

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2015

PRONOUNCED ON : 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.479 of 2012

and

M.P.Nos.1 & 2 of 2012

N.Natarajan

.. Appellant/Plaintiff

- Vs -

The Executive Officer,
Chitlapakkam Town Panchayat,
Having office at Chitlapakkam,
Chennai - 600 064, Tambaram Taluk,
Kancheepuram District.

.. Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.08.2011, made in A.S.No.32 of 2009 on the file of the learned Subordinate Judge, Tambaram reversing the Judgment and Decree dated 29.07.2005, made in O.S.No.20 of 2002 on the file of the learned District Munsif, Tambaram.

For Appellant : Mr.V.Raghavachari
for M/s.Sampathkumar Associates

For Respondent : Mr.P.H.Arvinth Pandian, A.A.G.,
Asst. by Mr.T.Jayaramaraj, GA (CS)

Amicus Curiae : Mr.T.R.Rajagopalan

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J U D G M E N T

The plaintiff in O.S.No.20 of 2002 on the file of the learned District Munsif, Tambaram is the appellant herein. The respondent is the defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the peaceful possession and enjoyment of the plaintiff. By decree and judgment dated 29.07.2005, the learned District Munsif decreed the suit as prayed for. As against the same, the respondent preferred an appeal in A.S.No.32 of 2009 on the file of the learned Subordinate Judge, Tambaram. By decree and judgment dated 30.08.2011, the learned Subordinate Judge allowed the appeal, set aside the decree and judgment of the Trial Court

and dismissed the suit. Challenging the same, the appellant is before this Court with this second appeal.

2. The case of the plaintiff in brief is as follows:

(i) The suit property is comprised in old survey No.189/1 and 190/2A (re-survey No.189/1J) at Chitlapakkam Village in Tambaram Taluk. The total extent of the suit property is 2433 sq.ft. and the same has been described as two pieces of land measuring 1433 sq.ft. and 1000 sq.ft. respectively.

(ii) According to the plaintiff, a Society known as the "Commercial Printing Employees Cooperative Industrial Housing Society Limited" formed a layout in S.No.189/1 and 190/2A in Chitlapakkam Village. The same was approved by the competent authority in LPN DTP No.100/51. The suit property measuring 1433 sq.ft. is plot No.28. As per the said layout on the north of the said property, there lies a vacant land measuring 1000 sq.ft. which is the second piece of land described as the suit property. This 1000 sq.ft. land, as per the approved layout was earmarked as a road.

(iii) Admittedly, the plaintiff is the absolute owner of Plot No.28 measuring 1433 sq.ft. The portion measuring 1000 sq.ft. situated on the north of Plot No.28, which was originally earmarked as a road running east to west, was not dedicated to the respondent Chitlapakkam Town Panchayat by the Society.

(iv) According to the plaintiff one Mr.Narayanaswamy was the owner of the Plot No.28 as well as the 1000 sq.ft. of land situated on the north of the same. He executed a settlement deed on 06.03.1991, thereby settling the Plot No.28 as well as 1000 sq.ft. of land in favour of one Mrs.Rajeswari. Mrs.Rajeswari in-turn settled both the properties in favour of the plaintiff by means of a registered settlement deed dated 13.03.1996 (Ex.A1). By virtue of the said document, according to the plaintiff, he has become the absolute owner of Plot No.28 as well as 1000 sq.ft of land. Thus, the plaintiff claims title for both the properties.

(v) It is his further case that he has raised compound walls on all four sides covering both the properties. He has also raised coconut trees on the vacant land measuring 1000 sq.ft. Thus, according to the plaintiff, he is in possession and enjoyment of the total extent of 2433 sq.ft. including 1000 sq.ft. of land. It is his further case that the defendant has got no right whatsoever to interfere with his peaceful possession and enjoyment of the suit property.

(vi) According to the plaintiff, at the instigation of the local Panchayat Councilor an attempt was made to disturb his possession and hence he was forced to file this suit.

3. In the written statement filed by the defendant, it is admitted that the "Commercial Printing Employees Cooperative

Industrial Housing Society Limited" formed an approved layout in LPN DTP No.100/51 at S.No.189/1 and 190/2A in Chitlapakkam Village. It is also admitted that Plot No.28 measuring an extent of 1433 sq.ft. belongs to the plaintiff. But the 1000 sq.ft. of land which is situated on the north of Plot No.28 has been earmarked as road as per the approved layout. The defendant, being the custodian of the road, has got every right to maintain the same. The plaintiff has got no right whatsoever over the same and he is not in the possession of the said property measuring 1000 sq.ft. Though it is claimed by the plaintiff that pattas have been issued by the revenue authorities for Plot No.28 and the road portion, the pattas are not true. Thus, the defendant objects to the grant of decree in respect of 1000 sq.ft. of land which is situated on the north of Plot No.28.

4. Based on the above pleadings, the Trial Court framed appropriate issues. On the side of the plaintiff he was examined as P.W.1. He had spoken to about the settlement deed executed by Mrs.Rajeswari in his favour and his alleged possession of both the properties. He has exhibited four documents viz., Exs.A1 to A4. Ex.A1 is the settlement deed dated 14.03.1996 executed by Mrs.Rajeswari. Ex.A2 is the patta granted for 1000 sq.ft of land dated 04.08.2000 and Ex.A3 is the patta granted for Plot No.28 measuring 1433 sq.ft. and Ex.A4 series are property tax receipts for the house in Plot No.28.

5. On the side of the defendant, two witnesses were examined who have stated that 1000 sq.ft. of land situated on the north of Plot No.28 is a road and it is under the maintenance of the Panchayat. On the side of the defendant two documents were exhibited as Exs.B1 and B2. Ex.B1 is the sale deed dated 27.04.1981, executed by Cooperative Society in respect of Plot No.28 and Ex.B2 is the xerox copy of the approved field map. During the trial, an Advocate Commissioner was appointed to inspect the suit property and his report has been marked as Ex.C1 and the rough sketch prepared by him was marked as Ex.C2.

6. Having considered all the above, the Trial Court decreed the suit which was reversed by the lower Appellate Court and that is how the appellant is before this Court with this second appeal.

