

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **16.02.2015**

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

A.Nos.6809 to 6811 of 2014
and
A.Nos.6948 & 6949 of 2014
and
A.D.No.30964, 30779,
29500, 40981 of 2014
and
A.D.No.38355 of 2007
in
E.P.No.48 of 1997
in
C.S.No.43 of 1962

P-1 S.V.R. SAROJA ..

P-2 S.V.R. VIJAYA ..

P-3 S.V.R. RAMPRASAD ..

P-4 S.V.R. RENUKA DEVI ALL ARE RESIDING AT L17/71 24TH ST ANNA
NGAR EAST CHENNAI 102 ... PETITIONERS

VS.

R-1 S.V. MATHAPRASAD 20 BAJANA KOIL ST RAJAKILPAKKAM CHENNAI 600
073

R-2 MRS. RAJABY FATHIMA BUHARI DEAD BY LRS

R-3 A.M. BUHARI (DEAD) BY LRS

R-4 MOHAMMED BASHEER BUHARI (DEAD) BY LRS

R-5 MRS ZUBEIDA HAMID .

R-6 MR MOHAMMED FAROOK ..

R-7 MRS. MAIMEENA JAMAL ..

R-8 HAJA MOHIDEEN BUHARI ..

R-9 ABDUL CODER BUHARI ..

R-10 MRS MUMTAJ B UHARI 2 TO 9 ARE LEGAL HEIRS OF 1ST J.D.)
RESIDING AT IMPERIAL HOTEL NO.5 GANDHI IRVIN ROAD EGMORE
CHENNAI 8

R-11 MRS SHAHIRA BASHEER W/O DECEASED MOHAMMED BASHEER
BUHRI

R-12 MRS FAZEELATH SIRAJ D/O MOHAMMED BASHEER BUHRI

R-13 MRS. MAHAJUBDEEN IBRAHIM D/O MOHAMMED BASHEER BUHRI

R-14 HAJA ABDUL NAZEER D/O MOHAMMED BASHEER BUHRI

R-15 MRS FARZANA MALIK D/O MOHAMMED BASHEER BUHRI

R-16 HAJA ANWAR MURAD S/O MOHAMMED BASHEER BUHRI

R-17 MRS ZEENATH YUSUF S/O MOHAMMED BASHEER BUHRI

R-18 HAJA AMED IMITAZ S/O MOHAMMED BASHEER BUHRI

R-19 HAJA MOHAMMED SAMEER S/O MOHAMMED BASHEER BUHRI

R-20 MISS ROSHANARA BEGAM 10 TO 19 ARE LEGAL HEIRS OF 3RD J.D.)
RESIDING AT NO.L 15 27TH CROSS ST BESANT NAGAR CHENNAI 90

R-21 A.M.D. BUHARI

..Respondent

ORDER:

R.SUBBIAH, J.,

All the above applications have arisen out of the orders dated
06.06.2014 & 27.08.2014 passed by the learned Master, by which the

learned Master has directed the Registry to delete the names of the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, from the Execution Petition No.48 of 1997 and not to print the name of the counsel for the applicants in the cause list and dismissing all the memos filed by the applicants to implead them as co-petitioners in the Execution Petition.

2.The prayers made in each of the application are as follows_

In respect of the order dated 06.06.2014 passed by the learned Master

Application No.6809 of 2014 has been filed by the applicants praying to condone the delay of 69 days in filing the appeal against the order dated 06.06.2014 passed in E.P.No.48 of 1997 by the learned Master of this Court, whereby the learned Master has directed the Registry to delete the names of the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, from the Execution Petition No.48 of 1997 and not to print the name of the counsel for the applicants in the cause list.

Application No.6810 of 2014 has been filed by the applicants praying to permit them to file appeal against the order dated 06.06.2014 made in E.P.No.48 of 1997 on the file of the learned Master of this Court and to set aside the said order in so far as to the extent of affecting the applicants' rights in E.P.No.48 of 1997,

In respect of the order dated 27.08.2014 passed by the learned Master

Application No.6811 of 2014 has been filed by the applicants praying to permit them to file appeal against the order dated 27.08.2014 passed by the learned Master in E.P.No.48 of 1997, whereby the learned Master rejected all the memos filed by the applicants to include their name in the execution petition as co-decree holders 2 to 5.

Application No.6948 of 2014 has been filed by the applicants praying to stay the operation of the order dated 27.08.2014 passed in E.P.No.48 of 1997 on the file of the learned Master of this Court.

In respect of E.P.No.48 of 1997

Application No.6949 of 2014 has been filed by the applicants praying to stay all further proceedings in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of the learned Master of this Court, pending disposal of the applications filed by the applicants.

3.The un-numbered applications in A.D.No.38355 of 2007, A.D.No.29500 of 2014, A.D.No.30779 of 2014, A.D.No.30964 of 2014, & A.D.No.40981 of 2014, which were filed by the applicants, have also been posted and heard under the caption 'For Maintainability'. The prayers made in the said un-numbered applications are as follows_

A.D.No.38355 of 2007 has been filed by the applicants seeking to implead the applicants and Mrs.E.Lalitha, sister of the 2nd plaintiff S.V.Matha Prasad, as respondents in E.P.No.48 of 1997 in C.S.No.43 of 1962.

A.D.No.29500 of 2014 has been filed by the applicants seeking to grant stay of all further proceedings in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of the learned Master.

A.D.No.30779 of 2014 has been filed by the applicants seeking to permit them to file appeal against the order passed in E.P.No.48 of 1997 dated 27.08.2014 on the file of the learned Master and to set aside the same.

A.D.No.30964 of 2014 has been filed by the applicants seeking to pass an order withdrawing the proceedings in E.P.No.48 of 1997 from the file of the learned Master and to transfer the same to the file of this Court for adjudication in accordance with law.

A.D.No.40981 of 2014 has been filed by the applicants seeking to condone the delay of 54 days in preferring appeal against the order passed in Application No.4969 of 2014 dated 17.09.2014 in E.P.No.48 of 1997.

4.To decide the issues involved in the above applications, it would be appropriate to extract the facts of the case. The facts of the case, in brief, is

as follows:-

4-1. One S.V. Ramakrishnan being the 1st plaintiff, associating with his son S.V. Matha Prasad (2nd plaintiff & petitioner in E.P.No.48 of 1997), had filed the Civil Suit No.43 of 1962 for specific performance of the agreement dated 24.03.1959 as against one Mrs. Rajaby Fathima Buhari and A.M.B. Buhari in the year 1962, for the relief of reconveyance of the properties as set out in the suit schedule and for delivery of possession, besides for payment of income from 23.03.1962 and cost of the suit. The said suit was decreed on 10.11.1965 as prayed for. The defendants 1 & 2 had preferred separate appeals in O.S.A.Nos.8 & 9 of 1966 as against the decree passed in C.S.No.43 of 1962 dated 10.11.1965 before the Division Bench of this Court, which were allowed on 10.05.1972.

4-2. Aggrieved over the order dated 10.05.1972 passed by the Division Bench in O.S.A.Nos.8 & 9 of 1966, the 1st plaintiff S.V. Ramakrishnan by himself had filed an SLP before the Hon'ble Supreme Court. Since his son S.V. Matha Prasad did not join in the appeal along with him, the appellant S.V. Ramakrishnan had shown his son S.V. Matha Prasad as a respondent in the said SLP. Upon leave granted by the Hon'ble Supreme Court, the said SLP was converted as one of Civil Appeal No.224 of 1974. During the pendency of the said Civil Appeal, the sole appellant S.V. Ramakrishnan died on 31.12.1980. After the demise of the sole appellant S.V. Ramakrishnan, the applicants herein viz., 1) S.V.R. Saroja, 2) S.V.R. Vijaya, 3) S.V.R. Ramprasad &

4)S.V.R.Renuka Devi had filed a petition in C.M.P.No.7242 of 1981 before the Hon'ble Supreme Court to come on record as legal representatives on the basis of the registered Will dated 15.07.1970 in order to prosecute the said Civil Appeal No.224 of 1974. The said C.M.P.No.7242 of 1981 was allowed by the Hon'ble Supreme Court by order dated 15.12.1981, whereupon the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi have been brought on record as appellants in Civil Appeal No.224 of 1974.

4-3.In the said appeal, the 2nd plaintiff in the suit viz., S.V.Matha Prasath S/o.S.V.Ramakrishnan, through his first wife, has been arrayed as 3rd respondent. Even after the demise of his father S.V.Ramakrishnan, the 2nd plaintiff S.V.Matha Prasath has not taken any step to transpose himself as appellant in the said appeal before the Hon'ble Supreme Court.

4-4.However, on 17.04.1995, the Hon'ble Supreme Court has allowed the Civil Appeal No.224 of 1974. While allowing the said Civil Appeal, the Hon'ble Supreme Court has restored the decree passed in C.S.No.43 of 1962 dated 10.11.1965 passed by the learned Singe Judge of this Court and directed the respondents therein or their successors in interest to convey the property mentioned in Schedule 'A' of the plaint, within one month from 17.04.1995, failing which it would be open to the Trial Judge (Single Judge) to execute the required document. The relevant portion of the decree passed by the Hon'ble Supreme Court in the Civil Appeal No.224 of 1974 reads as

follows_

"1.That the Judgment and Order dated 10th May, 1972 of the Division Bench of the High Court of Judicature at Madras in O.S.A.Nos.8 & 9 of 1966, be and is hereby set aside and the Judgment and Decree for specific performance dated 10th November, 1965 passed by the Single Judge of the said High Court in Original Suit No.43 of 1962 be and is hereby restored.

