

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.1082 & 1083 of 2012 and
M.P.Nos.1 & 4 in S.A.No.1082 of 2012 and
M.P.Nos.1 & 3 in S.A.No.1083 of 2012

1.Lingamoorthy
2.Parangusam (died)
3.Vibhushanam

4.S.Ranganathan

5.P.Chitra

6.Minor Ilakkiya

7.Minor Nandhini

(Both minors are represented by
natural guardian and mother

P.Chitra (5th appellant)

... Appellants in S.A.No.1082 of
2012

(Appellant 5 to 7 brought on records LRS of the deceased 2nd
appellant vide order of Court dated 29.4.2013 made in M.P.Nos.2 &
2/13 in S.A.1082 & 1083/12)

1.S.Ranganathan

2.Lingamoorthy

3.Parangusam (died)

4.Vibhushanam

5.P.Chitra

6.Minor Ilakkiya

7.Minor Nandhini

(Both minors are represented by
natural guardian and mother

P.Chitra (5th appellant)

... Appellants in S.A.No.1083 of
2012

(Appellants 5 to 7 brought on record as LRS of the deceased 3rd
Appellant vide order of Court dated 29.4.2013 made in M.P.No.2 & 2/13
in S.A.No.1082 & 1083/2013.)

Vs.

1.V.Ganesan

2.J.Varalakshmi

3.K.Srinivasan

4.K.Bhavani

5.J.Saravanan

6.K.Muniammal

7.G.Elumalai

8.S.Gopal

9.Somasundaram

10.Vanathchi Ammal
11.S.Sivakumar
12.T.Ramakrishnan
13.Pathmaja
14.Ramachandran
15.Usha Tiwari
16.Govindarajulu
17.Lakshmipathi
18.Santhammal

19.The Chief Engineer,
Tamil Nadu Highways Department,
Chepauk, Chennai. ... Respondents in S.A.No.1082/2012

1.V.Ganesan
2.J.Varalakshmi
3.K.Srinivasan
4.K.Bhavani
5.J.Saravanan
6.G.Elumalai
7.S.Gopal ... Respondents in S.A.No.1083/2012

Prayer in S.A.No.1082 of 2012:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 31.07.2012 in A.S.No.64/2009 on the file of the learned III Additional District Judge, Thruvallore, Poonamallee arising out of the judgement passed in O.S.No.123 of 2007 dated 28.10.2009 on the file of the learned Subordinate Judge, Poonamallee in respect of reversing the judgement of trial Court.

Prayer in S.A.No.1083 of 2012:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 31.07.2012 in A.S.No.65/2009 on the file of the learned III Additional District Judge, Thruvallore, Poonamallee arising out of the judgement passed in O.S.No.175 of 2008 dated 28.10.2009 on the file of the learned Subordinate Judge, Poonamallee in respect of reversing the judgement of trial Court.

Second Appeal No.1082 of 2012:-

For Appellants : Mr.V.Manohar
For R.1 : Mr.G.Masilamani, Senior Counsel
: for Mr.S.Vijayakumar
For R.19 : Mr.T.Jayaramaraj,
Government Advocate (CS)
RR8, 12, 13, 15 : No Appearance

RR2 to 6, 7, 9 to 11, 14,
17 & 18

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: Dispensed with by order of this
Court dated 18.11.2013
in M.P.No.5/13.

Second Appeal No.1083 of 2012:-

For Appellants : Mr.V.Manohar

For R.1 Mr.G.Masilamani, Senior Counsel
: for Mr.S.Vijayakumar
R6 : S.Jayaprakash

For RR.2 to 7 : No Appearance

COMMON JUDGEMENT

The appellants 1 to 4 in S.A.No.1083 of 2012 are the plaintiffs 5 to 8 in O.S.No.631 of 2004 on the file of the learned District Munsif, Ambattur. The said suit was transferred to the file of the learned learned Subordinate Judge, Poonamallee and re-numbered as O.S.No.175 of 2008. The first respondent herein is the sole defendant in the said suit. The respondents 2 to 5 herein are the plaintiffs 1 to 4 in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the alleged peaceful possession and enjoyment of the plaintiffs. The trial Court by decree and judgement dated 28.10.2009 decreed the suit as prayed for. As against the same, the first respondent herein filed an appeal in A.S.No.65 of 2009 on the file of the learned III Additional District Judge, Tiruvallore, Poonamallee. The First Appellate Court allowed the appeal and set aside the decree and judgement of the trial Court. As against the same, the appellants herein have come up with S.A.No.1083 of 2012.

2.The first respondent in S.A.No.1082 of 2012 is the plaintiff in O.S.No.123 of 2007 on the file of the learned Subordinate Judge, Poonamallee. The appellants 1 to 4 herein are the defendants 8 to 11 in the suit. The other respondents are the other defendants in the suit. This suit was filed for declaration declaring that the settlement deed dated 05.11.2004 under Document No.3722/4, Sub Registrar Office, Anna Nagar, Chennai, executed by the fifth defendant in favour of the defendants 1 to 4 is illegal, unlawful, null and void and for further declaration that the sale deed dated 01.02.2007 under Document No.393 of 2007, Sub Registrar Office, Villivakkam, executed by the defendants 6 and 7 as the Power Agents of the defendants 1 to 4 in favour of the defendants 8 to 11 is illegal, unlawful and liable to be cancelled and for permanent injunction to restrain the defendants from in any manner interfering with the alleged peaceful possession and enjoyment of the plaintiff. The trial Court dismissed the suit by decree and judgement dated 28.10.2009. As against the same, the first respondent herein filed an appeal in A.S.No. 64 of 2009 on the file of the learned III Additional District Judge, Poonamallee. The First Appellate Court by decree and judgement dated 31.07.2012, allowed the appeal and set aside the decree and judgement of the trial Court and decreed the suit as prayed for. As against the same, the appellants 1 to 4 have

come up with S.A.No.1082 of 2012.