7. In this second appeal, it is contended that the lower Appellate Court was not right in reversing the decree of the Trial Court in respect of the entire extent of 2433 sq.ft of land. It is further contended that so far as Plot No.28 measuring 1433 sq.ft. of land is concerned, when it is admitted by the defendant that the plaintiff is the absolute owner and he is in possession of the same, the lower Appellate Court ought not to have reversed the decree for that portion at least. So far as 1000 sq.ft. of land is concerned, according to the plaintiff, he has got title for the same and he bases his title on the patta issued under Ex.A2 by the Tahsildar, Tambaram. The learned counsel would further refer to

the Commissioner's report, which shows that prima facie the plaintiff is in possession of the said portion of 1000 sq.ft also. Thus according to the learned counsel for the appellant, the lower Appellate Court ought not to have reversed the decree of the Trial Court in respect of this portion also.

8. From the materials available on record including the pleadings, I find that the following substantial questions of law have arisen for consideration in this second appeal:

(i) Whether the Trial Court was right in holding that Exs.A2 and A3 are not forged documents ?

(ii) Whether the Courts below were right in relying on Exs.A2 and A3 disregarding the contention of the defendant that they are forged documents for the simple reason that the relevant records have not been produced by the defendant from the Taluk office to prove that these two documents are forged documents ?

(iii) Whether the lower Appellate Court ought to have summoned the Tahsildar, Tambaram and to have received the relevant registers like Patta Transfer Register, Patta Transfer Order and the other connected files in additional evidence by invoking its power under Order 41 Rule 27 of Code of Civil Procedure ?

(iv) Whether the claim of the plaintiff that he is the owner of 1000 sq.ft. of land situated on the north of Plot No.28 is sustainable based on the above alleged forged Patta in Ex.A2 ?

(v) In the absence of transfer of title for 1000 sq.ft of land which was earmarked as road as per the approved layout, whether the respondent has got right to object to the plaintiff from claiming exclusive possession for the same ?

(vi) Whether the defendant is the custodian of the road portion viz., 1000 sq.ft. of land situated on the north of Plot No.28 and thus has right to object to the claim of the plaintiff for title and possession ?

9. I have heard the learned counsel Mr.V.Raghavachari, appearing for the appellant and Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing for the respondent.

10. Reiterating the grounds of appeal, the learned counsel Mr.V.Raghavachari submitted that in respect of Plot No.28, since there is no dispute by the respondent, the lower Appellate Court ought not to have reversed the decree of the Trial Court in respect of Plot No.28.

11. The learned Additional Advocate General has got nothing to say opposing the said plea of the learned counsel for the appellant. In my considered opinion too, when there is no dispute with regard to Plot No.28, measuring 1433 sq.ft. which belongs to the plaintiff and he is also admittedly in possession of the said property, the lower Appellate Court ought not to have reversed the decree of the Trial Court in respect of the said portion.

12. But at the same time, the learned Additional Advocate General submitted that Ex.A3 patta for Plot No.28, which is stated to have been issued by the Tahsildar, Tambaram is not a true document and the same is a forged document. The learned Additional Advocate General took me through the evidence of D.Ws 1 and 2, wherein, they have categorically stated that Ex.A3 was not at all issued by the Tahsildar.

13. Similarly, the learned Additional Advocate General would submit that Ex.A2 is also a forged document. Referring to the evidence of D.Ws 1 and 2 and other documents, he would submit that the said land measuring 1000 sq.ft. has been earmarked as road as per the approved layout and absolutely there is nothing on record to show that the plaintiff has acquired title for the said portion. The learned Additional Advocate General would further submit that a simple verification of records more particularly Exs.B2 and B3 and the oral evidence of D.W.2 would go to show that Ex.A2 is also a forged document. He would further submit that in respect of the one and only Survey Number, there would have been no occasion to grant two different pattas in the name of the same person by means of two different proceedings.

14. The learned Additional Advocate General further pointed out that the Courts below have held that these two documents have not been proved to be forged because the relevant records such as Patta Transfer Register and the Patta Transfer Orders have not been produced by the defendant. The learned Additional Advocate General further submitted that the Courts below, more particularly the lower Appellate Court, should have summoned the documents and received the same in additional evidence.

15. The learned counsel for the appellant submitted that since this is not a suit for declaration of title, the plaintiff is not obliged to prove his title. According to him, it is suffice that he has proved his possession to the suit property by means of patta and Commissioner's report.

16. The learned counsel for the appellant would further submit that when Exs.A2 and A3 have been issued by the Tahsildar, Tambaram by following the procedure contemplated under the relevant Board Standing Orders pertaining to transfer of patta there is no reason to doubt the genuineness of the same. The learned counsel further submitted that since the land measuring 1000 sq.ft. which was

earmarked for road was not put into use by anybody as a road, the plaintiff has been in possession and enjoyment of the same along with plot No.28. At any rate, according to the learned counsel, the Courts below have relied on Exs.A2 and A3 and there is no reason to suspect the genuineness of these two documents.

17. I have considered the above submissions.

18. This second appeal originally came up before this Court on 12.04.2012 for admission. On that date, after having heard the learned counsel for the appellant this Court had granted interim order of stay of the decree and judgment of the lower Appellate Court. In the said interim order, in paragraph No.4, this Court has recorded as follows:

"4. Learned counsel appearing for the appellant/petitioner submitted that the appellant/petitioner is in possession and enjoyment of the property being a natham poromboke land and having put up compound wall, based on the possession and enjoyment, Tahsildar, Tambaram issued patta. However without cancelling the patta, the respondent is taking hefty steps to interfere with the possession and enjoyment of the appellant/petitioner's schedule mentioned property."

19. From the above interim order and from the submissions made before this Court, it is crystal clear that at every stage in respect of the land measuring 1000 sq.ft. situated on the north of Plot No.28, the plaintiff has been claiming some right or the other based only on Ex.A2. Therefore, it is essential to find whether the said patta (Ex.A2) as well as patta under Ex.A3 were really issued by the Tahsildar, Tambaram or are they forged documents. It needs to be noted that the Courts below have found fault with the respondent for having not sent for the relevant registers/documents from the Tahsildar's office so as to establish that Exs.A2 and A3 are forged documents.

20. When this second appeal came up for hearing on 03.03.2015, after having heard the arguments of the learned counsel for the appellant and the learned Additional Advocate General elaborately, in order to satisfy the judicial conscience of this Court as to whether Exs.A2 and A3 are genuine documents, this Court directed the Tahsildar, Tambaram to be present before this Court along with the Patta Transfer Proceedings relating to Exs.A2 and A3 as well as other connected records. On 04.03.2015, the Tahsildar, Tambaram appeared and he was in possession of the relevant records which prima facie reflected that Exs.A2 and A3 were doubtful documents. This Court therefore expressed its prima facie opinion that it would be necessary for this Court to receive these records in additional evidence in order to pronounce satisfactory judgment in the case on the substantial questions of law involved. But,

Mr.V.Ragavachari, learned counsel appearing for the appellant vehemently opposed such a move and he submitted that this Court has got no power to receive any document by way of additional evidence at this stage. He wanted to make elaborate arguments on this issue. Accordingly when the matter was listed before this Court on the subsequent hearing dates, the learned counsel made his submission opposing the move to receive any document or oral evidence by way of additional evidence. Considering the importance of the question of law involved in this matter in respect of reception of additional evidence, this Court requested the learned senior advocate Mr.T.R.Rajagopalan to assist this Court as Amicus Curiae and accordingly he also made submissions.