2.It is hereby directed that the respondents herein or their successors-in-interest would reconvey the property mentioned in Schedule 'A' of the plaint within a period of one month from this the 17th April, 1995, failing which it would be open to the trial judge (Single Judge) of the aforesaid High Court to execute the required document(s)."

4-5.Thereafter, after two years from the date of passing the decree in the said Civil Appeal by the Hon'ble Supreme Court, the 2nd plaintiff S.V.Matha Prasad has filed an Execution Petition No.48 of 1997 in C.S.No.43 of 1962 on 03.03.1997 before this Court. In the said Execution Petition, he has not mentioned about the death of his father S.V.Ramakrishnan, who was the 1st plaintiff in the Original Suit. Further, in the Execution Petition, the 2nd plaintiff S.V.Matha Prasad has not made any reference about the survival of his own natural sister Mrs.Lalitha and similarly, he has not made any reference about the applicants being 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, who got substituted as appellants in C.A.No.224 of 1974 before the Hon'ble Supreme Court as Legal

Representatives of late 1st plaintiff S.V.Ramakrishnan on the basis of the order passed by the Hon'ble Supreme Court on 15.12.1981 in C.M.P.No.7282 of 1981. In fact, along with the said Execution Petition, the 2nd plaintiff S.V.Matha Prasad had filed an affidavit and in the said affidavit, he had himself claimed that he is the only legal heir of the deceased S.V.Ramakrishnan and claimed reconveyance and delivery of possession of the suit schedule property as the decree holder in his favour alone.

4-6.In the Execution Petition, the judgment debtors being the 2nd defendant A.M.Buhari and Legal Representatives of the 1st defendant Mrs.Rajabu Fathima Buhari have filed a counter affidavit jointly sworn to on 25.01.1998, in response to the affidavit filed by S.V.Matha Prasad. In the said counter, they have stated about the death of the 1st plaintiff S.V.Ramakrishnan on 31.12.1980 and also about the application filed by the applicants herein before the Hon'ble Supreme Court to substitute them as appellants in the Civil Appeal and also about the order passed by the Hon'ble Supreme Court to substitute the applicants herein in C.A.No.224 of 1974. That apart, in the said counter affidavit, they have also brought one more fact in para 10(3) of their counter, which reads as follows_

"The appeal was actually prosecuted by some third parties i.e., 1)Lalchand Mehraj and Chimandas Mensaraj who had filed applications before the Hon'ble Supreme Court to implead them as party appellants 5 and 6 on the basis of the assignment deeds executed by all the legal heirs of the only

appellant S.V.Ramakrishna Mudaliar and the said application was also allowed by the Hon'ble Supreme Court and as such the present petitioner has no locus standi to file the execution petition."

4-7.The said assignees viz., 1)Lalchand Menghraj and 2)Chimandas Menghraj have filed two applications before the learned Master in Application Nos.2005 & 2006 of 1998 to get impleaded in E.P.No.48 of 1997 and for reopening of E.P.No.48 of 1997 respectively, as third party applicants. In the said Applications in A.Nos.2005 & 2006 of 1998, a common order was passed by the learned Master on 19.04.1999, directing the said third party applicants (assignees) to file assignment deeds executed by all the legal heirs of the deceased S.V.Ramakrishna, besides directing issuance of notice to other six legal heirs of the deceased S.V.Ramakrishna, by recording a finding to the effect that their impleadment is absolutely necessary for the purpose of putting them on notice and deciding their claims as well.

4-8.Aggrieved over the order dated 19.04.1999 passed by the learned Master in Application Nos.2005 & 2006 of 1998, the 2nd plaintiff S.V.Matha Prasad filed appeals in the nature of applications as envisaged under the Scheme of Order 14 Rule 12 of O.S.Rules in Application Nos.1106 to 1108 of 2000 before the learned Single Judge of this Court and the said applications were allowed by the learned Single Judge on 03.07.2000, setting

aside the order passed by the learned Master in A.Nos.2005 & 2006 of 1998, and directing the learned Master to execute reconveyance of the property in favour of the decree holder S.V.Matha Prasad (2nd plaintiff / 1st respondent herein) and deliver possession of the property within one month. But, the said applications were heard by the learned Single Judge without issuing notice to the other legal heirs of the deceased S.V.Ramakrishnan.

4-9.In such circumstances, pursuant to the order passed by the learned Single Judge, the learned Master resorted to pass an order on 07.07.2000 in E.P.No.48 of 1997, directing the Judgment Debtors in E.P.No.48 of 1997 to execute the deed of reconveyance to the decree holder and deliver possession of the properties within in one month from 07.07.2000 to the decree holder S.V.Matha Prasad.

4-10.Hence, challenging the order dated 07.07.2000 passed by the learned Master, the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, who have been substituted as appellants in the Civil Appeal No.224 of 1974 before the Hon'ble Supreme Court, have filed appeals in the form of applications, as the co-decree holders, in Application Nos.2872 & 2873 of 2000 before the learned Single Judge of this Court, challenging the correctness and validity of the order dated 07.07.2000 passed by the learned Master in E.P.No.48 of 1997, ordering reconveyance and delivery of possession to S.V.Matha Prasad.

In the said applications, after hearing both sides, the learned Single Judge by order dated 24.08.2000 set aside the order passed by the learned Master. The relevant portion of the order dated 24.08.2000 passed by the learned Single Judge is as follows_

"9.Learned counsel for the 1st respondent further stated that in view of the aforesaid decisions, the petitioners cannot be considered as legal heirs of the deceased and as such, the order passed by the learned Master is proper and correct. I am unable to agree with the contentions of the learned counsel for the 1st respondent. Even in the decree passed by the Apex Court, the first respondent herein had not been shown as a decree holder and this being so, now he has filed the execution petition as if he is the only decree holder entitled to file execution petition excluding the other legal heirs who were impleaded in the Apex Court as early as 1981. Admittedly, the first respondent herein was the third respondent in the Apex Court and he did not oppose the application filed by the petitioners in CMP.No.7242 of 1981 for impleading themselves as parties in the appeal viz., the appellants. The silence on the Part of the first respondent herein as early as 1981 would only indicate that he had waived his right to raise the objection in respect of the status of the petitioners at the earliest point of time. Now, what could not be achieved by the first respondent in the Apex Court is trying to make use of the same and want to

enrich himself as if he is the only legal heir of the deceased entitled to re-conveyance of the property from the judgment debtors. When once the petitioners have been impleaded as the legal heirs of the deceased in the Apex Court and they have prosecuted the appeal and succeeded, they are also entitled to get the fruits of the decree. Even assuming that the petitioners are not the legal heirs in accordance with law the first respondent alone cannot claim exclusive re-conveyance of the properties. Now, it appears, there is no dispute inter se between the petitioners on one side and the first respondent on the other side after the demise of the said Ramakrishna Mudaliar. The petitioners represent the second wife and children of the deceased, whereas the first respondent represents the son of the deceased through the first wife. The suit was filed by Ramakrishna Mudaliar for specific performance and the decree passed by the Apex Court can be enjoyed by the petitioners as well as the first respondent. Now, one cannot exclude the other. The dispute with reference to the shares of the first parties in the property can be solved by the parties concerned separately. Under the circumstances, I am of the view that the order passed by the learned Master directing re-conveyance of the property exclusively to the first respondent is not proper and correct. The petitioners are also legal heirs of the deceased as they were already brought on record as early as

1981 and the re-conveyance should be ordered in favour of the petitioners also. Hence, these points are answered accordingly.

10. For the reasons stated above the order passed by the learned Master dated 07.07.2000 is modified and the petitioners being decree holders along with the first respondent are entitled to get re-conveyance of the property. The judgment debtors are directed to execute the re-conveyance of the property in favour of the petitioners as well as the first respondent, the dispute, if any between the petitioners as well as the first respondent, relating to their respective shares in the property is left open to be decided separately. These applications are ordered accordingly."

Thus, the learned Single Judge, after unraveling the truth behind the suit to the effect that the applicants herein viz., 1) S.V.R. Saroja, 2) S.V.R. Vijaya, 3) S.V.R. Ramprasad & 4) S.V.R. Renuka Devi, are the appellants in Civil Appeal No. 224 of 1974 before the Hon'ble Supreme Court by virtue of the order passed in the LR petition filed by them in C.M.P.No. 7282 of 1981 dated 15.12.1981 and that they only prosecuted the said civil appeal and succeeded in the appeal and the 2nd plaintiff in the suit viz., S.V. Matha Prasad was only the third respondent in the said Civil Appeal and that the applicants herein are the legal heirs of the deceased S.V. Ramakrishna Mudaliar along with S.V. Matha Prasad, held that the reconveyance should be given in favour

of the applicants herein along with the 2nd plaintiff S.V.Matha Prasad,

4-11. Aggrieved over the said order of the learned Single Judge dated 24.08.2000 in Application Nos.2872 & 2873 of 2000, the 2nd plaintiff/execution petitioner viz., S.V.Matha Prasad has filed a Letters Patent Appeal in O.S.A.No.372 of 2000 before the Division Bench of this Court. The Division Bench had examined the claims of S.V.Mathaprasad and rejected his claims by order dated 11.04.2001, thereby confirmed the order made in Application Nos.2872 & 2873 of 2000 passed by the learned Single Judge in entirety. However, while confirming the order of the learned Single Judge, the Division Bench had given independent directions to the Executing Court with reference to the Execution Petition, whereby joining the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, who represented as LR's of late S.V.Ramakrishnan before the Hon'ble Supreme Court as co-petitioners, and directing execution of reconveyance in favour of them as well along with S.V.Matha Prasad. The relevant portion of the decree passed by the Division Bench in O.S.A.No.372 of 2000, dated 11.04.2001 reads as follows_

"1.that the execution petition shall now proceed with the co-plaintiff – son by his first wife, as also the legal representatives of the deceased father who had been on record in the Supreme Court namely the second wife and her children as co-petitioners in the execution petition; and

2)that the reconveyance shall be in favour of all of them.”