3. During the pendency of these second appeals, Mr.Parangusam, second appellant in S.A.No.1082 of 2012 and third appellant in S.A.No.1083 of 2012, died and so, the appellants 5 to 7 in both the appeals have been brought on record as his legal representatives. In M.P.No.5 of 2013 in S.A.No.1082 of 2012, notice to the respondents 2 to 6, 9 to 11, 14, 17 and 18 were dispensed with by order dated 18.11.2013. The said order was challenged before the Hon'ble Supreme Court and the same was confirmed. Mr.V.Ganesan, the first respondent in both the second appeals is represented by Mr.G.Masilamani, learned Senior Counsel. The other respondents in S.A.No.1082 of 2012, though served, have not appeared before this Court and therefore, they are set exparte.

4. Similarly, in S.A.No.1083 of 2012 also except Mr.V.Ganesan, first respondent, there is no representation for the other respondents. It is brought to my notice that the other respondents have been duly served and hence, they are set exparte in this second appeal. However, in both the second appeals, the contesting respondent is only the first respondent.

5. It needs to be mentioned that since, these two suits were tried jointly by the trial Court and they were disposed of by way of common judgement and the First Appellate Court also heard the appeals jointly and disposed of the same by a common judgement, I have heard both the second appeals together and I dispose of the same by this common judgement.

6. For the sake of convenience, let me narrate the common facts involved in both the cases:-

The suit property is comprised in S.F.No.143 at Korratur Village. As per the revenue records, the total extent of the property in S.F.No.143 is 2.09 acres. This property and yet another property comprised in S.F.No.98 and few more properties originally belonged to one Mr.Govinda Swamy. Mr.Govinda Swamy sold away the suit properties by means of a registered sale deed dated 16.06.1926 to three brothers by name Mr.Seeyalan, Mr.Dhamodaran and Mr.Singaram who were all the sons of one Mr.Yogappan. During the life time of Mr.Seeyalan, Mr.Damodharan and Mr.Singaram, they did not partition the suit properties and other properties. After their demise, there was a partition effected on 29.04.1979, which was evidenced by a Koor Chit (Ex.B.2). The said partition was between the legal representatives of Mr.Seeyalan, Mr.Damodharan and Mr.Singaram. One Mr.Rajabathar and Ms.Radha were the children of Mr.Seeyalan. Mr.Kannappan and Mr.Gangadharan were the children of Mr.Dhamodaran. Mrs.Muniammal was the daughter of Mr.Singaram. In the said partition, "A" schedule properties were allotted to the children of Mr.Seeyalan. "B" schedule properties were allotted to the children of Mr.Damodharan. "C" schedule properties were allotted to Mrs.Muniammal who is the daughter of Mr.Singaram.

7. So far as the property comprised in S.No.143 is concerned, it was divided equally i.e., 69 cents was allotted to the children of Mr.Seeyalan; 69 cents was allotted to the children of Mr.Damodharan and 69 cents was allotted to Mrs.Muniammal, daughter of Mr.Singaram. Regarding this partition, there is no dispute. According to the Koor Chit (Ex.B.2), in S.No.143, Northern portion was allotted to the children of Mr.Seeyalan; middle portion was allotted to the children of Mr.Damodharan and the Southern portion was allotted to Mrs.Muniammal, the daughter of Mr.Singaram. But, the parties after the above partition dated 29.04.1979, did not enjoy their respective portions allotted and instead, Mrs.Muniammal took possession of the Northern portion of 69 cents and the children of Mr.Damodharan took possession of middle portion measuring 69 cents and the children of Mr.Seeyalan took possession of the Southern portion measuring 69 cents. (The appellants dispute this fact).

8. Thereafter, Mr.Kannappan and Mr.Gangadharan who are the sons of Mr.Damodharan started selling their shares i.e., 69 cents which forms part of the middle portion in S.No.143. Mr.Kannappan who is one of the sons of Mr.Damodharan sold 33 cents to one Mrs.Santhammal and also sold 6 cents to Mr.Ganesan, the first respondent herein on 09.07.1992 under document No.4747 (Ex.B.13). The remaining 27 cents which was allotted to the share of Mr.Kannappan was acquired by the Highways Department of the Government for laying a road. Thus, after the above sale, Mr.Kannappan, who is one of the sons of Mr.Damodharan had no more right over the property in S.No.143.

9. Mr.Gangadharan who is another son of Mr.Damodharan sold 15.75 cents to the first respondent herein (Mr.Ganesan) by means of a registered sale deed dated 10.07.1992 (Ex.A.1) and by means of another sale deed dated 24.08.1992 he sold away 17 cents to the first respondent herein and thus, from Mr.Gangadharan, the first respondent herein has purchased 32.75 cents. Thus, out of the 69 cents allotted to Mr.Kannappan and Mr.Gangadharan, sons of Mr.Damodharan, the first respondent Mr.Ganesan has purchased 38.75 cents. As I have already pointed out, 27 cents was taken over by the Highways Department and thus, according to the first respondent, he has purchased the entire property allotted to Mr.Kannappan and Gandharan sons of Damodharan which forms part of the middle portion of S.No.143, barring 27 cents on the Western side which was taken over by the Highways Department for the purpose of road.