21. On 06.03.2015, after having considered the rival submissions, this Court passed the following order

"The appellant is the plaintiff in O.S.No.20 of 2002 on the file of the learned District Munsif, Tambaram, and the respondent is the defendant in the said suit. The said suit was filed for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property. The suit property has been described as the one comprised in S.Nos.189/1 and 190/2A and resurvey No.189/1J and the extent of the land has been mentioned as 0.01.5 Hectares. According to the plaintiff, the suit property is situated in Kamaraj Colony, Chitlapakkam Village, Chennai. Admittedly, the plaintiff has purchased the land comprised in Plot No.28. On the North of Plot No.28, as per the approved lay out, a road running towards East-West is situated. According to the plaintiff, he has got title for that road also apart from Plot No.28. This claim is made based on two pattas allegedly issued by the Head Quarters Deputy Tahsildar, Tambaram Taluk, Kancheepuram District, as per his proceedings in RPT No.3224/2000 and RPT No.3326/2000. It is contended by the respondent that the said pattas are fabricated and false, amounting to a forgery.

2. In order satisfy the judicial conscience of this court, this court summoned the Tahsildar, Tambaram Taluk, to produce the original files relating to RPT No.3224/2000 and RPT No.3326/2000 and the Register of Patta Transfer and also the Field Measurement Book. The Tahsildar, accordingly, produced those records before this court. When they were verified, prima facie, this court found that RPT Nos.3224/2000 and 3326/2000 relate to some other properties in some other village. Thus, prima facie, this

court found justification in the case of the respondents that the pattas are forged. In order to give an adjudication in respect of the possession claimed by the plaintiff, based on these pattas, this court intended to exercise its inherent power to examine the Tahsildar, Tambaram Taluk, Kancheepuram District, as a Court Witness and also to receive the above documents viz., 8A Files relating to patta transfer, Register of Patta Transfer and also the Field Measurement Book covering S.No.189 of Chitlapakkam Village. This was opposed, by the learned counsel Mr.V.Raghavachari appearing for the appellant. His argument before this court was that at the first instance this court has got no suo motu power to examine any witness and/or to receive any additional documentary evidence at the second appeal stage. The second limb of his argument was that assuming that this court has got such suo motu power, there is no need to examine the Tahsildar concerned and to receive these documents in evidence as additional documentary evidence inasmuch as even in the absence of these documents, this court would be in a position to pronounce a judgment on the legal issues raised in this second appeal. In other words, according to him, Order 41, Rule 27 of CPC is not applicable to the facts of the present case.

3. Per contra, the learned Additional Advocate General Mr.P.H.Aravindh Pandian submitted that the power of this court under Order 41, Rule 27 of CPC, more particularly, under clause (b) is so exhaustive, which gives full power to this court to examine any witness and to receive any document in evidence as additional evidence, not only to pronounce the judgment, but also for any other sufficient cause.

4. Mr.T.R.Rajagopalan, the learned senior counsel, who was requested by this court to act as an Amicus Curiae on this legal issue, concurred with the submission of the learned Additional Advocate General.

5. Having heard the matter and having perused the judgments cited at the bar on either side and also by the learned Amicus Curiae, I have concluded that the examination of the Tahsildar, Tambaram Taluk, Kancheepuram District, as a Court Witness and reception of the above documents as

additional documentary evidence is absolutely necessary for rendering an effective judgment in this matter on the issues involved for which, according to me, this court has been empowered under Order 41, Rule 27 (b) of CPC. However, I leave it open for both the parties to make their objection, if any, in respect of the additional evidence, both oral and documentary, to be received by this court in the second appeal.

6. Accordingly, it is directed that the Tahsildar, Tambaram Taluk, Kancheepuram District, shall be examined as a court witness [C.W.1] and the documents viz., 8A Files relating to patta transfer, Register of Patta Transfer and also the Field Measurement Book shall be received in evidence as additional evidence.

7. At this juncture, the learned counsel Mr.V.Raghavachari submitted that the witnesses may be examined today in chief and he may be given time to inspect the documents and then to cross examine the court witness after two days. The said statement is recorded.

8. Call this matter by 2.15 p.m. for examination of court witness as C.W.1. The Tahsildar is directed to be present before this court in the afternoon session to give evidence."

22. Thereafter, Mr.S.Senthamarai Kannan, the Tahsildar, Tambaram Taluk was examined as Court witness No.1 and through whom seven documents were marked as Exs.C3 to C9 viz.,

"Ex.C3. File relating to transfer of patta of the property comprised in Survey No.654/2B1B and 654/2B1C at Pallikaranai Village.

Ex.C4. The Entry relating to RPT No.3224/2000 in the Register of Patta Transfer.

Ex.C5. The Entry regarding RPT Nos.3219 to 3228

Ex.C6. The file relating to RPT No.3326/2000 of the property comprised in Survey No.363/8A1A at Madipakkam-II Village.

Ex.C7. The entry relating to RPT No.3326/2000

Ex.C8. The entry relating to RPT No.3316 to 3326

Ex.C9. FMB for Survey No.189 of Chitalapakkam Village."

23. The learned counsel for the appellant filed a memo seeking adjournment to defer cross examination till 10.03.2015 and on his request he was permitted to inspect Exs.C3 to C9 in the presence of the Registrar, (Judicial) of this Court on 09.03.2015. The matter

again came up for hearing on 10.03.2015. Mr.V.Ragavachari, the learned counsel for the appellant cross examined the witness in part and he continued the cross examination on 11.03.2015 and completed the same. The learned Government Advocate (C.S) Mr.J.Jayaramaraj also cross examined the said witness.

24. The appeal was again taken up for final hearing on 17.03.2015. Mr.V.Ragavachari advanced arguments mainly contending that the evidence of C.W.1 and Exs.C3 to C9 are liable to be eschewed from consideration because they ought not to have been received by this Court for want of power and for want of legal necessity. But the learned Additional Advocate General appearing for the respondent submitted that this Court draws power from Order 41 Rule 27 of the Code of Civil Procedure as well as from Section 103 of the Code.