Further, in the said order, the Division Bench has observed that after execution of reconveyance, if there are any disputes *inter se* as among the children as regards the extent to which they are entitled to share the property, that is a matter which can be agitated separately. The relevant portion of the order dated 11.04.2001 passed by the Division Bench is as follows_

“9.After reconveyance is executed, if there are any disputes *inter se* among the children as regards the extent to which they are entitled to share in the property, that is a matter which can be agitated separately.”

4-12.Aggrieved over the order dated 11.04.2001 passed by the Division Bench in O.S.A.No.372 of 2000, the 2nd plaintiff S.V.Matha Prasad has filed a Special Leave petition in SLP.No.895 of 2003 before the Hon'ble Supreme Court; but the said SLP was also dismissed by the Hon'ble Supreme Court by order dated 17.04.2003. The order dated 17.04.2003 passed by the Hon'ble Supreme Court reads as follows_

“Delay Condoned. The special leave petition is dismissed. It is clarified that if any suit is filed *inter se* the contending claimants to the ownership of the suit property, then the question of owner

ship, the number of owners and the extent of share shall be decided in that suit only.”

Thus, the Hon'ble Supreme Court has confirmed the order of the Division Bench that if any suit is filed *inter se the* contending claimants to the ownership of the suit property, then the question of ownership, the member of owners and the extent of share shall be decided in that suit only.

4-13. While situation stood thus, in the meanwhile, the assignees viz., Lalchand Menghraj and Chimaldas Menghraj have filed Application Nos.2154 to 2156 of 2003 to condone the delay of 971 days in filing the petition to set aside the order dated 03.07.2000 passed in Application Nos.1106 to 1108 of 2000. The said condone delay petition was dismissed by the learned Single Judge of this Court on 08.12.2003 as barred by limitation, against which the assignees had preferred OSA.Nos.47 to 49 of 2004 before the Division Bench. The said OSAs were allowed by the Division Bench on 27.04.2004. Aggrieved by the same, the 2nd plaintiff S.V.Matha Prasad preferred Special Leave Petition before the Hon'ble Supreme Court in SLP.No.12237 – 12239 of 2004 and upon leave granted, the same was taken on file in Civil Appeal No.1576 of 2007 which was disposed on 26.03.2007 by the Hon'ble Supreme Court, by which it has maintained the order passed by the Division Bench to the extent of condonation of delay, but disagreed with the findings recorded on merits and accordingly, remanded the matter to this

Court to be heard on merits. After remand, the Application Nos.4467 to 4470 of 2007, which were filed by the assignees to set aside the order dated 03.07.2000 passed in Application Nos.1106 to 1108 of 2000, were heard by the learned Single Judge of this Court and an order was passed on 25.09.2007, by which the order dated 03.07.2000 passed in Application Nos.1106 to 1108 of 2000 was set aside on the sole ground that the assignees were not heard and without notice to them, the said order was passed on 03.07.2000. As against the said order dated 25.09.2007 made in Application Nos.4467 to 4470 of 2007, the 2nd plaintiff S.V.Matha Prasad had preferred a Special Leave Petition before the Hon'ble Supreme Court in SLP.Nos.5820 – 5823 of 2008 and in that proceedings, the Hon'ble Supreme Court has passed an interim order on 02.05.2008, which reads as follows_

"Delay condoned. Issue Notice. Meanwhile, there shall be ad-interim stay of further proceedings in the High Court."

Thereafter, the said SLP was taken on file as Civil Appeal Nos.7130 – 7133 of 2011 and the interim order dated 02.05.2008 was made absolute by the Hon'ble Supreme Court on 16.08.2011. Subsequently, the 2nd plaintiff S.V.Matha Prasad had moved a clarification applications before the Hon'ble Supreme Court in respect of the interim order of stay granted earlier on 02.05.2008 and on 16.08.2011, by filing I.A.Nos.5 to 8 of 2014, which were disposed of by the Hon'ble Supreme Court on 24.02.2014 in the following manner_

"Pendency of this appeals as also the orders dated 02.05.2008 and 16.08.2011 shall not stand in the way of the Executing Court proceeding in E.P.No.48 of 1997 in accordance with law."

4-14. Thereafter only, the present impugned orders dated 06.06.2014 and 27.08.2014 have been passed by the learned Master of this Court, directing the registry to delete the names of the applicants from the execution petition and not to print the names of the counsel for the applicants in the cause list and dismissing all the memos filed by the applicants.

5. The factual aspects as regards the passing of the impugned orders as follows:-

5-1. Pursuant to the order dated 24.08.2000 passed by the learned Single Judge in Application Nos. 2872 & 2873 of 2000, which was confirmed by the Division Bench of this Court in O.S.A.No. 372 of 2000 by order dated 11.04.2001 and the Hon'ble Supreme Court by order dated 17.04.2003 in the SLP.No. 895/2003, the applicants herein filed memos before the learned Master seeking to pass an order with regard to their impleadment in E.P.No. 48 of 1997 as co-petitioners. The details of the memos filed by the applicants are as follows_

<u>Dated</u>	<u>SR.No.</u>
20.11.2002	31466

23.02.2007	7373
19.06.2012	15647
17.06.2013	16265
07.01.2014	856
05.03.2014	8470
11.03.2014	9400
15.04.2014	14694
10.06.2014	20029
19.06.2014	21445

But, no order was passed in the said Memos.

5-2. In the meantime, according to the 2nd plaintiff S.V. Matha Prasad, in the year 2006, it came to the knowledge of his counsel that the names of the applicants viz., 1) S.V.R. Saroja, 2) S.V.R. Vijaya, 3) S.V.R. Ramprasad & 4) S.V.R. Renuka Devi have been interpolated in the E.P.No.48 of 1997 along with other names in the E.P.No.48 of 1997. Hence, the learned counsel for the 2nd plaintiff-S.V. Matha Prasad brought to the knowledge of the learned Master about this fact and gave a complaint in this regard to the Register General vide his letter dated 06.03.2006. Since no action was taken up, the learned counsel for the 2nd plaintiff S.V. Matha Prasad was compelled to move a Contempt Petition in Cont.P.No.54 of 2006 in SLP (Civil).No.7447 of 2003 against the then Master, besides the applicants herein, on the pleading that the then Master and the applicants herein had flouted the judgment/order passed in SLP.No.895 of 2003 dated 17.04.2003. But, the said Contempt Petition was dismissed by the Hon'ble

Supreme Court by order dated 28.08.2006; however liberty was granted to the 2nd plaintiff to approach the Hon'ble Chief Justice of this court for proper remedy. Thereafter, the 2nd plaintiff S.V.Matha Prasad approached the Hon'ble Chief Justice and gave a representation dated 25.09.2006. Based on the said representation, a vigilance enquiry was conducted on tampering of records in E.P.No.48 of 1997. The Registrar-Vigilance had conducted an enquiry and by his report dated 31.01.2007, held that the complaint of tampering stood proved. Pursuant to the same, disciplinary action was taken against the concerned staff of Original Side Section of this Court viz., Mrs.T.R.Indira, who had carried out the amendment, by proceedings in Roc.No.26/2006-Con-Estt-II, dated 24.03.2007.

5-3.According to the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi, there is no allegation anywhere in the complaint either before the Hon'ble Supreme Court or before this Court by the 2nd plaintiff-S.V.Matha Prasad as against the applicants herein with regard to the interpolation of the record/amendment in cause title in E.P.No.48 of 1997. His entire complaint is directed against the assignees being Lalchand Menghraj and Chimandas Menghraj, in the act of amendment caused in E.P.No.48 of 1997.

5-4.Pursuant to the representation made by the 2nd plaintiff-S.V.Matha Prasad, the matter was listed before the learned Master on 06.06.2014; on that day, the learned Master has ordered to remove the name of the applicants herein from the cause title and not to print the name

of the counsel for the applicants in the cause list and further directed the 2nd plaintiff to file a clean copy. The order dated 06.06.2014 passed by the learned Master reads as follows_

"The Court received proceedings of Hon'ble Registrar General in Roc.No.2232/2014-Estt.II (RG) dt 29.04.2014, and this Court learnt that departmental proceeding had been initiated against the staff member for tampering of records for the reason that S.V.R.Saroja and 4 others were inserted in the cause list and staff member responsible for the same has also been departmentally punished. In the above proceeding this Court is directed to pass appropriate order in the execution petition in respect of insertion of certain terms, by tampering with the reasons since the staff concerned has been departmentally punished for tampering with the records. Whose names were inserted have to be deleted. Hence, I hereby order to delete the name of S.V.R.Saroja and 4 others, whose names were inserted in this Execution Petition as petitioners also. Decree Holder is directed to file clean copy by deleting the names of S.V.R.Saroja and 3 others. As on date S.V.R.Saroja and 3 others are not arrayed as parties in this Execution Petition. In this circumstances, Registry need not print the name of Counsel M/s.S.Mehalatha J.Sudha. Call on 12.06.2014."