10. Now, turning to Mrs.Muniammal, the only daughter of Mr.Singaram, on 26.11.1979, by means of five different sale deeds executed in the name of Mr.Somasundaram, Mr.Sathyanarayanammal, Ms.Lalitha, Ms.Vandhatchiammal and Mr.Sivabhushnam, she had sold away her entire share i.e., 69 cents in S.No.143. Mr.Somasundaram had purchased 16 cents; Mrs.Sathyanarayanammal had purchased 8 cents; Mrs.Lalitha had purchased 10 cents; Mrs. Vandhatchiammal had purchased 17 cents and Mr. Sivabhushnam had purchased 21 cents under Exs.A.3 to A.7 dated 28.11.1979 respectively. Thus, Mrs.Muniammal had sold away a total extent of 72 cents in S.No.143 though she was allotted only 69 cents as per the Partition Koor Chit dated 29.04.1979. Mrs.Muniammal had thus, sold three cents in excess.

Thus, after the above sale deeds dated 28.11.1979, Mrs.Muniammal had no more property in S.No.143 is the case of the first respondent.

11.While so, Mrs.Muniammal had executed a settlement deed under Ex.B.3 dated 05.11.2004 in favour of one Mrs.Varalakshmi, Mr.Srinivasan, Ms.Bhavani and Mr.Saravanan who are the defendants 1 to 4 in O.S.No.123 of 2007. As per the said registered settlement deed, Mrs.Muniyammal had settled 34 cents in S.No.143 2A 1A bounded on the North by S.No.143 2A 1B and S.No.143/2A2, South by S.No.143/2C and S.No.143/2E, East by S.No.142 and West by 200 feet road and also 24 cents in S.No.143/2C and S.No.143/2E bounded on the North by S.No.143 2A 1A South by S.No.139 East by S.Nos.140 and 143/2C and a West by 200 feet road. Thus, in Field Survey No.143 under the said settlement deed, Mrs.Muniyammal had settled 58 cents in favour of the above stated persons. Within three days thereafter, i.e., on 08.11.2004, under Ex.B.1, Mrs.Varalakshmi, Mr.Srinivasan, Ms.Bhavani and Mr.Saravanan had executed a general power of attorney in favour of one Mr.Elumalai and S.Gopal who are the defendants 6 and 7 in O.S.No.123 of 2007.

12.Thereafter, they obtained patta under Ex.B.4 for the above said two properties covered under the settlement deed in their names. Then, Mrs.Varalakshmi, Mr.Srinivasan, Ms.Bhavani and Mr.Saravanan, Mr.Elumalai and Mr.S.Gopal, the respondents 2 to 7 herein have filed O.S.No.631 of 2004 before the learned District Munsif, Ambattur. The said suit was later on transferred to the file of the learned Subordinate Judge, Poonamallee and re-numbered as O.S.No.175 of 2008. The said suit was filed for permanent injunction in respect of the property allegedly conveyed under the settlement deed - in S.No.143/2A 1A and S.No.143/2C and 143/2E. The total extent is 58 cents. The said suit was filed against Mr.V.Ganesan, the first respondent herein alone.

13.In the said suit, an Interlocutory Application was filed seeking temporary injunction. That application was dismissed by the trial Court. As against the same, they filed an appeal in C.M.A.No.17 of 2005 on the file of the learned Subordinate Judge, Poonamallee in which, the First Appellate Court granted interim injunction on 25.01.2007. Thereafter, on 01.02.2007, when the injunction was in force and the suit was still pending, Mrs.Varalakshmi and others, who are the settlees under the settlement deed, had sold away the properties to these appellants. Thereafter, the appellants were impleaded as parties in O.S.No.175 of 2008 as plaintiffs. As against the injunction order in C.M.A.No.17 of 2005, a revision was filed before this Court in C.R.P.No.610 of 2007. This Court by order dated 14.03.2007 disposed of the Civil Revision Petition thereby directing the parties to maintain status quo and further directing the trial Court to dispose of the suit as expeditiously as possible. Thereafter, the suit was taken up for trial.

14.In the said suit, Mr.Ganesan, the sole defendant/first respondent herein contended that the plaintiffs in O.S.No.175 of 2008 had no title or possession for the suit properties. According to him, Mrs.Muniammal, after having executed 5 sale deeds on 28.11.1979,

thereby selling a total extent of 72 cents, had no more property comprised in S.No.143 to convey. Therefore, according to the first respondent herein, the settlement deed (Ex.B.1) and the subsequent sale deeds made by the settlees in favour of the other plaintiffs namely the appellants herein are not valid and it would not convey any title to them. Thus, Mr.Ganesan, the first respondent herein had prayed for dismissal of the suit. The trial Court framed appropriate issues in the said suit.

15.As directed by this Court in C.R.P.No.610 of 2007, the trial Court took up the case for trial. Few witnesses were in fact examined. At that juncture, Mr.Ganesan, the first respondent herein filed O.S.No.123 of 2007 on the file of the learned Subordinate Judge, Poonamallee, impleading the plaintiffs in O.S.No.175 of 2008 as defendants and others also. In that suit, as I have already pointed out, Mr.Ganesan had prayed for declaration that the above stated settlement deed dated 05.11.2004 executed by Mrs.Muniammal and the consequential sale deed dated 01.02.2007 (Ex.B.17) are all null and void and also for permanent injunction to restrain the defendants in the said suit from in any manner interfering with his peaceful possession and enjoyment of the suit property.