25. Before going into the further debate on the legal issues raised by Mr.V.Ragavachari, let us first have a look into the relevant provisions of the Code of Civil Procedure. Order 41 Rule 27 reads as follows:

"O.41 R.27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission."

26. A perusal of the above provisions would show that it empowers the Appellate Court to receive additional evidence, whether oral or documentary, only in exceptional circumstances enumerated in Sub-Rule 1(a), 1(aa) and 1(b) of the Rules. So far as the present appeal is concerned, Sub-Rule 1(a) and 1(aa) are not applicable. Let us examine whether Sub-Rule 1(b) is applicable to the instant case. This provision states that a

document may be required by the Appellate Court or examination of any witnesses may be required to enable the Court to pronounce judgment satisfactorily and only in such an event the Court can receive a document as additional evidence or allow a witnesses to be examined. That apart, if the Court finds that for "any other substantial cause" if a document is required or examination of a witness is required, the Court may allow such evidence to be received or witness to be examined.

27. Referring to the above provisions, the learned counsel Mr.V.Ragavachari would submit that Sub-Rule 1(b) cannot be read in isolation as it is in the nature of either qualifying or controlling Sub-Rules 1(a) and 1(aa). It is his contention that for any reason if the Trial Court had refused to admit a particular document in evidence or refused to permit to examine a particular witness even then, it is not automatic for the appellate Court to receive that document in evidence or to allow the witnesses to be examined at the appellate stage. It is his contention that if only the conditions enumerated in clause 1(b) are satisfied, the Court may permit additional documentary evidence or oral evidence. Similarly, for any reason, if the Court accepts that additional evidence could not be produced by the parties despite due diligence that alone would not be suffice for the Appellate Court to receive the same as additional evidence. According to him, even then, the contingencies enumerated in Clause 1(b) are to be satisfied.

28. In my considered view, there can be no doubt that clause 1 (b) controls clauses 1(a) and 1(aa), but at the same time, at no stretch of imagination, it can be stated that clause 1(b) will not have its independent existence so as to empower the Court to receive any additional evidence either oral or documentary at the appellate stage. In other words, even if the conditions enumerated in Sub-Rules 1(a) and 1(aa) are not satisfied and even if no party seeks to produce additional evidence, in order to enable itself to pronounce judgment satisfactorily or for any other substantial cause as enshrined in Sub-Rule 1(b), the Appellate Court can suo motu require such document to be received in evidence and witnesses to be examined. This is the impression, both initial and final, one gets by closely reading Sub-Rule 1(b) along with Sub-Rule 1(a) and 1(aa).

29. On this aspect, let us have a survey of the judgments of various Courts. The earliest judgment upon which I can lay my hand is Parsotim Thakur and Others Vs. Lal Mohar Thakur and others reported in AIR 1931 Privy Council 143, wherein, the Privy Council has held that it is the duty of the Court to come to a valid conclusion that it is really necessary to accept documents as additional evidence to enable it to pronounce judgment. The true test is whether the appellate Court is able to pronounce the judgment from the materials already available, without taking into consideration the additional evidence sought to be adduced. This view of the Privy Council was subsequently approved by the Hon'ble

Supreme Court in Arjan Singh @ Puran Vs. Kartar Singh reported in AIR 1951 SC 193.

30. Thus, so far as the phrase "to enable it to pronounce judgment" as expressed in Sub-Rule 1(b) of C.P.C. is concerned, the true test is as to whether in the absence of the additional evidence sought to be adduced whether the Court would be in a position to pronounce judgment from the other materials already available on record or not. If the Court finds that in the absence of the additional evidence sought to be produced (either oral or documentary), the Court could effectively and satisfactorily adjudicate upon the issues so as to pronounce a satisfactory judgment then, the Appellate Court shall not receive additional evidence either oral or documentary.

31. In K.Venkataramiah Vs. A.Seetharama Reddy reported in AIR 1963 SC 1526 a Constitution Bench of the Hon'ble Supreme Court dealt with the power of the Appellate Court to receive additional evidence under Order 41 Rule 27. The Hon'ble Supreme Court took note of the judgment of the Privy Council in Parsotim Thakur and Others Vs. Lal Mohar Thakur and others (cited supra) as well as the judgment of the Hon'ble Supreme Court in Arjan Singh @ Puran Vs. Kartar Singh (cited supra). In paragraph 10 of the judgment, after having referred to Section 107 of the Code of Civil Procedure and Order 41 Rule 27 of the Code, while approving the view of the earlier judgment in Arjan Singh case (cited supra) the Hon'ble Supreme Court has held as follows:

"10. Section 107 of the Code of Civil Procedure empowers the appellate court "to take additional evidence or to require such evidence to be taken," "subject to such conditions and limitations as may be prescribed." Rule 27 of Or. 41 of the Code of Civil Procedure prescribes the conditions and limitations in the matter. The Rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced. One class is where the Court appealed from has refused to admit evidence which ought to have been admitted. The other class is where the appellate court requires such additional evidence for itself-either to enable it to pronounce judgment or for any other substantial cause. The second class of the rule requires that when additional evidence is allowed to be produced by an appellate court the Court shall record the reason for its admission."

In paragraph 13 of the judgment the Hon'ble Supreme Court has

concluded as follows:

"13. It is very much to be desired that the courts of appeal should not overlook the provisions of cl. (2) of the Rule and should record their reasons for admitting additional evidence. We are not prepared, however, to accept the contention of the appellant that the omission to record the reason vitiates the admission of the evidence. Clearly, the object of the provision is to keep a clear record of what weighed with the appellate court in allowing the additional evidence to be produced—whether this was done on the ground (i) that the court appealed from had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the appeal or (iii) it allowed this for any other substantial cause. Where a further appeal lies from the decision of the appellate court such recording of the reasons is necessary and useful also to the court of further appeal for deciding whether the discretion under the (1) [1866] 11 M.1.A. 28 (2) (1931) 35 C.W.N. 925 rule has been judicially exercised by the court below. The omission to record the reason must therefore be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory. For, it does not seem reasonable to think that the legislature intended that even though in the circumstances of a particular case it could be definitely ascertained from the record why the appellate court allowed additional evidence and it is clear that the power was properly exercised within the limitation imposed by the first clause of the Rule all that should be set at naught merely because the provision in the second clause was not complied with. It may be mentioned that as early as 1885 when considering a similar provision in the corresponding section of the Code of 1882, viz., s. 586, the High Court of Calcutta held that this provision for recording reasons is merely directory and not imperative vide Gopal Singh v. Jhakri Rai(1). We are aware of no case in which the correctness of this view has been doubted. It is worth noticing that when the 1908 Code was framed and Or. 41 r. 27 took the place of the old section 568, the legislature was content to leave the provision as it was and did not think it necessary to say anything to make the requirement of recording

reasons imperative. It is true that the word "shall" is used in R. 27 (2); but that by itself does not make it mandatory. We are therefore of opinion that the omission of the High Court to record reasons for allowing additional evidence does not vitiate such admission."

