

## Krishnan Vs Anusuya and Shanmugam

**Court:** Madras High Court

**Date of Decision:** April 20, 2011

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 107

**Hon'ble Judges:** T. Mathivanan, J

**Bench:** Single Bench

**Advocate:** V. Rajanarayanan, for the Appellant; R. Subramanian for S. Hemalatha, for the Respondent

**Final Decision:** Dismissed

### Judgement

T. Mathivanan, J.

Being dissatisfied with the judgment and Decree dated 08.02.2002 and made in A.S. No. 68 of 2001, on the file of the

learned III Additional District Judge at Pondicherry, confirming the judgment and Decree dated 20.09.2001 and made in O.S. No. 110 of 1999,

on the file of the learned Principal District Munsif, Pondicherry, the Plaintiff has filed this second appeal.

2. The Plaintiff had filed the suit, praying for a judgment and decree:

a) declaring that he is the absolute owner of the B-schedule property, which is a portion of A-schedule property,

b) restraining the Defendants, their men or agents from interfering with his peaceful possession and enjoyment in respect of B-schedule property,

3. The facts, which are absolutely necessary for the disposal of this second appeal may be summarised as under:

The property specified in the schedule of the plaint had/had been in possession and enjoyment of the Plaintiff and his ancestors for more than three

generations. Considering the longer enjoyment and possession of the Plaintiff, the Government had issued "Kudiyiruppu Patta" in his favour on

14.10.1976 and as such he is in absolute and exclusive possession and enjoyment of suit A-schedule property till date.

4. The Defendants are husband and wife. That on 15.09.1997, the first Defendant had issued a legal notice to the Plaintiff alleging that her

husband, the second Defendant, had donated some properties to her and that the Plaintiff had encroached on the alleged donated properties. The

first Defendant had admitted in the above said notice that the Plaintiff has been in possession of the disputed portion of the property (B-schedule)

by dumping things in that property. The first Defendant had also called upon the Plaintiff to remove the alleged encroachment of 1 Metre breadth

and 27.6 Metre in length on the eastern side. In fact, the Defendants are not having any source of title over the B-schedule property. The Plaintiff

had also suitably replied on 20.09.1997.

5. When the matter stood thus, the Defendants were trying to remove the eastern fence of the suit property by force and violence on 31.01.1999.

The Defendants were also trying to dispossess the property on the eastern portion of the property measuring 1 Metre breadth and 27.6 Meters in

length as detailed in the sketch appended to the plaint and described in the plaint B-schedule property. Since the Defendants have disputed the title

of the Plaintiff over the B-schedule property, the Plaintiff was constrained to file the suit.

6. The Defendants had not separately filed their written statement, instead they had adopted their counter filed in the interlocutory application in

I.A. No. 626 of 1999 as their written statement. They had contended that in accordance with the "Kudiyiruppu Patta" dated 14.10.1976, which is

issued in favour of the Plaintiff by the Government, the Plaintiff is entitled to an extent of 02-A 62-C having the linear measurement from east to

west on the northern side 9.4 Meters, on the south 9.2 Meters and from north to south on the eastern side 27.6 Meters and on the western side

28.8 Meters. The property described in the B-schedule of the plaint, does not belong to the Plaintiff, but it is virtually belonged to the Defendants

as they are the absolute owners thereof. The Plaintiff has been habitually causing nuisance to the Defendants by dumping unwanted things in the B-

schedule property. The Defendants had also initiated criminal proceedings by filing complaints before the concerned Police Station as against the

Plaintiff. The Plaintiff had also removed the boundary stones illegally, which was erected to demarcate the Plaintiff's property from the Defendants"

property. Even the proceedings u/s 107 Code of Criminal Procedure were also initiated before the Sub-divisional Judicial Magistrate at

Poncichéry.

7. Based on the pleadings of the Plaintiff as well as the Defendants, the trial Court had formulated the following issues for the better adjudication of

the suit:

1. Whether the B-schedule property belongs to the Plaintiff?

2. Whether the B-schedule property was found to have been encroached and occupied by the Plaintiff from the portion of the Defendants"

property?