According to the applicants herein, they were not put on notice by the then

learned Master before passing the order dated 06.06.2014. The factum of the said order dated 06.06.2014 came to be known to the applicants when the above E.P. Was listed on 16.06.2014. The applicants herein brought to the notice of then learned Master as to the memos already filed before him by them in EP, when the matter was listed. On directions from the then Master, a letter was also filed on 16.06.2014 before him whereby listing out the number of memos filed by them, whereupon the then Master had directed the Registry to post the memos and print the name of the counsel by order dated 16.06.2014. When EP was listed before the Master on 13.08.2014, attention of the Master was drawn as to non-listing of the memos filed by the applicants and non-printing of the name of the counsel for the applicants in the cause list in spite of the orders dated 16.06.2014 passed by the Master. Upon taking notice of the said facts, the Master adjourned the proceedings in E.P.48 of 1997 to 27.08.2014. The applicants were under the impression that the Master would hear the memos by affording an opportunity to the counsel for the applicants on the scheduled date of hearing on 27.08.2014. But, without listing the memos filed by the applicants and without printing the name of the counsel for the appellants in the cause list, the Master has shown simply as "orders on memos" in the cause list on 27.08.2014 and signed the order, which was already prepared, on 27.08.2014 at 2.15 pm, rejecting all the memos filed by the applicants right from the year 2002 to implead them as co-petitioners. Hence, aggrieved over the same above applications have been filed by the applicants.

6.The factual aspects relating to the filing of the above said un-numbered applications, which have been posted under the caption 'For Maintainability' are as follows__

6-1.The un-numbered application in A.D.No.30964 of 2014 has been filed by the applicants seeking to transfer the execution petition in E.P.No.48 of 1997 from the file of the learned Master to this Court for adjudication, contending that in view of the order passed by the Hon'ble Supreme Court dated 17.04.1995 in C.A.No.224 of 1974 directing the learned Single Judge to execute the required document, now the learned Master has become ineligible and incompetent to execute the required documents in favour of the applicants. Similarly, another un-numbered application in A.D.No.29500 of 2014 has been filed by the applicants seeking to grant stay of all further proceedings in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of the learned Master.

6-2.In the meantime, in the year 2007, the applicants have filed an application (un-numbered) in A.D.No.38355 of 2007 seeking to implead the applicants and Mrs.E.Lalitha, sister of the 2nd plaintiff S.V.Matha Prasad, as respondents in E.P.No.48 of 1997 in C.S.No.43 of 1962.

6-3.Since by order dated 27.08.2014 in E.P.No.48 of 1997 the learned Master has dismissed all the memos filed by the applicants to

implead them as co-petitioners, the applicants have filed the application (un-numbered) in A.D.No.30779 of 2014 seeking to permit them to file appeal against the order passed in E.P.No.48 of 1997 dated 27.08.2014 on the file of the learned Master and to set aside the same.

6-4.The 2nd plaintiff S.V.Matha Prasad (1st respondent herein) has filed an Application No.4969 of 2014 before the learned Master under Section 340 of Cr.P.C., seeking to initiate criminal action against the applicants under Section 120(b) r/w 466 IPC and Sections 13(1)(d)(i) & (iii) of Prevention of Corruption Act, 1988. In the said application, by order dated 17.09.2014, the learned Master has ordered to forward the criminal complaint against the applicants herein to the competent Jurisdictional Metropolitan Magistrate Court for trial for the alleged offence punishable under Section 466 r/w 120(b) IPC. Aggrieved over the same, the applicants have filed an application (un-numbered application) in A.D.No.40981 of 2014 seeking to condone the delay of 54 days in preferring appeal against the order passed in Application No.4969 of 2014 dated 17.09.2014 in E.P.No.48 of 1997. According to the applicants, the learned Master has no power to pass an order in the application filed under Section 340 of Cr.P.C. and as per the Original Side Rules, only the Court can pass an order in the application filed under Section 340 of Cr.P.C.

7-1.Heard the submissions made by Mr.R.Natarajan appearing for the

applicants, Mr. Anoop George Chaudhary senior counsel and Smt. June Chaudhary, senior counsel appearing for the 1st respondent and perused the materials available on record.

7-2. Application No. 6809 of 2014 has been filed seeking to condone the delay of 69 days in filing the appeal against the order dated 06.06.2014 passed in E.P.No.48 of 1997. Considering the facts and circumstances of the case, the delay of 69 days cannot be said to be an inordinate delay. Hence, the delay can be condoned. **Accordingly, the delay is condoned and Application No.6809 of 2014 is allowed.**

8. Though very many contentions have been raised on both sides, on considering the factual aspects of this Court, the issues that have to be decided in this case, fall under a narrow compass. The points which fall for consideration in this case are as follows—

(1) Whether the order dated 06.06.2014 passed by the learned Master in E.P.No.48 of 1997, deleting the name of the counsel for the applicants from the cause list, is legally sustainable?

(2) Whether the rejection order dated 27.08.2014 passed by the learned Master on the memos, which were filed by the applicants seeking to implead them in the Execution petition as co-petitioners on the strength of the order passed by the learned Single Judge as well as the orders of the Division Bench and Hon'ble Supreme Court, is correct?

(3) Whether the applicants are entitled to be impleaded as co-petitioners in the Execution Petition?

9-1 **Point No.(1):-** The applicants have been impleaded themselves in C.A.No.224 of 1974, after the demise of 1st plaintiff S.V.Ramakrishnan. Though the 1st respondent herein S.V.Matha Prasad was originally the 2nd plaintiff in the C.S.No.43 of 1962, he has not joined along with the 1st plaintiff S.V.Ramakrishnan, as appellant in the appeal in C.A.No.224 of 1974 before the Hon'ble Supreme Court. Hence, the 2nd plaintiff S.V.Matha Prasad was shown as 3rd respondent in C.A.No.224 of 1974 before the Hon'ble Supreme Court. After the demise of S.V.Ramakrishnan, the applicants herein substituted themselves as Legal Representatives of the 1st plaintiff late S.V.Ramakrishnan by filing an application (C.M.P.No.7242 of 1981) and prosecuted the Civil Appeal before the Hon'ble Supreme Court. The said Civil Appeal was allowed in favour of the applicants herein and the 1st respondent herein/2nd plaintiff S.V.Matha Prasad, who was shown as 3rd respondent in the said Civil Appeal. Subsequent to the Judgment passed by the Hon'ble Supreme Court in C.A.No.224 of 1974, the 2nd plaintiff S.V.Matha Prasad has filed E.P.No.48 of 1997 before this Court. But, in the Execution Petition, the 2nd plaintiff S.V.Matha Prasad had suppressed the death of his father S.V.Ramakrishnan. He has also not shown the names of the applicants in the Execution Petition, who are the appellants before the Hon'ble Supreme Court, claiming as if he is the only legal heir of his late father S.V.Ramakrishnan.

9-2. However, in the subsequent proceedings, viz., Application Nos.2872 & 2873 of 2000, the learned Single Judge of this Court by order dated 24.08.2000 has rendered a specific finding that the applicants herein are also the legal heirs of the deceased S.V.Ramakrishnan, as they were brought on record in the Civil Appeal by the Hon'ble Supreme Court and reconveyance should be ordered in favour of the applicants herein also. Aggrieved over the same, the 2nd plaintiff S.V.Matha Prasad (1st respondent herein) has filed an Appeal in O.S.A.No.372 of 2000 before the Division Bench of this Court. In the said OSA, the Division Bench of this Court has passed an order to the effect that the execution petition shall be proceeded with by the 2nd plaintiff S.V.Matha Prasad as well as by the applicants herein, who had been on record in the Supreme Court and that the reconveyance shall be in favour of all of them. The SLP filed by the 2nd plaintiff S.V.Matha Prasad against the order of the Division Bench was also dismissed by the Hon'ble Supreme Court confirming the order passed by the Division Bench of this Court.

9-3. But, even thereafter, the 2nd plaintiff S.V.Matha Prasad (1st respondent herein) was reluctant in impleading the applicants herein as co-petitioners in the Execution Petition. However, in the meantime, the applicants themselves have filed a memo on 20.11.2002 based on the order passed by the learned Single Judge and the order passed by the Hon'ble Supreme Court, to pass necessary orders to implead them in the Execution

Petition. But, no order was passed in the said Memo. Thereafter, till 2014, several memos have been filed by the applicants. In the year 2007, apart from the memos, an application was also filed by the applicants in A.D.No.38355 of 2007 (un-numbered application) to implead them as co-petitioners in the Execution Petition. But, neither in the memos nor in the said application, order was passed by the learned Master.

9-4. In the meantime, in the year 2006, according to the 2nd plaintiff S.V.Matha Prasad (1st respondent herein), his counsel came to know that the names of the applicants herein viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi have been interpolated in the EP along with the others, in handwriting. Hence, in this regard a complaint was given to the Register-General of this Court on 06.03.2006 by the counsel for the 2nd plaintiff/1st respondent herein. Since no action was taken by the 1st respondent herein, he moved a Contempt Petition No.54 of 2006 in SLP.No.7444 of 2003; but, the Hon'ble Supreme Court had dismissed the said Contempt Petition vide its order dated 20.08.2006. While dismissing the Contempt Petition, the Hon'ble Supreme Court has granted liberty to the 1st respondent herein S.V.Matha Prasad to approach the Hon'ble Chief Justice of this Court. Hence, S.V.Matha Prasad gave a representation dated 25.09.2006. Thereafter, a vigilance enquiry was conducted with regard to tampering of records. In the enquiry proceedings, the Register-Vigilance had held that the complaint of tampering was proved. Pursuant to the same, by proceedings in Roc.no.26/2006-Con-Estt-II, dated 24.03.2007, the

concerned staff of this Court viz. Mrs.T.R.Indira was punished by the Registry of this Court. Thereafter, the 1st respondent herein S.V.Matha Prasad by deleting the names of the applicants which were entered into the execution petition due to the interpolation committed by Mrs.T.R.Indira, staff of this Court, filed a clean copy of the EP and the EP was restored to its original form.

