the right to the title to such land of building shall be entitled to all the rights this Act of his transferor.**

Section 64 pre-supposes that a person is entitled to ownership or possession or occupancy of any land immediately before the notified date. In case of temporary dispossession or deprivation of his right to occupation hereafter and he has not lost the right to recover the possession of such a land or building shall for the purpose of the Act be deemed to be the owner or to be in possession or occupation of such land or building.

There cannot be any dispute with respect to legal provisions in Section 64 of the Act of 1948. It is settled proposition of law that in case of wrongful dispossession or discontinuance of possession of owner, possession of person who has wrongfully taken it is deemed to be that of the true owner, but in the instant case, the provisions of Section 64 render no help to the plaintiff for the singular reason that his vendor is not proved to be the owner of the land

nor has proved his occupation on the date of abolition or that it had been discontinued in illegal manner, no such right of vendor to remain in possession has been established. Plaintiff's vendor was not having any right, title or interest after the lapse of temporary leases. Consequently, he did not possess any transferable right in the land. Hence, Pachiappan did not derive any right, title or interest from his predecessor in the land as he had none. Plaintiff was required to prove derivative title in which he has miserably failed. It was mentioned in recital in the sale deed by his vendor that he was not able to possess land nor could cultivate it. Apparently, the vendor of the plaintiff was not in occupation of land. Moreover, possession had been taken in 1951 of entire estate by the State Government as apparent from the Gazette notification, the land of the entire village stood vested in the State.

The State Government has handed over the land to Salem Municipality and a major part of

it has been given to the Anna Transport Corporation for the purpose of the bus stand. The High Court has observed why entire land was not given to Transport Corporation by Municipality and consequently inferred in favour of the plaintiff, only part of the land has been given could not have been made the basis by the High Court to derive a conclusion in favour of the plaintiff so as to buttress the title. The High Court has gravely erred in recording such an inferential finding. There was no scope to arrive at the same. The approach employed by the High Court is wholly impermissible, unsustainable, perverse and illegal.

Thus, we have no hesitation in setting aside the judgment and decree passed by the High Court and restoring that of the First Appellate Court. All the three suits stand dismissed. As there was multiplication of various proceedings and three suits were filed, we impose cost of Rupees One Lakh upon the plaintiff/respondent to be deposited with the Welfare Fund of Supreme Court Advocate-on-Record Association within two

months and receipt be filed in the Registry.

The appeals are allowed.

.....J.
(ARUN MISHRA)

.....J.
(VINEET SARAN)

NEW DELHI,
15th NOVEMBER, 2018