3. Whether the B-schedule property has been encroached and occupied by the Defendants?

4. Whether the Plaintiff is entitled for the injunction as prayed for? And

5. To what relief the Plaintiff is entitled?

8. In order to substantiate their respective cases, four witnesses including the Plaintiff were examined on behalf of the Plaintiff. During the course of

their examination Exs.A1 to A13 were marked. On the other hand, five witnesses including the second Defendant were examined on behalf of the

Defendants. During the course of their examination Exs.B1 to B49 were marked. Apart from this, Exs.X1 to X15 were marked as third party's

document.

9. On appraising the oral and documentary evidences and on considering the related facts and circumstances, the trial Court had concluded that

a) B-schedule property, which is in dispute, is belonged to the Plaintiff,

b) the Defendants had failed to prove their contention that the Plaintiff had only encroached the disputed piece of land (B-schedule property) and

as per Ex.A1, the Plaintiff has been enjoying the suit property (plaint B-schedule property) and that the Defendants have been enjoying their

property as per their documents under Exs.B1 to B4.

c) the Plaintiff is entitled only for declaration that he is the absolute owner of the B-schedule property, which is a portion of A-schedule property,

Ultimately the trial court had allowed the suit in respect of the relief of declaration and dismissed the suit in respect of the relief of injunction.

10. Impugning the judgment and Decree of the trial Court, the Plaintiff had preferred an appeal in A.S. No. 68 of 2001 on the file of the learned III

Additional District Judge at Pondicherry.

11. The Defendants also, challenging the decreed portion of the suit had filed another appeal in A.S. No. 83 of 2001. Both these appeals were

clubbed together and heard by the learned III Additional District Judge at Pondicherry.

12. These two appeals were disposed of on the following two questionnaires:

a) Whether the Plaintiff is the absolute owner of the B-schedule property of the plaint? and whether he was in possession and enjoyment of the

property as on the date of filing of the suit?

b) Whether there is any infirmity in the judgment of the trial court?

13. On considering the submissions made on behalf of both sides and on assessing the evidences both oral and documentary, the first appellate

Court has found that:

a) if really the Plaintiff was in possession of the B-schedule property as on the date of Ex.A1, the authorised officer would have certainly conferred

ownership on the Plaintiff in respect of B-schedule property.

b) if the small triangular shaped Bschedule property of the plaint was added to the linear measurement of 2A 62C.A as contemplated under Ex.A1

that would be in violation of the said Kudiyiruppu Act or beyond the maximum limit contemplated under the Kudiyiruppu Act,

c) there is nothing on record to show that the Plaintiff has been in possession and enjoyment of the plaintiff B-schedule property even anterior to the

emergence of Ex.A1 and as such the Plaintiff has failed to prove that he is the owner of the B-schedule property,

d) though, as on date of filing of suit, he was in possession, his possession has not been proved as of a legitimate one and therefore he is not

entitled either for declaration on his title over the property or for obtaining permanent injunction as prayed by him,

Ultimately, the first appellate court has dismissed both the appeals in A.S. No. 68 2001 (filed by the Plaintiff) and A.S. No. 83 of 2001 (filed by

the Defendant).

14. Challenging the judgment and decree of the first appellate Court, the Plaintiff has approached this Court by way of this second appeal.

15. The second appeal came to be admitted based on the following substantial question of law:

Whether the Courts below are right in refusing to grant injunction as prayed for, with regard to B-schedule property, in spite of the finding that the

Plaintiff is entitled to declaration of B-schedule property and is in possession of the B-schedule property

16. Heard both sides.

17. Mr. V. Rajanarayanan, learned Counsel for the Appellant has submitted that despite the finding of all issues in favour of the Plaintiff, the

dismissal of the suit by the trial court as well as the first appellate court has not been justified. He has also added that once both the lower court as

well as the first appellate court have found the possession of the property in dispute in favour of the Plaintiff at least the Plaintiff might have been

granted the relief of injunction.

18. Mr. R. Subramanian, learned senior counsel appearing for Mrs.S. Hemalatha, learned Counsel who is on record for the Respondents has

submitted that in so far as the issue No. 5 is concerned the trial court had strangely found that the Plaintiff is entitled only for declaration as if he is

the absolute owner of the B-schedule property, which according to the Plaintiff is a portion of A-schedule property and that he is not entitled for

injunction as prayed for by him. Ultimately, the suit was dismissed. The learned senior counsel would further submit that the first appellate court

had rightly found that though the Plaintiff was found to be in possession as on date of filing of the suit, his possession had not been proved as of

legitimate one and that he was not entitled either for declaration or for permanent injunction over the property as prayed for by him. He has also

maintained that the first appellate court had dismissed both the appeals in A.S. No. 68 of 2001 filed by the Plaintiff and A.S. No. 83 of 2001 filed

by the Defendants.