9-5.According to the learned senior counsel appearing for the 1st respondent herein-S.V.Matha Prasad, since the tampering was proved in the enquiry proceedings, the name of the learned counsel appearing for the applicants ought to have been deleted in the cause list, but their names were coming in the cause list. Hence, a letter was given to the Deputy Registrar in Original Side of this Court on 26.02.2013 by the counsel for the 1st respondent herein-S.V.Matha Prasad. Thereafter, from 19.06.2013 onwards the name of the learned counsel for the applicants did not appear in the cause list. But, again the name of the counsel for the applicants appeared in the cause list on 08.01.2014. Hence, again a letter was given to the Registrar-General by the counsel for the 1st respondent-S.V.Matha Prasad asking to remove the name of the counsel appellants from the cause list since they are not the parties to the EP. Thereafter, the Registrar-General issued proceedings in Roc.No.Roc.No.2232/2014-Estt.II (RG) dt 29.04.2014. Based on the said proceedings, on 06.06.2014 the learned Master has passed the impugned orders deleting the names of the applicants from the Execution Petition and the name of the counsel from the cause list.

9-6. Now, it is the main submission of the learned counsel for the applicants that till date there is no finding as against the applicants herein either in the Vigilance enquiry or in any other proceedings that the applicants herein are responsible for the tampering/amending the cause title of EP; that even in the contempt petition filed by the 1st respondent herein S.V. Matha Prasad, allegations were made by him only as against the assignees and not against the applicants herein; that without following the principles of natural justice, the learned Master, based on the proceedings issued by the Registrar-General, deleted the names of the applicants from the EP and name of the counsel for the applicants from the cause list; hence, the said order of the learned Master is liable to be set aside.

9-7. Whereas, according to the learned counsel for the 1st respondent herein, the orders passed by the learned Master based on the proceedings issued by the Registrar-General, is only an administrative order; therefore, the applicants cannot challenge the said order and they cannot seek for continuation of their name in the cause title and their counsel's name being printed in the cause list.

9-8. But, on perusal of the materials on record, I find that as early as on 11.04.2001 itself, by way of the order made in O.S.A.No.372 of 2000, the Division Bench of this Court, by considering the judgment of the Hon'ble Supreme Court in C.A.No.224 of 1997, dated 17.04.1995, has confirmed the

order passed by the learned Single Judge in Application Nos.2872 & 2873 of 2000. In the said order dated 11.04.2011, the Division Bench of this Court has clearly observed that the EP shall proceed with by the 1st respondent S.V.Matha Prasad as well as by the applicants herein and the reconveyance should be made by the Court in favour of all of them. Pursuant to the said order, first memo was filed by the applicants on 20.11.2002 intimating the order of the Division Bench passed in OSA.No.372 of 2000 as well as the order of the Hon'ble Supreme Court, to implead them as co-petitioners in the EP.

9-9. According to the learned senior counsel appearing for the 1st respondent, since in the EP filed by the 1st respondent tampering had taken place by interpolating the names of the applicants herein, the 1st respondent gave a letter to the Deputy Registrar in original side on 26.02.2013. Based on the said letter only, order was passed to delete the name of the counsel for the applicants. Hence, according to the learned senior counsel appearing for the 1st respondent, the applicants' names were correctly deleted by the order of the learned Master dated 06.06.2014. But, on perusal of the records, I find that the alleged interpolation in EP was made only in the year 2006, whereas even much earlier to the alleged interpolation, on 20.11.2002 the applicants had intimated the learned Master that by virtue of order dated 11.04.2001 in O.S.A.No.372 of 2000, the Execution Petition filed by the 1st respondent herein has to be proceeded with by adding them as co-petitioners

in Execution Petition. Therefore, right from the year 2002 onwards the learned counsel for the applicants are representing the applicants in this case. The Vigilance enquiry proceedings were conducted with regard to the interpolation only in the year 2006. On perusal of the enquiry report also, I find that absolutely there is no finding to the effect that these applicants are involved in the interpolation in EP. Further, perusal of the Vigilance Report would show that the interpolation was done by a staff of member of this Court viz., one Mrs.T.R.Indira, who was Record Clerk in Original Side Section at the relevant point of time, at the instance of the counsel for the assignees. Infact, the said staff had deposed in the enquiry proceedings that the advocate appearing for assignees Lalchand Mehraj and Chimandas Mensaraj produced a letter dated 24.02.2004 and requested her to make the amendment as per Supreme Court Judgment.

9-10.Further, even in the contempt petition in Cont.P.No.54 of 2006 filed by the 1st respondent herein S.V.Matha Prasad before the Hon'ble Supreme Court, there is no allegation against the applicants herein with regard to the alleged interpolation in EP. Basis for filing the contempt petition by the 1st respondent herein S.V.Matha Prasad before the Hon'ble Supreme Court was also not on the allegation of tampering of the EP by the applicants herein. The reason for filing the contempt petition by the 1st respondent S.V.Matha Prasad is as follows_ (para 8 in the affidavit filed in support of the contempt petition)

'8.The petitioner submits that the order dated 3/7/2000 is in

force. The order for delivery of possession passed on 7/7/2000 is a consequential order and was passed following the directions issued in order dated 3/7/2000. The only modification made regarding order dated 7/7/2000 was that the L.R's herein were also directed to take the decree along with the petitioner. But, subsequently this Hon'ble Court clarified the order by Judgment dated 17/04/2003 in SLP.895 of 2003 and directed the LR's to work their remedy by way of a separate suit. As such the execution order dated 7/7/2000 has to be implemented by issuing process.

9.The petitioner on mention listed the matter before Learned Master on 22.02.2004 for moving and for issuing process for execution pursuant to the order dated 7/7/2000. The L.R's appeared and objected and claimed that they are also entitled to the decree. But, the Learned Master at that time relied upon the Judgment in C.C.No.895 of 2003 and at the request was adjourned to 27/2/2004 as there was a stay granted in OSA.47 of 2004.

10.The Petitioner submits that again the EP.48 of 97 was listed in August 2004. The Assignees appeared and got time for 2 weeks to produce a stay order.

11.When the EP was listed again in Sep. 2004, the learned Master directed the petitioner to finish the SLP No.12237-12239 and come back. In October 2004, it was brought to the knowledge of the learned Master that the Apex Court, has directed the case to be listed in March and had verbally observed that as there was no stay, the High Court could proceed with the Execution Petition.

12.While so the learned Master in utter disregard to all the above said orders and in clear violation of the provisions of law has taken up the E.P.No.48 of 97 and another E.P.No.21 of 2004 filed by the Assignees herein for enquiry. The learned Master has allowed the Senior Counsel for Respondent-Assignees to argue the case once again and heard them regarding their right as per the assignment deeds. The learned Master has even ordered notice to the LR's by his order dated 25/1/2006. The petitioner submits that the act of learned Master and the Assignees herein amounts to contempt of court for the following amount other."

9-11. According to the 1st respondent herein, the order dated 11.04.2001 passed by the Division Bench in O.S.A.No.372 of 2000, directing the learned Master to proceed with the EP by impleading the applicants herein as co-petitioners, was challenged by him before the Hon'ble Supreme Court in S.L.P.No.895 of 2003. While the said SLP was dismissed on 17.03.2013, the Hon'ble Supreme Court has clarified the order of the Division Bench as follows_

"It is clarified that if any suit is filed inters the contending claimants to the ownership of the suit property, then the question of ownership, the number of owners and the extent of share shall be decided in that suit only."

According to the 1st respondent herein, by way of above clarification, the Hon'ble Supreme Court, by modifying the order passed in O.S.A.No.372 of 2000 on 11.04.2001, directed the applicants to file a separate suit after reconveyance of the property to the 1st respondent S.V.Matha Prasad; but, floating the order passed by the Hon'ble Supreme Court on 17.04.2003, the learned Master is proceeding with the EP with regard to reconveyance of the property to all the petitioners. Thus, even in the contempt petition the grievance of the 1st respondent herein is only as against the Master and not against the applicants herein.

9-12. Though the 1st respondent has been repeatedly contending that the Hon'ble Supreme Court by order dated 17.04.2003 in SLP No.895 of 2003

modified the order of the Division Bench of this Court in O.S.A.No.372 of 2000, on a careful perusal of the order passed by the Hon'ble Supreme Court, I find that the order of the Division Bench passed in O.S.A.No.372 of 2000 directing the learned Master to proceed with Execution Petition impleading the applicants was not modified. On the other hand, the Hon'ble Supreme Court has only confirmed the order passed by the Division Bench of this Court. For the sake of clarity, the order passed by the Division Bench in O.S.A.No.372 of 2000 on 11.04.2001 is once again extracted herein. The operative portion of the order passed in O.S.A.No.372 of 2000_

"9.After reconveyance is executed, if there are any disputes inter se among the children as regards the extent to which they are entitled to share in the property, that is a matter which can be agitated separately."