In paragraph 16 of the judgment the Constitution Bench has laid down the law in the following words:

"16.....Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause." There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under R-27(1) (b) of the Code."

32. Thus, after the above authoritative pronouncement of the Constitution Bench there can be no more doubt regarding the power of this Court to receive additional evidence either to enable it to pronounce judgment or for any other substantial cause.

33. In A.P.State Wakf Board, Hyderabad Vs. All India Shia Conference reported in (2000) 3 SCC 528 the above Constitution Bench judgment in K.Venkataramiah case (cited supra) was followed. Again in Mahavir Singh Vs. Naresh Chandra reported in (2001) 1 SCC 309 a similar view was taken following the Constitution Bench judgment.

34. Very recently in Surjit Singh Vs. Gurwant Kaur reported in (2015) 1 SCC 665 a Division Bench of the Hon'ble Supreme Court again considered the scope of Order 41 Rule 27(1)(b). After having made a complete survey of all the judgments more particularly the judgment referred to above the Hon'ble Supreme Court in paragraph No.21 has held as follows:

"21. At this juncture, it is necessary to clarify that sub-rule (1)(a) of Order XLI Rule 27 is not attracted to the case at hand inasmuch as the documents were not taken on record by the trial court and error, if any, in the said order

does not survive for reconsideration after the High Court has given the stamp of approval to the same in civil revision. Similarly, sub-rule (1) (aa) would not be applicable as the party seeking to produce an additional evidence on the foundation that despite exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed does not arise, for the documents were sought to be produced before the trial court. Cases may arise under sub-rule (1)(b) where the appellate court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. However, exercise of the said power is circumscribed by the limitations specified in the language of the rule. It is the duty of the court to come to a definite conclusion that it is really necessary to accept the documents as additional evidence to enable it to pronounce the judgment. The true test is, as has been held in *Parsotim v. Lal Mohar* where the appellate court was able to pronounce the judgment from the materials before it without taking into consideration the additional evidence sought to be adduced. The same principle has been accepted by a three-Judge Bench in *Arjan Singh v. Kartar Singh and others*." (Emphasis added)

35. A deep reading of all the above judgments and the relevant provisions of the Code of Civil Procedure would leave no doubt that additional evidence, whether oral or documentary, can be received by the appellate Court either at the instance of the parties as provided in Sub-Rules (1)(a) and (1)(aa) or suo motu by the Court as provided in Sub-Rule (1)(b) provided any one of the contingencies enumerated in Sub-Rule 1(b) exists impelling the Appellate Court to receive such additional evidence both oral and documentary. To exercise the power to receive additional evidence under Sub-Rule (1)(b) it is not at all necessary that a party to the appeal should make an application. What all that is required is the satisfaction of the Appellate Court that the additional evidence is required either for pronouncing the judgment satisfactorily or for any other substantial cause.

36. The learned counsel Mr.V.Ragavachari is not able to bring to my notice any judgment, either of the Hon'ble Supreme Court or of any other High Court, taking the view that power under Order 41 Rule 27 (1)(b) cannot be exercised suo motu by this Court at the second appeal stage.

37. Now, we may refer to the judgment of the Delhi High Court in Surjit Vs. Kishori Lal in RSA No.277/2007 dated 08.05.2014, wherein, in paragraph 8 the Delhi High Court has held as follows:

"8. However, in my opinion, there ought not to arise a position that no one is an owner of the suit plot. Consequently, the facts of the present case persuade me to exercise my suo moto powers under Order 41 Rule 27 CPC read with Section 165 of the Evidence Act, 1872. Both these provisions, de hors the aspect of any default committed by the parties of leading sufficient evidence, allows a court to bring evidence on record so as to do complete justice. In this case, complete justice is required to be done because once the defendant failed to prove the adverse possession, there has to be some definite ownership of the suit plot and if ownership of the suit plot was of M/s Leela Ram and Sons and thereafter of plaintiff no.2, a suit for possession must reach its logical conclusion."
(Emphasis added)

38. It is seen from the above judgment, that it was not argued before the Delhi High Court as to whether the Court has got suo motu power or not and thus it had no occasion to examine the said issue deeply. The Delhi High Court has, however, exercised its suo motu power to receive additional evidence at the appellate stage. This view is akin to the view which I have taken herein before. After having gone through the legal history commencing from 1931 Privy Council to 2015 judgment of the Hon'ble Supreme Court, I hold that under Sub-Rule 1(b) of Order 41 Rule 27 the Appellate Court has got suo motu power to receive additional evidence, either oral or documentary, provided any one or more of the contingencies enumerated in the said Rule exists.

39. The learned counsel Mr.V.Ragavachari nextly contended that in the instant case, no one such contingency is available. The learned counsel would further submit that even in the absence of evidence of C.W1 and Exs.C3 to C9, this Court can pronounce the judgment in this case as it is only a suit for injunction based on possession. This argument does not persuade me at all for, it is not as though, the plaintiff is claiming possession as a trespasser and seeks injunction against a third party and not against the owner of the land. Here, he claims to be in possession of the property based on his alleged title. The title is sought to be proved not by any deed of conveyance but only by Ex.A2 patta. Therefore, the fundamental question is whether Ex.A2 is a true document or a forged document. The Trial Court has held the same to be a genuine document because the other registers such as Exs.C3 to C9 were not produced before it. Only to resolve this issue and the additional issue as to whether the plaintiff has got title for 1000 sq. ft. of land, the truthfulness of Ex.A2 has to be ascertained and

without ascertaining this fact, this Court cannot pronounce a satisfactory judgment. Thus, I hold that for pronouncing a satisfactory judgment as enshrined in Sub-Rule 1(b) the oral evidence of C.W.1 and the documentary evidence under Exs.C3 to C9 are absolutely necessary. In the absence of the same, I am of the firm conclusion that this Court cannot pronounce a satisfactory judgment. Thus, I hold that the first contingency is satisfied.