16.In the said suit, the appellants herein contended that the properties purchased by Mr.Ganesan, the first respondent herein from Mr.Kannappan and Mr.Gangadharan and the properties were purchased by them by means of a sale deed based on the settlement deed executed by Mrs.Muniammal are different properties. In crux, their case is that Mrs.Muniammal had valid title to convey in respect of survey numbers S.No.143/2A 1A and S.No.143/2C and 143/2E. In this suit also, the trial Court framed appropriate issues based on pleadings. Thereafter, it appears that both the parties had made a request to the trial Court to have joint trial and accordingly, joint trial was held and evidence was recorded in O.S.No.123 of 2007. On the side of Mr.Ganesan, the first respondent herein, he was examined as P.W.1 and on his side, 29 documents were exhibited. On the side of the appellants herein and the other defendants in O.S.No.123 of 2007, four witnesses were examined and 23 documents were exhibited.

17.During the pendency of the suit, an Advocate Commissioner was appointed in O.S.No.175 of 2008 and whose report was marked as Ex.C.1 and the rough sketch prepared by him was marked as Ex.C.2. During the pendency of C.R.P.No.610 of 2007, this Court had appointed an Advocate Commissioner and whose report has been marked as Ex.C.4 during trial.

18.Having considered all the above, the trial Court decreed the suit in O.S.No.175 of 2008 and dismissed the suit in O.S.No.123 of 2007 by common judgement dated 28.10.2009. However, the same was reversed by the First Appellate Court by common judgement dated 31.07.2012 thereby decreeing the suit in O.S.No.123 of 2007 and dismissing the suit in O.S.No.175 of 2008. That is how the appellants are before this Court with these second appeals.

19.When these second appeals were admitted on 20.11.2012, this

Court framed the following substantial questions of law:-

"1) Whether the Lower Appellate Court committed error or not in giving finding about the survey No.143/2A1A is one and the same of 143/3 without proper ascertainment of the same?

2) Whether the Lower Appellate Court was correct in presuming the things as against the available evidence to favour the plaintiff who has not taken any initiative to establish the case presented by him?

3) Whether or not the appellate court committed error in relying upon the invalid sale of Muniyammal to presume she has no right in the property due to such transaction?

4) Whether the lower appellate court committed error or not in presuming the survey No.143/2A1 is lying in the middle sect of partitioned property when the Advocate Commissioner specifically located the same with the assistance of the Surveyor at the southern most portion which is belongs to the Muniyammal and the subsequent person in interest of the same?"

20.I have heard Mr.V.Manohar, learned counsel appearing for the appellants; Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent and Mr.T.Jayaramaraj, learned Government Advocate (CS) and I have also perused the records carefully.

21.In these appeals, between the parties, there is no controversy that originally, the entire extent of the suit property comprised in F.S.No.143 was purchased jointly by Mr.Seeyalan, Mr.Dhamodaran and Mr.Singaram. It is also not in dispute that the total extent of the property comprised in F.S.No.143, even according to the revenue records is only 2.09 acres. It is also not in dispute that the properties were partitioned among the children of Mr.Seeyalan, Mr.Damodharan and Mr.Singaram by means of Koor Chit under Ex.B.2.

22.A perusal of the Koor Chit (Ex.B.2) would go to show that it is in vernacular language i.e., in Tamil which states that in S.No.143, 69 cents was allotted to the children of Mr.Seeyalan; 69 cents was allotted to the daughter of Mr.Damodharan and 69 cents was allotted to the children of Mr.Singaram. Therefore, it is crystal clear that Mrs.Muniammal daughter of Mr.Singaram cannot have title or any other right for more than 69 cents in the Field Survey No.143. Regarding this conclusion, there can be no controversy at all.

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23.A reading of Ex.B.2 would go to show that "nky; ghfk;" (mel

pagam) is allotted to Mr.Seeyalan. "eL ghfk; "(nadu pagam) (middle portion) is allotted to Mr.Damodharan and "fPH; ghfk; " (kil pagam) is allotted to Mr.Singaram. In common parlance, it is understood that nky; ghfk; (mel pagam) means western portion, eL ghfk; (nadu pagam) means middle portion and fPH; ghfk; (kil pagam) means Eastern portion. But, it was not understood in that sense by any of the parties to the document. According to the admitted case of the parties, nky; ghfk; (mel pagam) means the top in the field i.e., Northern portion. eL ghfk; (nadu pagam) means, middle portion and the fPH; ghfk; (kil pagam) means, the lowest portion i.e., Southern portion. If one has to go by this understanding, the children of Mr.Seeyalan would have had the Northern 69 cents, the children of Mr.Damodharan would have had the middle 69 cents and Mrs.Muniammal who is the daughter of Mr.Singaram would have had the southern 69 cents.

24.But, a perusal of the various sale deeds executed by the children of Mr.Seeyalan, children of Mr.Damodharan and Mrs.Muniammal would go to show that by means of the above partition deed (Ex.B.2), the Northern portion measuring 69 cents was enjoyed by Mrs.Muniammal and Southern portion was enjoyed by the children of Mr.Seeyalan.