Thus, the Division Bench of this Court by order dated 11.05.2001 has given a direction to implead the applicants as co-petitioners and to proceed with the Execution Petition. While giving such a direction the Division Bench has also observed that if there are any disputes inter se among the parties as regards the extent to which they are entitled to share in the property, they can be agitated separately. While the said order was challenged before the Hon'ble Supreme Court, no interference was made by the Hon'ble Supreme Court in the direction given by the Division Bench of this Court to implead the applicants as co-petitioners and to proceed with the Execution Petition. Under such circumstances, the learned Master ought to have impleaded the applicants as co-petitioners in Execution Petition earlier. However, due to the

interpolation made in the execution petition by the staff of this Court based on the letter given by the counsel for the assignees, the names of the applicants were removed from the cause title. Therefore, by order dated 06.06.2014 the name of the counsel for the applicants was also deleted from the cause list.

9-13.in my considered opinion, when absolutely there is no material as on date to the effect that the applicant have tampered the records, the order passed by the learned Master deleting the name of the counsel for the applicants from the cause list, is not legally sustainable. Further more, when there is no material on record to show that the applicants are the persons responsible for the interpolation in the EP, the order passed by the learned Master dated 06.06.2014 without affording an opportunity to the applicants is totally in violation to the principles of natural justice; therefore, the same is liable to be set aside. In this regard, a reference could be placed in the judgment reported in **1995(2) SCC 369 (Director, ESI Scheme Vs. Dr.Sabita Mohanty)**, wherein it has been held by the Hon'ble Supreme Court as follows_

"3.We are afraid, this perception of the tribunal as to the ends of justice and their expeditious attainment prevailing over the delays inherent in what the tribunal assumes to be a dispensable formality of the filing of a counter and hearing of the other side is wholly erroneous and entirely unsupportable. Indeed, these words of Lord Wright in *general Medical Council Vs. Spackman* [(1943) SC 627 : (1943) 2 ALL ER 337]

are worth recalling:

“If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.”

4.The appellants are justified in their grievance that the Tribunal went off the mark in its perception of the procedural imperatives in this case. We have no hesitation in holding that the reasoning of the tribunal in justification of the denial to the appellants of an opportunity of being heard is unsupportable.”

For the same proposition, a reliance was placed by the learned counsel for the applicants upon the judgment reported **2009 (2) CTC 186 (Uma Nath Pandey and ors vs. State of U.P. And anr)**, wherein it has been held by the Hon'ble Supreme Court as follows_

“Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old

distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.”

Therefore, I am of the opinion that in the absence of any material to show that the applicants are involved in interpolation, the impugned order passed by the learned Master merely based on the proceedings issued by the Registrar-General, without affording an opportunity of hearing to the applicants, has no legs to stand and the same is liable to be set aside.

9-14. It is yet another submission of the learned senior counsel appearing for the 1st respondent that the order passed by the learned Master is only an administrative order; therefore, the same cannot be challenged by way of filing appeal under Order 14 Rule 12 of O.S. Rules before this Court. But, I find that Order 1 Rule 4(3) of Original Side Rules of High Court says that the '*Court*' includes the Judge or Master or First Assistant Registrar of Original Side. Therefore, the order passed by the learned Master is only a judicial order and it is not an administrative order. If any person is affected by the order passed by the learned Master, he can file appeal under Order 14 Rule 12 of Original Side Rules before the Court; Therefore, the submission made by the learned senior counsel for the 1st respondent that the order is only an administrative order, cannot be accepted.

Hence, for the foregoing reasons, the order passed by the

learned Master dated 06.06.2014 is liable to be set aside.

Accordingly, the same is set aside.

10-1.**Point No.2:** - Pursuant to the order passed by the learned Single Judge in the Application Nos.2872 & 2873 of 2000, dated 24.08.2000, which was confirmed by the Division Bench in O.S.A.No.372 of 2000, by order dated 11.04.2001, the applicants filed their first memo on 20.11.2002 intimating the order of the Division Bench passed in O.S.A.No.372 of 2000, to implead them as co-petitioners in the EP. Based on the said memo, the learned Master ought to have permitted the applicants to be added as co-petitioners in the EP. But, no order was passed by the learned Master on the said Memo. After the first memo, the applicants have filed another memo on 20.03.2007, which was also not considered by the learned Master. In between the period from 2000 to 2007, challenging the order dated 11.04.2001 passed by the Division Bench in O.S.A.No.372 of 2000, the 1st respondent S.V.Matha Prasad has filed an SLP.No.895 of 2003, but the said SLP was also dismissed by the Hon'ble Supreme Court. Even then, the learned Master has not chosen to pass any order in the memos filed by the applicants. In fact, in the year 2007, apart from the memos, an application was also filed by the applicants in A.D.No.38355 of 2007 to implead them as co-petitioner; but, the said application was not numbered by the Registry. Only under such circumstances, the above referred impugned order dated 06.06.2014 was passed by the learned Master deleting the

names of the applicants from the EP as well as the name of their counsel from the cause list.

10-2. Thereafter, again on 16.06.2014 a letter given by the learned counsel for the applicants listing out the number of memos filed by the applicants, whereupon the learned Master has directed the Registry to post the memos and print the name of the learned counsel in the cause list. Thereafter, on 13.08.2014 the matter was listed before the learned Master, but the said memos filed by the applicants to implead them as co-petitioners were not listed. Hence, the attention of the learned Master was drawn to the non-listing of the memos and non-printing of the name of the learned counsel for the applicants in the cause list, in spite of the order dated 16.06.2014 passed by the learned Master. Then, upon taking note of the above said facts, the Master adjourned the matter to 27.08.2014. According to the applicants, they were under the impression that the Master would hear the memos by affording an opportunity of hearing to the applicants on the schedule dated of ie., on 27.08.2014. But, the Master, without listing the memos filed by the applicants and without printing the name of their counsel in the cause list, had shown simply as (orders on memos) in the cause list on 27.08.2014 and signed the order which was already prepared on 27.08.2014 at 2.15 pm, thus, rejected all the memos filed by the applicants.

10-3. The relevant portion in the impugned order dated 27.08.2014

passed by the learned Master is as follows_

"10..... In pursuance of insertion of name, they have filed above referred memos informing the re-conveyance deed has to be executed jointly in favour of all, and the Registry also printed their name and counsel name in cause list. They have not filed any application before this Court seeking permission to implead them as co-decree holders. Without filing appropriate applications to bring them on record, they have inserted their names in the original Execution Petition based upon the order passed by the Hon'ble Supreme Court of India in C.M.A.No.7242 of 1981. The CMA.No.7242 of 1981 was filed before the Hon'ble Supreme Court of India to bring them on record as legal representative of Deceased S.V.Ramakrishna Mudaliar. The insertion of their name straight away in E.P.No.48/1997 without filing necessary application seeking permission of Court is illegal one.....

13.Even though Mrs.S.V.R.Saroja, S.V.R.Vijaya, S.V.R.Ramprasad, S.V.R.Renuka Devi are declared as co-decree holders by the Hon'ble Supreme Court of India in C.A.No.224/1974, they have not approached this Court by filing necessary application to implead them as co-decree holder in E.P.No.48 of 1997....."

From a perusal of the impugned order dated 27.08.2014, I find that the reason for rejection of the memos filed by the applicants by the learned Master was that the applicants cannot be impleaded by filing memo and they ought to have taken out an application seeking the permission of the Court to implead them as co-petitioners. But, in my considered opinion, these applicants were already parties before the Hon'ble Supreme Court. Subsequently, the learned Single Judge in A.Nos.2872 & 2873 of 2000 and the Division Bench in OSA.No.372 of 2000 asserted the right of the applicants to prosecute E.P.No.48 of 1997 along with 1st respondent-S.V.Matha Prasad, as co-petitioners. In fact, the Division Bench in the nature of direction passed an order that the EP shall proceed by impleading the applicants as co-petitioners along with the 1st respondent S.V.Matha Prasad. Under such circumstances, in my considered opinion, when there is already a direction by the Division Bench to implead the applicants as co-petitioners in the EP, the learned Master ought to have taken note of the said order, based on the memo filed by the applicants and ought to have impleaded the applicants as co-petitioners. Further, in my considered opinion, only when a person is not a party to the proceeding, if such party intends to implead himself into the pending legal proceedings, only then the question of filing an application to implead the said party would arise; in the instant case, already the applicants are on record before the Hon'ble Supreme Court and their right to succeed as LR's of the deceased S.V.Ramakrishnan was also asserted by the learned Single Judge as well as by the Division Bench. It is only the 1st respondent

S.V.Matha Prasad purposely, by omitting the applicants as well as without making any reference to them, has filed the Execution Petition. Therefore, based on the memos filed by the applicants, the learned Master ought to have impleaded them as co-petitioners in EP.

10-4.Further more, I also find that the applicants have also filed an application in A.D.No.38355 of 2007 to implead them as co-petitioner in Execution Petition by serving a copy on the learned counsel for the respondents herein, but the said application was not numbered by the Registry; but, without looking into these aspects, the learned Master has passed the impugned order that too without affording an opportunity to the applicants.

Therefore, the impugned order dated 27.08.2014 is also liable to be set aside, since the same is not legally sustainable. Accordingly, the order dated 27.08.2014 is set aside.