40. So far as the "justifiable cause" as enumerated in Sub-Rule 1(b) is concerned, when forgery is alleged, these additional evidence are absolutely required in order to find out the truth. This, in my considered view is a substantial cause. Thus, this contingency is also satisfied. In view of all the above, I hold that reception of these additional evidences is absolutely necessary.

41. Mr.V.Ragavachari, the learned counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in Malyalam Plantations Ltd Vs. State of Kerala reported in AIR 2011 Sc 559, wherein, the Hon'ble Supreme Court has reiterated that when an application for reception of additional evidence under Order 41 Rule 27 of C.P.C is filed by a party, it is the duty of the High Court to deal with the same on merits. The Hon'ble Supreme Court has further held that if a petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing of the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance / bearing in the issues involved. This proposition is not something new as this has been dealt with by the Constitution Bench in K.Venkataramiah case (cited supra).

42. The learned counsel would nextly place reliance on the judgment of the Hon'ble Supreme Court in Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others reported in (2010) 8 SCC 423, wherein, the phrase "Substantial Cause" as enumerated in Sub-Rule (1)(b) came to be considered by the Hon'ble Supreme Court. After referring to the Constitution Bench judgment in K.Venkataramiah case (cited supra) the Hon'ble Supreme Court has held in paragraph 17 as follows:

"17.The division bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41, Rule 27. As shown above the additional documents produced by the appellant were liable to be taken on record as provided under Order 41, Rule 27 (b) in the interest of justice. But it was certainly right in holding that the way the learned single judge disposed of the appeal caused serious prejudice to the defendants/respondents. In the facts and circumstances of the case, therefore, the proper course for the division bench was to set aside the order of the learned single judge without

disturbing it insofar as it took the originals of the certificates of registration produced by the appellant on record and to remand the matter to give opportunity to defendants/respondents to produce evidence in rebuttal if they so desired. We, accordingly, proceed to do so."

43. The learned counsel, by relying on the above judgments, would submit that in the instant case, this Court ought not to have undertaken the task of examining C.W.1 and to have received Exs.C3 to C9 and instead this Court should have remanded the matter back to the lower Court to receive the evidence and appreciate the facts.

44. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in Jabalpur Development Authority Vs. V.V.Shrivastava and another reported in (2010) 13 SCC 84, Sangawwa Vs. Shankarappa reported in AIR 1992 Karnataka 211, Anisetti Bhagyavathi Vs. Andaluri Satyanarayana reported in AIR 1992 AP 304 and State of Rajasthan Vs. Mst.Dhanni reported in AIR 1993 Rajasthan 67. I do not wish to extract all these judgments as all these judgments have only followed the Constitution Bench judgment in K.Venkataramiah case (cited supra) and there is no contrary view expressed anywhere.

45. The learned counsel Mr.V.Ragavachari would then contend that Order 41 Rule 27 is applicable only to the first appellate Court and not to this Court. His argument is that appreciation of evidence and giving a finding on facts falls within the domain of the Trial Court and the first Appellate Court and not within the domain of this Court in view of Section 100 of the Code of Civil Procedure. His contention is that these documents which have been now received by way of additional evidence and oral evidence of C.W.1 may be relevant for giving a factual finding and not relevant for deciding the substantial questions of law involved. This argument, though gives an initial impression of strength, a deeper consideration of the same would expose its hollowness. In this regard, I may refer to Section 103 of the Code of Civil Procedure which reads as follows:

"Section 103: Power of High Court to determine issues of fact:- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts reason of a decision on such question of law as is referred to in

section 100."

46. Keeping in mind the above provision, now let us go to the judgment of the Hon'ble Supreme Court in Union of India Vs. Ibrahim Uddin reported in 2012-4-L.W. 359. In that case, inter alia, the Hon'ble Supreme Court has dealt with the limitation of the power of this Court under Section 100 of the Code of Civil Procedure. In short, the Hon'ble Supreme Court explained under what circumstances the second appeal can be entertained by the High Court. In paragraph 54 of the judgment the Hon'ble Supreme Court has held as follows:

"54. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (Vide:Jadish Singh v. Nathu Singh AIR 1992 SC 1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353; Satya Gupta (Smt.) @ Madhu Gupta v. Brijesh Kumar, (1998) 6 SCC 423; Ragavendra Kumar v. Firm Prem Machinery & Co., AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd., AIR 2000 SC 1261; Bharatha Matha & Anr. v. R.Vijaya Renganathan & Ors. AIR 2010 SC 2685; and Dinesh Kumar v. Yusuf Ali, (2010) 12SCC 740)."

47. The earliest judgment on this subject from the Madras High Court is that of a Division Bench in Gaddam Paramasivudu v. Mulakala Subbanna [AIR 1919 Mad 17] wherein this court has held that no general rule could be laid down with regard to admission of additional evidence in Second Appeal and that each case has to be dealt with reference to its own merits and the existence of sufficient cause referred to in Order 41, Rule 27 of CPC. On the facts of that case, the Division Bench held that there could be no objection to receive the additional evidence. Subsequently, a single Judge of this Court in Subbaraja v. Narayana Raja [AIR 1954 Mad 1074] held that having regard to the provision of Section 103 of CPC the Second Appellate Court could not admit additional evidence. But, this judgement has no binding force in view of the Division Bench judgement in Goddam Paramasivudu's case. After the amendment of Section 100 of CPC in the year 1976, these judgements were later on considered by a Division Bench of Andhra Pradesh High Court in Chapala Chinnabbayi and others v. Naralasetti Anusuyam [AIR 2006 AP 142] wherein agreeing with the Division Bench of this Court in Goddam Paramasivudu's case the Division Bench of Andhra Pradesh held thus "If the High Court considers necessary and appropriate to receive further evidence at the stage of second appeal and in the interest of justice and both parties, it may permit the additional evidence to be adduced by invoking Order 42 C.P.C. and by taking the aid of Order 41 Rule 27 C.P.C."

48. Thus, it is crystal clear from the above judgment of the Hon'ble Supreme Court and other judgments referred to therein that there is no prohibition for this Court to go into the question of facts provided, the Court is satisfied that the findings of the Courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded by the Court below are perverse. In my view, in the instant case, the findings of the Court below that Ex.A2 has proved the title of the plaintiff and the same is genuine for want of production of relevant records from the Tahsildar's office is clearly a perverse finding. Thus, I hold in the instant case, the evidence of C.W.1 and the documentary evidence under Exs.C3 to C9 are absolutely necessary to resolve the mixed question of law and facts involved. I also hold that this Court need not have directed the lower Court to receive the additional evidence and to record its findings. This court is fully empowered to receive additional evidence at the Second Appeal stage.