25.Now, there is no controversy that the middle portion measuring 69 cents was allotted to Mr.Kannappan and Mr.Gangadharan who are the sons of Mr.Damodharan and they were enjoying the same as absolute owners. Mr.Kannappan, as I have already pointed out, out of his share in the middle portion, had sold 6 cents to Mr.Ganesan, the first respondent herein and Mr.Gangadharan had sold 32.75 cents under two different sale deeds to the first respondent herein in the year 1992. Thus, Mr.Ganesan, the first respondent herein has purchased a total extent of 38.75 cents from out of the share allotted to Mr.Kannappan and Mr.Gangadharan, the sons of Mr.Damodharan. The remaining 27 cents which was allotted to the share of Mr.Kannappan was acquired by the Highways Department for laying a road on the Western side of the property purchased by him. Thus, so far as the share allotted to Mr.Kannappan and Mr.Gangadharan, the sons of Mr.Damodharan is accounted for. There can be no dispute that the property purchased by Mr.Ganesan, the first respondent herein is the middle portion of S.No.143 measuring 38.75 cents. The Western portion of middle portion has been acquired by the Government measuring 27 cents. These sale deeds have thus, conveyed absolute title for the said property to Mr.Ganesan, the first respondent herein. From the above sale deeds, it is also crystal clear that the properties sold have been duly described by means of four boundaries and the same has been spoken to by the witnesses. The suit property has been duly correlated to these sale deeds.

26.Now, turning to Mrs.Muniammal's share, as I have already pointed out, Mrs.Muniammal was allotted only 69 cents and she cannot claim anything more than 69 cents. Though, the Koor Chit (Ex.B.2) states that she was allotted the Southern 69 cents, Exs.A.3 to A.7 executed by her on 26.11.1979 would clearly go to show that she enjoyed the Northern portion and sold away 72 cents i.e., 3 cents more than the share allotted to her. These documents more

particularly, Exs.A.4 and A.6 would go to show that the southern boundary of the property sold under these documents is shown as that of the property belonging to Mr.Kannappan and Mr.Gangadharan. In the year 1979, the middle portion was admittedly owned by Mr.Kannappan and Mr.Gangadharan. Therefore, it is crystal clear that what was enjoyed by Mrs.Muniammal and sold away by her was only the Northern portion of S.No.143. Acquisition of a portion of the property by the Government happened only in the year 1985. In the year 1979, when Mrs.Muniammal executed Exs.A.3 to A.7, she would have sold only 69 cents. But, she had sold 72 cents and that was also not questioned by anybody. Thus, the entire property allotted to Mrs.Muniammal under Koor Chit (Ex.B.2) and enjoyed by her which is the Northern portion of S.No.143 has been accounted for. After, Exs.A.3 to A.7, she would not have any more property in S.No.143.

27. Curiously, Mrs.Muniammal executed the settlement deed in favour of her children on 05.11.2004 under Ex.B.1 as though she still had title for 34 cents in S.No.143/2A 1A and 24 cents in S.No.143/2C and 143/2E. Thus, according to Ex.B.1, the settlement deed, Mrs.Muniammal has settled 58 cents in Field Survey No.143. A reading of Ex.B.1 settlement deed would go to show that for this 58 cents covered under the settlement deed also, she had traced title on the basis of the partition by means of Koor Chit. It is not as though it is her case that she either inherited or acquired title for this 58 cents out side the purview of Ex.B.2 Koor Chit. She claims title for conveying the same under the settlement deed only from the above said partition (Ex.B.2) which in my considered opinion is not only incorrect but it is a false claim. As I have already pointed out, Mrs.Muniammal had already disposed of her entire share in S.No.143 even in the year 1979 itself. When that be so, it is not explained to the Court as to how she could execute the settlement deed in favour of her children in the year 2004 claiming 58 cents more in the very same Survey number.

28. It is the contention of the learned counsel for the first respondent that creation of the settlement deed - Ex.B.1 itself is only with a view to create some confusion and to grab the property of the first respondent which is the middle portion of the property which the first respondent had earlier purchased from the children of Mr.Damodharan. I find truth in this contention because, as I have already pointed out, having disposed of her entire share in S.No.143 in the year 1979 itself, she had created this settlement deed under Ex.B.1 on 05.11.2004 which must be only with a view to create confusion and to grab the property of the first respondent herein.

29. The settlement deed was executed on 05.11.2004 and within three days thereafter, that was on 08.11.2004, the settlees had executed a general power of attorney in favour of the defendants 6 and 7 in O.S.No.123 of 2007. Within nine days thereafter, i.e., on 17.11.2004, the Tahsildar, curiously, strangely and also shockingly had transferred the patta based on the settlement deed dated 05.11.2004 by making further subdivisions of the properties. This was a matter of challenge in a writ petition in W.P.No.3571 of 2007. The Tahsildar did not even issue notice to the other land owners or the

persons interested and instead, in an arbitrary manner he has issued an order of transfer of patta in the name of the settlees of Mrs.Muniammal. The said writ petition was disposed of by this Court with a direction to the parties to settle the issues before the competent Civil Court and with a further direction to the Civil Court not to be carried away by the patta. Immediately, after getting patta on 17.11.2004, the suit in O.S.No.631 of 2004 which was re-numbered as O.S.No.175 of 2007 was filed for permanent injunction. The pace with which these transactions have been carried out by Mrs.Muniammal and her parties and the defendants 6 and 7, who are real estate businessmen, would go to show that, as rightly contended by the learned Senior Counsel appearing for the first respondent, these documents have been created deliberately with a view to grab the property of the first respondent.