11-1.**Point No.3:-** Now the only question that falls for consideration is *whether the applicants are entitled to be impleaded as co-petitioners in the EP.*

11-2.The learned senior counsel appearing for the 1st respondent vehemently opposed the impleadment of the applicants as co-petitioners in the EP, by making the following submissions:- The applicants are not the

plaintiffs in the civil suit and they got substituted themselves as Legal representatives before the Hon'ble Supreme Court, after the death of the 1st plaintiff S.V.Ramakrishnan. Since the applicants herein were substituted in C.A.No.224 of 1997 by the Hon'ble Supreme Court as appellants, the same will not give the status of decree holders to them. Purpose of substitution is only to ensure that appeal should not get abated. Further more, they have been substituted as appellants before the Hon'ble Supreme Court as Legal Representatives of the deceased S.V.Ramakrishnan in C.A.No.224 of 1997 only on the basis of the un-probated Will dated 15.07.1970 executed by the said deceased S.V.Ramakrishnan. Substitution of the applicants as legal representatives on the basis of the Will executed by the said S.V.Ramakrishnan does not confer any right on the applicants to join as co-petitioners in EP, because they cannot be termed as co-decree holders. In this regard, the learned Senior Counsel has also made a detailed argument by inviting the attention of this Court to the definition for Legal Representatives under Section 2(11) of CPC and under Section 213 of Indian Succession Act. Further, the learned senior counsel appearing for the 1st respondent by inviting the attention of this Court to Article 137 of Limitation Act, submitted that the time for impleadment is only within three years from when the right to apply accrues. Thus, according to the learned Senior Counsel appearing for the 1st respondent, the applicants ought to have impleaded themselves in the EP within three years from the date of filing the EP; therefore, at this juncture, they cannot be impleaded. In this regard, the

learned senior counsel relied upon number of decisions.

11-3. But, in my considered opinion, all the submissions made by the learned Senior Counsel appearing for the 1st respondent based on Section 213 of Indian Succession Act and Article 137 of Limitation Act and Section 2(11) of CPC need no consideration at this stage, because all the said contentions raised by the learned senior counsel appearing for the 1st respondent have already been dealt with by the learned Single Judge while dealing with the Application Nos.2872 & 2873 of 2000 as well as by the Division Bench in O.S.A.No.372 of 2000 and the order of the Division Bench was also confirmed by the Hon'ble Supreme Court. Now, the 1st respondent cannot reagitate the same in the EP. Therefore, as per the order of the Division Bench which was confirmed by the Hon'ble Supreme Court, the applicants have to be impleaded as co-petitioners.

11-4. Further, I find that though the applicants viz., 1)S.V.R.Saroja, 2)S.V.R.Vijaya, 3)S.V.R.Ramprasad & 4)S.V.R.Renuka Devi were not parties in the Civil Suit and OSA, they got substituted themselves as appellants in the Civil Appeal before the Hon'ble Supreme Court. After passing the decree by the Hon'ble Supreme Court in Civil Appeal No.224 of 1995, dated 17.04.1995, the decree passed in C.S.No.43 of 1962 dated 10.11.1965 got merged with decree passed by the Hon'ble Supreme Court in C.A.No.224 of 1974. Therefore, the submission made by the learned counsel for the

respondent that the applicants were not party before the High Court has no significance.

11-5. Further, as per Order 21 Rule 15 of CPC, if the Court allows one of several decree-holders to execute, it shall make such provision as it may deem necessary for protecting the interests of persons who have not joined in the application. When that being the legal position, there cannot be any impediment for the applicants to be added as decree-holder, when there is a specific direction by this Court to implead them as co-petitioners.

11-6. In this regard, a reference could be placed in the judgment reported in ***AIR 1921 Madras 599 (FB) (Muthiah Chettiar Vs. Krishna Doss Varu)***, wherein it has been held as follows_

“Assuming that a decree may be transferred in part under the present Code, the next question is how is the part transferee to enforce his rights. He is much in the position of a joint decree-holder under Order 21 Rule 15 but does not come within the words of that rule, as the decree has not been passed in favour of more persons than one. Rule 15 provides that where the Court allows one of several decree-holders to execute, it shall make such provision as it may deem necessary for protecting the interests of persons who have not joined in the application. It must also, it seems to me, have jurisdiction to allow such other decree-holders to intervene in a pending execution if it is not being properly

conducted and must also have jurisdiction to allow a part transferee of the decree so to intervene, if, as alleged here, the executing decree-holder is not duly prosecuting the execution. It would be a very unsatisfactory state of the law if a decree-holder who has obtained valuable consideration for a part transfer of the decree were to be at liberty to abandon or delay the execution of the decree and defeat the right of the transferee."

In the decision reported in ***AIR 1998 SC 1827(1) [Shreenath and another Vs. Rajesh and others]***, it has been held as follows__

"10. Under sub-clause 1 Order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, Rule 99 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the

person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such a case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the Executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the Executing Court could adjudicate the claim made in any such application under Order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, including tenants or other persons claiming right on their own including a stranger.

11.. So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not

thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21, Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21, Rule 36 only symbolic possession is given where tenant is in actual possession. Order 21, Rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person', as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger.

12. Prior to the 1976 Amending Act, provisions under Order 21, Rules 97 to 101 and 103 were different which are quoted hereunder:-

"97.(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and

answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation to be detained in the civil prison for a term which may extend to thirty days.

99. Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

100.(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property or where such property has been sold in execution of a decree, by purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made and answer the same.

101. Where the Court is satisfied that the

applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 and rule 101 may institute a suit to establish the right which he claims to the present possession of the property, but. subject to the result of such suit (if any), the order shall be conclusive."

From the dictum laid down in the said Judgment, it could be seen that the Hon'ble Supreme Court while delaing with the scope and ambit of Order 21 Rule 97 CPC relating to any person whose right is asserted on his own, had held that it is permissible for that person to advance his claim before the Execution Court. In the instant case also, the applicants herein asserting their rights on their own. Therefore, they have every right to get impleaded as co-petitioners, pursuant to the judgment of the Hon'ble Supreme Court in C.A.No.224 of 1974 and also the judgment passed by the learned Single Judge in Application Nos.2872 & 2873 of 2000 as well as Division Bench in O.S.A.No.372 of 2000.

11-7.It is one of the submissions of the learned senior counsel for the 1st respondent that the applicants ought to have impleaded themselves within three years from the date of filing the execution petition. In this regard,

reliance was placed by the learned Senior Counsel for the 1st respondent on the Article 137 of Limitation Act. But, I am of the opinion that Article 137 of Limitation Act has no application in this case because the applicants have to be impleaded only in the pending EP proceedings, pursuant to the order passed by the Hon'ble Supreme Court. In this regard, a reference could be placed in the judgment reported in ***AIR 1991 Allahabad 214 (Cchotey Lal Vs. Dist Judge and others)*** wherein it has been held as follows_

"3.Order 22 Rule 12 lays down that nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order, Rules 3 and 4 of Order 22 provide for making of an application for substituting the heirs of plaintiff and defendant within the time provided by law, with the result that if such an application is not made, suit stands abated. When R.12 lays down that nothing in Rules 3 and 4 will apply to execution proceedings, it means that even if heirs are not brought on record, execution proceedings will not abate. The legal representatives of the deceased decree-holder are not required to move substitution application and as held by a Division Bench of this Court in *Manmothan Dayal Vs. Kailash Nath, AIR 1957 All 647 : 1957 ALL LJ 578* they are entitled to ask for continuation of execution proceedings without moving any fresh application for execution.

4.This Court in *S.Khandelwal Vs.*

B.Prasad, AIR 1972 All 321 : 1972 All LJ 66 has laid down that provisions of S.214 of the Succession Act do not apply to application of a person seeking to continue the execution proceedings after the death of decree-holder, inasmuch as the legal representatives merely request the execution Court for continuation of the execution proceedings already initiated by the deceased decree-holder. This Court declared that Section 214 of the Succession Act prohibits the institution of execution proceedings by a person claiming as successor but it does not bar the continuance of the proceedings if the execution proceeding had already started by the deceased decree-holder. The first plea of the learned counsel for the petitioner as such, cannot be accepted.

5.Regarding the second plea about limitation, it may be mentioned that Rr.3 and 4 of O.22 of the C.P.C. lay down that application for substitution is to be made within the specified time and as these rules are not applicable to execution proceedings, in view of R.12 of O.22, C.P.C. period of limitation for permission to continue the execution proceedings cannot be applied. Article 137 of the Schedule of the Limitation Act prescribed period of limitation of three years for 'Any other application for which no period of limitation is provided also where in this deviation'. This

Article cannot apply to each and every application even if no period of limitation is provided by the Limitation Act for such an application, when what is required to be done by the Court is merely an act of ministerial character or when the court is enjoined by law to do something on its own accord, this Article may not apply, even if party concerned makes an application and the Court passes an order in connection therewith. This Court in *Budh Singh Vs. Additional District Judge*, AIR 1986 All 49 has laid down that, when (at pages 49 and 50; AIR 1986 All):

“the decree-holder dies it is open to the legal representatives claiming interest in the estate of the deceased or as being entitled to proceed with the decree, to come up just by way of information to the execution Court and thereafter proceed with the execution. Since under the Code no application for substitution or otherwise is required to be made by such legal representatives, it cannot be claimed that the bar of Article 137 of the Limitation Act is attracted. Article 137 may be invoked where an application is required under law to be necessarily made in order to

confer or create a right to proceed in a matter but where no such application is the requirement of law, the bar of limitation is inapplicable.”

The second submission of the learned counsel for the petitioner also lacks force. The writ petition is accordingly dismissed.”

From the dictum laid down in the said Judgment, it could be seen that Article 137 of Limitation Act has no application to a party to be impleaded in a pending proceedings.