49. In view of the forgoing discussions, the contention of the learned counsel for the appellant Mr.V.Ragavachari that the evidence of C.W.1 and documentary evidence in Exs.C3 to C9 should be eschewed from consideration is only liable to be rejected and accordingly it is rejected.

50. Now, let us go into the mixed question of fact and law as to whether Exs. A2 and A3 are forged documents or not. Exs.A2 and A3 would read as though they were issued by the Head Quarters Deputy Tahsildar, Tambaram on 04.08.2000 and 26.07.2000 respectively in the name of the plaintiff Mr.N.Natarajan. In both the documents patta number has been shown as 585. In Ex.A2 there is an endorsement as follows: "DIS RPT No.3224/2000, dated 04.08.2000". In Ex.A3 similar endorsement is found as "DIS RPT No.3326/2000 dated 26.07.2000".

51. It is the admitted case of both the parties and as spoken to by C.W.1, "RPT" means "Register of Patta Transfer". According to the evidence of C.W.1, if any request is made for transfer of patta, the same shall be entered in the Register of Patta Transfer and a number assigned in chronological order. After making such entry in the RPT register and number is assigned to the petition, a file is opened. In that file enquiry is held and finally Tahsildar passes the order transferring patta. The said order is again entered in the RPT register. Ex.C3 is the file relating to the patta transfer proceedings in respect of RPT No.3224/2000. But admittedly, this file relates to a property comprised in Survey Nos.654/2B1B and 654/2B1C at Pallikaranai Village and this has got nothing to do with the suit property at all. Similarly, Ex.C5 relates to the relevant page in RPT register showing that RPT No.3224/2000 came into being only on 22.12.2000, whereas Ex.A2 shows that the order was passed as early as on 04.08.2000 itself. Similarly Ex.A3 shows that RPT No.3326/2000 is dated 26.07.2000, but as per the Register of Patta Transfer it relates to a property

in Survey No.363/8A1A at Madipakkam-II village and this has got nothing to do with the suit property i.e. Plot No.28. The patta transfers were made in the name of one Mr.Srinivasan in RPT No.3224/2000 and in the name of one Mr.Ravikumar in RPT No.3326/2000. Patta transfer order in RPT No.3326/2000 was made only on 22.12.2000, whereas, Ex.A3 shows that the said order was passed on 26.07.2000.

52. A comparison of Exs.A2 and A3 along with Exs.C3 to C9 would go to establish that Exs.A2 and A3 are only forged documents. Though C.W.1 has been cross examined at length, nothing could be elicited that these two documents were really issued by the Head Quarters Deputy Tahsildar, Tambaram. During cross examination, C.W.1 has admitted that the Chitta registers have been updated and they have been computerised at the office of the Tahsildar, Tambaram. The name of the pattadar for survey No.189/1J has been mentioned as Mr.Natarajan. He has also admitted that in the 'A' Register patta for survey No.189/1J stands in the name of the plaintiff Mr.Natarajan. From this, the learned counsel would submit that Exs.A2 and A3 are genuine documents.

53. In my considered view, this argument deserves only to be rejected because a cursory comparison of these documents would clinchingly prove that Exs.A2 and A3 are only forged documents, as Exs.A2 and A3 do not correspond to Exs.C3 to C9. During cross examination by the learned Government Advocate (CS) C.W.1 has clarified that the entire road including the road on the north of Plot No.28 which was earmarked as road bears a single Survey No.189/1A1A. But Ex.A2 shows that Survey number for 1000 sq.ft. of land situated on the north of plot No.28 is 189/1J. Thus, this would further clinchingly prove that Ex.A2 is a forged document. Ex.A3 also have been proved to be forged. It is true that Plot No.28 belongs to the plaintiff but that will not automatically go to prove that Ex.A3 is not a forged document. Thus, I firmly hold that Exs.A2 and A3 are forged documents.

54. If once it is so held that Ex.A2 is a forged document and that as per the approved layout and the oral evidence that 1000 sq.ft. of land which is a portion of the suit property situated on the north of Plot No.28 is only a road, then the claim of the plaintiff that he has got title and that he is in possession of the same cannot be sustained. Thus, so far as the road portion viz., 1000 sq.ft. which is situated on the north of Plot No.28 is concerned, the plaintiff is not entitled for any relief at all.

55. The learned counsel for the appellant would submit that the Commissioner's Report would go to show that the plaintiff is in possession and he can maintain a suit for injunction against the defendant because the defendant has got no right whatsoever over the suit property. In my view, this argument deserves to be rejected because the plaintiff has not come to this Court with clean hands. The plaintiff has come forward with a false plea based

on forged documents. Apart from that the Panchayat is the custodian of the road. The ownership of the road has not been transferred to the panchayat. But, still the panchayat is concerned with public interest to maintain the said portion as a road. Even the owner of the property cannot prevent the road from being used as a road. It cannot be used for a different purpose by anybody including its owner and the panchayat. In this regard, we may refer to the judgement of the Hon'ble Supreme Court in Pt. Chet Ram Vashist v. Municipal Corporation of Delhi [1995 (1) SCC 47] wherein the Hon'ble Supreme Court has directed that the Corporation shall have right to manage the land which was earmarked for school, park etc. and that the Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony and it is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded. Following this judgement, a Division Bench of this Court in K.Rajamani v. Alamunagar Residents' Welfare Association, 2011 (1) CTC 257, after referring to the provisions of the Tamil Nadu Town and Country Planning Act, 1971, has held that though the ownership of the land earmarked for a public purpose has not been transferred to the Municipality, the Municipality is the custodian of the land and it can enforce the purpose for which it has been earmarked in the approved plan. In view of the said legal position, so far as the road portion measuring 1000 sq.ft. situated on the north of plot No.28 is concerned, I am inclined to confirm the judgment and decree of the lower appellate Court. Accordingly, I answer all the substantial questions of law in favour of the respondent.

56. Having held that Exs.A2 and A3 are forged documents, what to do next ? "Fraud avoids all judicial acts ecclesiastical or temporal", the Hon'ble Supreme Court stated in S.P.Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. reported in AIR 1994 SC 853. In English Courts also similar view prevails. The English Court in Lazarus Estate Ltd., Vs. Besalay reported in 1956 All. E.R. 349, has observed that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything". In Smt.Shrisht Dhawan Vs. M/s.Shaw Brothers reported in AIR 1992 SC 1555, the Hon'ble Supreme Court went on to observe as follows:

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

In United India Insurance Co. Ltd., Vs. Rajendra Singh & Ors, reported in AIR 2000 SC 1165 the Hon'ble Supreme Court held "Fraud and justice never dwell together".