30.Now, the learned counsel for the appellants would submit that it may be true that the first respondent has purchased the share of Mr.Kannappan and Mr.Gangadharan, the sons of Mr.Damodharan but, that property has got nothing to do with the suit property which is covered under the settlement deed dated 05.11.2004 and the subsequent transactions. According to him, the Advocate Commissioner appointed thrice by various proceedings could not identify the respective properties. He would further submit that the relevant documents of the parties have not been correlated to the suit properties. This argument, in my considered opinion, deserves to be simply rejected. Ex.B.6 is a copy of the Surveyor's sketch issued by the Head Quarters, Deputy Tahsildar, Ambattur. This document throws light on the issues more than sufficiently.

31.A perusal of these documents would go to show that the Western portion of S.F.No.143 is the road which is the property acquired in the year 1985. What remains is only the Eastern portion of F.S.No.143. In this, middle portion has been mentioned as 143/2A 1A. It is for this property, the appellants claim title as well as possession. S.No.143/2A 1A which represents the middle portion of the property would not have been to the share of Mrs.Muniammal at all. The Northern portion of S.F.No.143 are shown as S.Nos.143/2A 1B, 143/2A2, 143/3, 143/2D and 143/2A 1C. These are all the properties which have been sold by Mrs.Muniammal to various third parties. The ninth defendant in O.S.No.123 of 2007, one of the purchasers from Mrs.Muniammal on 28.11.1979, has deposed before the trial Court to the effect that the property purchased by him from Mrs.Muniammal forms part of Northern portion of S.F.No.143. The other purchasers of Mrs.Muniammal have also filed written statements taking similar stand. Thus, it has been very clearly established that Mrs.Muniammal was enjoying only the Northern portion and she has sold away the entire extent of Northern portion under Exs.A.1 to A.7. Therefore, she cannot have an inch of land more than what she has already sold under Exs.A.1 to A.7 in Field Survey No.143. Thus, it is crystal clear that the suit property covered under Ex.B.1, settlement deed and the middle portion of the property purchased by the first respondent are one and the same.

32.Similarly, the Southern portion of the property was allotted

to the share of the children of Mr.Seeyalan. The same have also been sold and the said sale deeds would go to show that what was enjoyed by the children of Mr.Seeyalan is the Southern portion. Sale deeds executed by the children of Mr.Seeyalan would go to show that the Northern boundary of the property sold by them was owned and possessed by Mr.Kannappan and Mr.Gangadharan. This would clearly indicate that the middle portion was in possession and enjoyment of Mr.Kannappan and Mr.Gangadharan from whom Mr.Ganesan, the first respondent has purchased. Therefore, the claim of the appellants that they have purchased from the children of Mrs.Muniammal, the middle portion in S.No.143/2A 1A and also the Southern portion in S.No.143/2A and 143/2C is absolutely a false claim. It needs to be mentioned that this Court, while disposing of the writ petition, has clearly held that the Civil Court should not get influenced by the transfer of patta and the sub divisions made by the revenue authorities. Therefore, though the patta has been issued for S.Nos.143/2A 1A and 143/2A and 143/2C in the name of the children of Mrs.Muniammal, that will not create any title or right either on the children of Mrs.Muniammal or the subsequent purchasers from them.

33.It is very obvious that by colluding with the revenue authorities, the defendants 6 to 7 who are the real estate businessmen have used Mrs.Muniammal and her children to create the above documents in quick succession so as to grab the property of the first respondent. From the description of properties more particularly, the four boundaries, it is crystal clear that the suit property namely the property which has been described as the one comprised in S.Nos.143/ 2A 1A is precisely, the property purchased by Mr.Ganesan, the first respondent from Mr.Kannappan and Mr.Gangadharan. Therefore, I reject the contention of the learned counsel for the appellants that the properties purchased by the first respondent from Mr.Kannappan and Mr.Gangadharan are different from the properties covered under the settlement deed dated 05.11.2004. At the risk of repetition, I want to re-emphasise that Mrs.Muniammal had no property at all comprised in S.No.143 after the execution of Exs.A.3 to A.7 since, she had sold away the entire property allotted to her and as a matter of fact, more than that she had sold to various parties.

34.Yet another document which needs to be mentioned is the Commissioner's report and the Surveyor's sketch produced under Ex.B.16. The learned counsel for the appellants would submit that as per the said sketch (Ex.B.16), the Commissioner has identified the suit property in O.S.No.175 of 2008 namely, the property comprised in S.No.143/2A 1A. It is true that going by the sub-division made stealthily by the then Tahsildar, the Commissioner has measured the property. This is, therefore, of no significance. In my considered opinion, subdivision of the survey number by the then Tahsildar is nothing short of a fraud committed on the Government Department itself.

35.The learned counsel for the appellants would nextly submit that the documents armed with by the first respondent have not been correlated to the suit property. This argument, in my considered

opinion, deserves to be simply rejected. I find that the first respondent has succeeded in correlating the documents with the suit properties. As I have dealt with in detail herein above, the sale deeds executed by Mrs.Muniammal under Exs.A.3 to A.7, the sale deeds executed by Mr.Kannappan and Mr.Gangadharan in favour of first respondent and the sale deeds executed by the children of Mr.Seeyalan would go to show that the suit properties are the middle portion of S.No.143 which is covered under the sale deeds executed by Mr.Kannappan and Mr.Gangadharan in favour of the first respondent. For the very same property, which was sold by Mr.Kannappan and Mr.Gangadharan in favour of the first respondent, subsequently, Mrs.Muniammal has executed a settlement deed dated 05.11.2004 in favour of her children and then transfer of patta has taken place and then, suit has been filed in O.S.No.175 of 2008 and during the pendency of the suit, sale deeds have been created in favour of the appellants all in quick succession. It is not as though the appellants are innocent purchasers. Though the suit was filed in the year 2004, they purchased the property in the year 2007 under Ex.B.17 that was after the interim injunction was granted by the First Appellate Court in C.M.A.No.17 of 2005. Therefore, the plea that the appellants are innocent purchasers has no basis and the same deserves to be rejected.