19. Ex.A1 is the Kudieruppu Assignment Deed. It reveals that the property comprised in Survey No. 190/2-E, measuring 0.02.62 Cents (Punja)

was assigned to the Plaintiff in accordance with Section 4(1) of Act 8 of 1974 of Puducherry Act as he was found to be in possession of the said

site for the past three generations. The assignment was made on 06.09.1976. As per Ex.A1, the Plaintiff is expected to be in possession of the

extent of land measuring 0.02.62 Cents and not beyond that. In this document, the clear boundaries on all four sides are given to the land assigned

to the Plaintiff. Hence, it is thus clear that the Plaintiff is entitled to the extent of the land what is assigned to him under Ex.A1. He cannot claim or

assert right over any piece of land belonging to the adjoining owner. In this connection, for the better appreciation of the case, it may be relevant to

refer the evidence of DW1, who is the Surveyor of Pondicherry Municipality. Ex.B1 is the Extract of Field Measurement Book in respect of the

field No. 190/2-B. This document has been marked through PW4. This document has also been spoken to by DW1. DW1 has admitted in his

chief examination that the land, which is comprised in field No. 190/2-B assigned to the Plaintiff has been shown in Ex.B1. AS per Ex.B1, the site

comprised in Survey No. 190/2-E measures as follows:

North South on the Eastern Side - 27.6 mtrs

North South on the Western Side - 28.8 mtrs

East West on the Southern Side - 9.2 mtrs

Similarly, the property assigned to the Defendants measures as follows:

North South on the Western Side - 27.6 mtrs

North South on the Eastern Side - 26.8 mtrs

East West on the Northern Side - 5.4 mtrs

20. DW1 has also admitted that he had measured the property comprised in Survey No. 190/2-E on 17.07.1997 at about 10.00 a.m. as detailed

under Ex.B3. He would further state that the measurements given in Ex.B1 is the exact measurement. But, entirely contrary to Ex.B1 the Advocate

Commissioner PW3 in his report has given improper measurements. In Ex.A13 (Plan prepared by the Advocate Commissioner), PW3 has stated

that the A-schedule property was measured as detailed below:

East West on the Northern Side - 9.4 mtrs

East West on the Southern Side - 10.5 mtrs

North South on the Eastern Side - 27.6 mtrs

North South on the Western Side - 28.8 mtrs

21. Further, PW3 has also stated that the measurements found in the "A" schedule of the suit property tallied on ground as per the sketch

produced by the surveyor. He has also stated that he had measured the Defendants' property also and it has been referred as "B" in the Sketch.

He has also stated that he had not referred the measurement of the property marked as B in his report. Further, he would state that while

measuring the southern side boundary there were two survey stones, one was found at 9.6 meters and the other one was found at 10.5 meters

from east to west measurement. He has also stated that the correct boundary stone is the one which was found at 10.5 meters and that the survey

stone found at 9.6 meters is relating to adjacent property. In his cross-examination, he has admitted that he had not referred any title deeds in his

report under Ex.A12. He has also stated that he had measured only as per the revenue records and there was no encroachment by either party.

He has also admitted that the plaintiff B-schedule property has not been specifically shown in Exs.A12 as well as in Ex.A13.

22. On careful appreciation of evidence of the Advocate Commissioner as well as evidence of DW1, Surveyor, this Court is of the considered

view that the evidence of Advocate Commissioner, his report under Ex.A12 and rough sketch under Ex.A13 are lacking of credit of worthiness.

The evidence of PW3 as well as Exs.A12 and A13 cannot be trusted for the appreciation of the case. Ex.A1 as well as the B1 are very much

important and sufficient to disprove the case of the Plaintiff. This Court has also analysed the evidences of PW1 to PW4, DW1 to DW5 and the

documents under Exs.A1 to A13, B1 to B49 as well as the X1 to X15. On taking into consideration of the related facts and circumstances and on

assessing the above mentioned evidences, this Court has endorsed the findings of the first appellate Court.

23. In the result, this second appeal is dismissed and the judgment and Decree dated 08.02.2002 and made in A.S. No. 68 of 2001, on the file of

the learned III Additional District Judge at Pondicherry is confirmed. No costs.