57. In Meghmala & Ors Vs. G.Narasimha Reddy & Ors reported in (2010) 8 SCC 383 in paragraph 24 of the judgment the Hon'ble Supreme Court has held as follows:

"24. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud."

The Court further held

"Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage."

Having said so, in paragraph 26 of the judgment the Hon'ble Supreme Court concluded as follows:

"26.Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata....."

58. In the instant case, as I have already concluded, creation of Exs.A2 and A3 amounts to fraud which requires serious action at the hands of this Court. But the question is whether this Court should initiate proceedings under Section 340 of the Code of Criminal Procedure against the plaintiff. To make out a prima facie case under Section 195 of the Indian Penal Code, so as to initiate a proceeding under Section 340 of Cr.P.C. it should be shown that the appellant had fabricated false evidence or used the same in evidence knowing that it is a forged document. But from the materials available on record, in the instant case, I do not find a prima facie case satisfying any one of the ingredients of Section 195 of I.P.C. Therefore, it is not possible for this Court to initiate any proceedings under Section 340 of the Cr.P.C. But, for that matter, this Court cannot close its eyes and keep its arms tied without moving forward to see that the real culprits, who are responsible for the fabrication of these documents, are prosecuted and punished. At this juncture, it needs to be noted as to whether in a case of forgery, it is necessary that the proceedings should be initiated under Section 340 of the Cr.P.C. by the Court or whether the police could register a case. This issue was resolved

by the Hon'ble Supreme Court in Sachida Nand Singh and another Vs. State of Bihar and another reported in 1998 SCC (Cri) 660 has held in paragraphs 10, 11 and 12 as follows:

10. The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It has to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the Chapter appellates. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records."

59. In the case on hand, since, as I have already pointed out, the offence of forgery of Exs.A2 and A3 was committed outside the Court, even before they were produced before the Court, there can be no impediment for the police to register a case. When it was pointed out by this Court to the learned counsel on either side that this Court has power to issue a direction to the Thasildar, Tambaram to forward a complaint to the police in respect of the above offence of forgery, for registration of a criminal case so as to investigate the same thoroughly to find out the real culprits, the learned counsel for the appellant submitted that such power is

not available for this Court in a civil proceedings. Of course, it is true that there is no express provision in the Civil Procedure Code specifically empowering a Civil Court to issue a direction either to a party or to a witness to make a complaint to the police. But at the same time, it needs to be noted that there is no prohibition, either express or implied, thereby prohibiting a Civil Court from issuing any direction to a party or a witness to forward a complaint to the police when a serious offence of forgery is alleged.

60. In my considered view, in such circumstances, the power of this Court could be found in Section 151 of the Code of Civil Procedure. Regarding the scope of power of this Court under Section 151 of the C.P.C., I am of the view that I need not delve more since a Constitution Bench of the Hon'ble Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal* reported in AIR 1962 SC 527, has held that the inherent jurisdiction of the Court to make order *ex debito justitiae* is undoubtedly affirmed by Section 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code. Thus, there is no prohibition for this Court to exercise its inherent jurisdiction to issue a direction to the Tahsildar, Tambaram (C.W.1) to forward a complaint to the police.

61. Above all, forgery is a fraud and so the power of the Court, to unearth the fraud and to bring to book the culprits shall find no barriers. If the inherent power of this Court under Section 151 could not be exercised to such a situation, the phrase "ends of justice" as enumerated in Section 151 will not serve its purpose. Therefore, I hold that to meet the ends of justice, it is absolutely necessary for this Court to issue a direction to the Tahsildar to make a complaint to the police.

62. In this regard, I may also state that, in general, whenever a criminal case is registered by the police alleging offence of forgery, the accused rushes to this Court under Section 482 of the Code of Criminal Procedure seeking to quash the F.I.R. alleging that the issue is before a Civil Court and that no decision has been arrived at by the Civil Court as to whether the document is a forged one or not. Many a times, it happens, the High Court holds that the dispute is civil in nature and quashes the F.I.R. Thus comes to an end the criminal case. Before the Civil Court when the matter finally comes up for consideration, it, generally, happens that the Court simply gives a finding that the document is a forged one and thereafter no further action is taken against the offender. Ultimately the offender thus, escapes, from the clutches of law and goes scot-free.

63. In my view, this is because of the reluctance of the Civil Courts to issue a direction to the police to register a case of forgery or in appropriate cases to initiate proceedings under Section 340 of the Code of Criminal Procedure. Therefore, it has become necessary for this Court to clarify that in appropriate cases, the Civil Court has got power to issue a direction to a party or to a witness to forward a complaint to the police. This measure alone shall send an appropriate message to the intending wrong doers so that the fraud and forgery could be curtailed.

64. In the result, the second appeal is partly allowed in the following terms:

(i) There shall be a decree for permanent injunction in respect of Plot No.28 as per the approved layout restraining the defendant from in any manner interfering with the peaceful possession and enjoyment of the plaintiff.

(ii) The suit shall stand dismissed in respect of 1000 sq.ft. of land situated on the north of Plot No.28 comprised in S.No.189/1A1A.

(iii) The respondent shall be at liberty to remove the encroachments, if any, on this property viz., 1000 sq.ft of land situated on the north of Plot No.28 by following the procedure established by law.

(iv) C.W.1, the Tahsildar, Tambaram shall forthwith forward a complaint to the Commissioner of Police, Chennai City in respect of the forgery of Exs.A2 and A3.

(v) On receipt of the said complaint, the Commissioner of Police shall ensure that F.I.R. is registered by the jurisdictional police and thereafter the Commissioner of Police shall entrust the case to the CB-CID for investigation.

(vi) No costs. Consequently, the connected miscellaneous petitions are closed.

65. Before parting with this case, I place on record the excellent assistance rendered by Mr.T.R.Rajagopalan, the learned senior counsel who acted as Amicus Curiae and I also record my appreciation for Mr.P.H.Arvinth Pandian, the learned Additional Advocate General and Mr.V.Ragavachari, the learned counsel for the appellant who have made their submissions threadbare touching upon all the legal issues.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tambaram.
2. The District Munsif,
Tambaram.

Copy To:
The Commissioner of Police,
Chennai City.

+1 cc to M/s.Sampathkumar & Associates, Advocate,SR.18020

+1 cc to Mr.M.Venugopal, Advocate,SR.17565.

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krd 17/4

PRE DELIVERY JUDGMENT
in S.A.No.479 of 2012 and
M.P.Nos.1 & 2 of 2012

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