36.The next contention of the learned counsel for the appellants is that the first respondent is in no way connected to the settlement deed namely Ex.B.3 and the subsequent sale deeds executed by the settlees in favour of these appellants and therefore, he has got no locus standi to seek for declaration that these documents are void. This argument simply overlooks the fact that it is only on the basis of these documents, the appellants are trying to disturb the possession of the first respondent and they question the title of the first respondent. Therefore, in my considered opinion, the first respondent has locus standi to file the suit in O.S.No.123 of 2007 for a declaration that these transactions are null and void. The First Appellate Court has rightly appreciated all the facts and law involved and has come to the right conclusion, in this respect.

37.The learned counsel for the first respondent would rely on a judgement of the Hon'ble Supreme Court in Union of India v. Vasavi co-op Housing Society Ltd., (2014 2 SCC 269) to substantiate his contention that the plaintiff, who seeks a relief before the Civil Court, should either succeed or fall on his strength or weakness and he should not be allowed to pick up the holes in the case of the defendant so as to succeed. Regarding this proposition, I have no second opinion. But, in the case on hand, the appellants are plaintiffs in one suit and Mr.Ganesan, the first respondent herein is the plaintiff in the other suit. There was a joint trial. When these appellants seek injunction claiming that they are in possession of the property and when they claim possession based on title, as per the said judgement, it is their burden to prove that they have got title and based on the same, they are in possession of the property. As I have already concluded, the appellants are not in a position to succeed since, Mrs.Muniammal had no right or title for any extent of the property in S.No.143 after the execution of sale deeds in Exs.A.3

to 7 on 28.11.1979. Thus, the appellants have failed to discharge their burden to establish their title under the settlement deed followed by the sale deeds for the suit properties.

38. Similarly, the appellants have failed to prove that they are in possession of the suit property. The adangal extract and patta are sought to be used by the appellants to make an attempt to show that they are in possession of the property. These two documents are to be simply ignored, because, the Writ Court has already held that the transfer of patta and consequential entries made in the adangal shall not influence the mind of the Civil Court. Thus, the legal proposition stated in Union of India v. Vasavi co-op Housing Society Ltd., (cited supra) does not in any manner go to rescue the appellants. So far as the first respondent is concerned, I hold that he has discharged his burden to prove that he is the absolute owner of the suit property and that, the settlement deed executed by Mrs. Muniammal and the consequential sale deeds in favour of the appellants are void.

39. The learned counsel for the appellants, next, placed reliance on a judgement of this Court in Raja & Another v. Paramanathan & another (2014 (2) L.W 301) wherein, this Court had taken the view that the Civil Court should not grant the relief of injunction in favour of the plaintiffs solely relying on the weakness of the case of the defendant. Regarding this legal proposition also, I have no second opinion. But, in the case on hand, as I have already pointed out, both the parties are plaintiffs as the appellants herein are the plaintiffs in one suit and the first respondent herein is the plaintiff in the other suit and thus, the burden is on both of them to prove their respective case. So far as the facts which are required to be proved by the first respondent are concerned, as I have already concluded, he has discharged his burden whereas, the appellants have failed to prove their possession as well as title.

40. Now, turning to the questions of law, the first substantial question of law framed by this Court is, whether the Lower Appellate Court committed error or not in giving finding that the survey No. 143/2A 1A and 143/3 are one and the same without proper ascertainment of the same? I answer this substantial question of law in favour of the first respondent by holding that the property which has been now sub-divided and assigned the Survey No. 143/2A 1A is the property belonging to the first respondent covered under the sale deeds executed by Mr. Kannappan and Mr. Gangadharan who are the sons of Mr. Damodharan in favour of the first respondent.

41. So far as the second substantial question of law is concerned, the First Appellate Court has not presumed anything against the available evidence to favour the appellants as it is sought to be projected by the appellants. The First Appellate Court has strictly gone through the records and the oral evidences. Therefore, this question is also answered only in favour of the first respondent.

42. The third substantial question of law is as to Whether or not

the appellate court committed error in relying upon the invalid sale of Muniyammal to presume that she has no right in the property due to such transaction? This question of law has been framed on the basis of the contention of the appellants that the sale deeds executed by Mrs.Muniammal under Exs.A.3 to A.7 are invalid. In my considered opinion, this contention cannot be accepted at all, because, those deeds were executed by her in the year 1979 and no materials have been placed by the appellants to hold that Exs.A.3 to A.7 are void documents. Therefore, this question of law is also answered in favour of the first respondent.

43.Regarding the fourth substantial question of law, I have already answered that the Commissioner's report does not in any manner go to improve the case of the appellants and instead, the Field Survey Map under Ex.B.6 clearly further goes to strengthen the case of the first respondent that the suit property is precisely the property covered under the sale deeds executed by Mr.Kannappan and Mr.Gangadharan in favour of the first respondent. Thus, this question of law is also answered in favour of the first respondent.

44.Now, turning to the possession, it is in evidence that the first respondent has raised compound wall on all four sides, which has been confirmed by the Commissioner's report. These compound walls were raised in the year 1992 as soon as the purchase was made. This also goes to prove that the first respondent is in possession. Absolutely, there is no evidence to show that the appellants are in possession and enjoyment of the suit property. Therefore, the First Appellate Court was right in reversing the decree and judgement of the trial Court in O.S.No.175 of 2008. Further, the First Appellate Court has rightly held that the first respondent is in possession and enjoyment of the suit property and therefore, the First Appellate Court was right in reversing the decree and judgement of O.S.No.123 of 2007 so as to grant the decree as prayed for. In nutshell, I hold that the settlement deed executed by Mrs.Muniammal under Ex.B.3 and the sale deed under Ex.B.7 are void and I also hold that the first respondent herein is entitled for injunction as prayed for by him.

45. Before parting with this case, I invited the learned counsel on either side to make their submissions as to why proceedings should not be initiated under Section 340 of Cr.P.C. against the persons who are responsible for having created these false documents and for having used the same in evidence before the Court of law. It appears that the defendants 6 and 7/respondents 6 & 7 in S.A.No.1083 of 2012 who are the real estate businessmen were in the background to use the services of Mrs.Muniammal and her children to create these documents. The appellants herein, as I have already pointed out are not innocent purchasers and they have deliberately purchased these properties during the pendency of the litigation only with a view to grab the property of the first respondent. Thus, prima facie, I am satisfied that it is a fit case where this Court has to initiate proceedings under Section 340 Cr.P.C., against the persons who have committed the alleged offences. Prima facie, the creation of these false documents and using the same in evidence to claim right over the property make out offences punishable under the provisions of Indian Penal Code

[see Illustration (h) to Section 464 of IPC].

46.Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent would insist that leniency should not be shown and action should be taken against the persons who have committed these offences. But, Mr.Manohar, the learned counsel for the appellants, would submit that the act of the appellants was not deliberate and therefore, some leniency may be shown on the appellants.

47.Considering the rival submissions, though, prima facie, I am satisfied that this is a fit case where this Court should initiate proceedings under Section 340 Cr.P.C., hoping that the persons who are responsible for this episode will mend their attitude and would not indulge in such kind of activities in future, I desist from initiating such proceedings. But, at the same time, I am of the view that the appellants should at least pay cost for having wasted the valuable time of the trial court and the first appellate court and also this court.

48.Mr.G.Masilamani, learned Senior Counsel would submit that if this Court comes to the decision to award cost on the appellants, heavy cost may be imposed and the same may be ordered to be paid either to the legal services authority or to any orphanage. Mr.Manohar, the learned counsel for the appellants submitted that the appellants are very poor and therefore, some leniency may be shown in the matter. Further, he submitted that the appellants are prepared to pay cost to an orphanage, if directed. The learned counsel on either submitted that the cost may be utilized by the orphanage for stitching and supplying dress materials to the children in need.

49.In this regard, it may not be out of context to express my views. In this great country, no one is an orphan. The children who have been neglected by their parents and relatives and the children who have lost their parents are only the children in need of care and protection. The society at large and the Government in particular, should extend their helping hands to them. The State has a constitutional obligation under Article 21 of the Constitution of India to assure them a dignified life. It is true that this task has been undertaken by a number of organizations established by pious and service oriented people. But, many of these organizations, unfortunately/ inadvertently give to themselves the name as "orphanages". This name, I apprehend, may create a sense of insecurity and a feeling of loneliness in the mind of the children. Already, they may be in depressed thoughts and feelings due to the loss of their parents. We should not add to their depression by calling them as "orphans". We need to create a natural family atmosphere in these homes for the children to get rid of their emotional problems and to grow in the natural way. Subject to the opinions of the Child Psychologists, I am of the view that naming these homes as "orphanages" may amount to stigmatizing them thereby adding to their agonies and creating negative emotions in the mind of the children. Therefore, it is time that these organizations, who really render a good service, should think of shedding the name "orphanage". Instead, they may name after these organizations

befitting to the honour and dignity of the children like "Home for Children" , "Home for protection of children", etc. Let these words, "orphan", "orphanage" and "orphaned" disappear from the English Dictionaries.

50.Now, let the appellants jointly pay a sum of Rs.32,000/- (Rupees thirty two thousand only) (Rs.16,000/- for each appeal) to the Varadhappa Choultry Orphanage, Old No.288, New No.891, Tondiarpet High Board, Old Washermenpet, Chennai - 600 021 (opp. To Old Washermenpet P.O.) Ph.No.044 25951521, within a period of four weeks from today. The authority in administration of the said Institution shall supply dress to the children in need and exhaust the entire amount for the said purpose. Let this measure send a message that the civil courts shall no more remain as mute spectators and that they shall hardly hesitate to take action under the criminal law as a deterrence to prevent claims made on the basis of forged documents and fraudulent transactions.

51.In the result, both the second appeals fail and accordingly, the same are dismissed, however, with cost as stated above. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Poonamallee.

2.The III Additional District and Sessions Judge,
Poonamallee.

3.The Varadhappa Choultry Orphanage,
Old No.288, New No.891,
Tondiarpet High Board,
Old Washermenpet, Chennai - 600 021
(opp. To Old Washermenpet P.O.)

3 cc to Mr. V.Manohar,Advocate, SR.No.11220

2 cc to Mr.S.Vijayakumar ,Advocate, SR.No.11138

S.A.Nos.1082 & 1083 of 2012

EU (CO)

PMK.21.3.2015