11-8. But, the learned Senior Counsel for the 1st respondent emphatically submitted that though the Hon'ble Supreme Court has dismissed the S.L.P.No.895 of 2003, which was filed by the 1st respondent as against the order of the Division Bench in O.S.A.No.372 of 2000, dated 11.04.2001, by way of clarification, the Hon'ble Supreme Court directed the applicants here only to file a separate suit to claim their shares; therefore, in view of the order passed by the Hon'ble Supreme Court, the applicants are not entitled to make submission on merits in the EP.

11-9. But, on perusal of the records, I find that the learned Single Judge, while allowing the applications filed by the applicant in A.Nos.2872 & 2873 of 2000 on 24.08.2000, has directed the Judgment Debtors to execute

the reconveyance of the property in favour of the applicants as well as the 1st respondent herein S.V.Matha Prasad. In the same order, the learned Single Judge has observed that if any dispute between the parties as well as the respondents relating to the property, it is left open to the parties for filing a suit. On perusal of the order of the learned Single Judge, it is seen that the after reconveyance of the property in favour of the applicants and the 1st respondent, they have liberty to file a separate suit if there is any dispute with regard to the suit property. The said order was confirmed by the Division Bench as well as the Hon'ble Supreme Court in S.L.P.No.895 of 2003. Further, subsequently the 1st respondent also filed a Contempt Petition No.54 of 2006 in SLP.No.7447 of 2003 before the Hon'ble Supreme Court contending that the reconveyance of the property in favour of the applicants also is in total contradiction to the order dated 17.04.2003 passed by the Hon'ble Supreme Court passed in SLP.895 of 2003. But, the said Contempt Petition was dismissed by the Hon'ble Supreme Court stating that there is no contempt by the learned Master in proceeding with the execution petition for reconveyance of the property. Therefore, it is incorrect to state that the Hon'ble Supreme Court has modified the order of the learned Single Judge and the Division Bench and that the applicants are not entitled to reargue the EP on merits.

11-10.Further more, the 1st respondent herein in I.A.No.2 of 2008 in C.A.No.224 of 1974 has averred in the affidavit to the effect that the

applicants herein are the co-petitioners in E.P.No.48 of 1997 and they are equally entitled to the suit properties. Further, in the complaint dated 25.09.2006 given by the 1st respondent before the Hon'ble Chief Justice of this Court also, the 1st respondent has not made any direct allegation as against the applicants herein with regard to the tampering of EP and his entire allegation is only as against the assignees and not against the applicants herein.

11-11. Therefore, considering all the above facts, in my considered opinion, the applicants are entitled to get impleaded as co-petitioners in the EP, since already they are on record by virtue of the order of the Hon'ble Supreme Court. In spite of the fact that the application was filed by the applicants to implead themselves as co-petitioners, they were not impleaded as co-petitioners, since the said application was not numbered and listed before the Master. Further, the vigilance report would also show that the tampering of EP was done only based on the instructions given by the learned counsel for the assignees, by the then Record Clerk Mrs.T.R.Indira. Though there was a direction to delete the names of the applicants from the Execution Petition by the learned Master, the names of the other persons, which were inserted by the alleged tampering were not deleted so far. Therefore, the learned Master ought to have directed the concerned parties also to file proper application to get them impleaded in the EP proceedings in accordance with.

12. In the light of the above, this Court gives the following directions:

12(1) the learned Master is directed to print the name of the learned counsel for the applicants in the cause list, by impleading the applicants in the Execution Petition as co-petitioners based on the memos filed by them from the year 2002 and to proceed with the Execution Petition.

12(2). The learned Master is also directed to delete the other names, which were entered into the Execution Petition by way of interpolation and to direct the concerned parties to file application to get themselves impleaded in the Execution Petition; and on filing such application, the learned Master may pass appropriate orders thereafter.

12(3). So far as the sister of the 1st respondent viz., Lalitha is concerned, since she is not a party before the Hon'ble Supreme Court in the Civil Appeal, the learned Master can implead her in the Execution Petition on an application being filed by her to implead her as a party in the Execution Petition.

In view of the above order, un-numbered applications in A.D.No.29500 of 2014 and A.D.No.30779 of 2014 have become infructuous and the same are closed as infructuous. Similarly, A.D.No.38355 of 2007 is also closed.

13.Un-numbered Application No. A.D.40981/2014:-

13-1. A.D.40981/2014 has been filed against the order dated 17.09.2014 passed by the learned Master in A.No.4969 of 2014. The 1st respondent Matha Prasad filed Application No.4969/2014 under Section 340 of Cr.P.C., for prosecution of the applicants for the offence punishable under Section 120(B), 466 IPC. In the said application, the learned Master by order dated 17.09.2014 directed the Registry to forward the criminal complaints against the applicants to the competent jurisdictional Metropolitan Magistrate with regard to tampering of records. Aggrieved over the same, the applicants filed an application (A.D.No.40981/2014), but the Registry has not numbered the application. Hence, the said application is posted before this Court under the caption 'For Maintainability'.

13-2. It is the submission of the learned senior counsel for the 1st respondent that the applicants have no right of audience; appeal is contemplated in Section 341(1) of Cr.P.C., but there is specific bar to appeal against the Order of the High Court. The Master Court is delegatee of the High Court and not inferior to High Court. Hence, the order passed under Section 340 of Cr.P.C. by the learned Master is not appealable.

13-3. But, it is the submission of the learned counsel for the applicants that the Master of the High Court has power to implead and strike out the parties in the pleadings in exercise of his power conferred under

Order 14 Rule 10(xii) of O.S.Rules. However, the Master is enjoined to pass orders even under Order 30 Rule 3 of OS rules with regard to judicial, quasi-judicial and other orders. This Court has delegated the powers to be exercisable by the learned Master under Order 14 Rule 10 of OS Rules. With regard to all other matters not covered under Order 14 Rule 10 of OS Rules, the Judge of this Court alone is having jurisdiction and authority.

13-4.Further, the Court alone can initiate action under Section 340 of Cr.P.C. The learned Master has no authority to initiate action under Section 340 of Cr.P.C. In the instant case, by exceeding his authority, the learned Master has passed the order under Section 340 of Cr.P.C; therefore, the correctness and legality of the order passed by the learned Master can be challenged. Therefore, the present application filed under Order 14 Rule 12 of OS Rules in the form of judges summon under Order 14 Rule 8 of OS Rules in A.D.No.40981 of 2014 is maintainable. In this regard, the learned counsel appearing for the applicants relied upon the decision reported in **100 LW 738 (Harikrishna Jhaver Vs. Ram Narayan Bhattad, Madras)**, wherein it has been held by this Court as follows__

“for one thing, the Master's Court is also a Court within the meaning of the Rules of the High Court on the Original Side. Secondly, under the Original Side Rules, Order 14 Rule 8 the application for sanction to prosecute will have to be filed by a

Judge's summons and not by a Master's summons
and in these circumstances, the application filed
before the learned Judge was in order.”

Therefore, from the above dictum it could be seen that the learned Master has passed an order exceeding his authority under Section 340 of Cr.P.C. Therefore, the appeal filed against the said order in A.D.No.40981 of 2014 is maintainable.

13-5. I find some force in the submission made by the learned counsel appearing for the applicants.

Hence, Registry is directed to number the un-numbered application in A.D.No.40981 of 2014 and post the same before this Court, since the said application is very well maintainable.

14.Un-numbered Application No.A.D.30964 of 2014:-

14-1. A.D.No.30964 of 2014 has been filed by the applicants seeking to transfer the proceedings in E.P.No.48 of 1997 from the file of the learned Master to the file of this Court for adjudication in accordance with law. This application has been filed based on the order dated 17.04.1995 passed by the Hon'ble Supreme Court in C.S.No.224 of 1994, wherein the learned Hon'ble Supreme Court has held as follows_

“1.That the Judgment and Order dated 10th May,

1972 of the Division Bench of the High Court of Judicature at Madras in O.S.A.Nos.8 & 9 of 1966, be and is hereby set aside and the Judgment and Decree for specific performance dated 10th November, 1965 passed by the Single Judge of the said High Court in Original Suit No.43 of 1962 be and is hereby restored.

2.It is hereby directed that the respondents herein or their successors-in-interest would reconvey the property mentioned in Schedule 'A' of the plaint within a period of one month from this the 17th April, 1995, failing which it would be open to the trial judge (Single Judge) of the aforesaid High Court to execute the required document(s)."

The learned counsel for the applicants submitted that since the Hon'ble Supreme Court has directed the learned Single Judge to execute the required documents in respect of reconveyance of the suit property, an application has been filed to transfer the proceedings in E.P.No.48 of 1997; therefore, the un-numbered application in A.D.No.30964 of 2014 has to be numbered by the Registry.

14-2. But, the learned senior counsel appearing for the 1st respondent submitted that the Hon'ble Supreme Court has directed the Trial judge of this Court only to execute the required document in case the judgment debtors or their successors-in-interest failed to reconvey the property. Therefore, the Execution proceedings cannot be transferred to this Court.

14-3.However, I am of the opinion that the submissions made

by the learned counsel for the 1st respondent can be considered only after the application is numbered. Hence, the Registry is directed to number the un-numbered application A.D.No.30964 of 2014.

In the result, Application Nos.6809 to 6811 of 2014 are ordered accordingly. Application Nos.6948 & 6949 of 2014 are closed. Un-numbered application in A.D.No.38355 of 2007 and A.D.Nos.29500 & 30779 of 2014 are closed. A.D.No.30964 of 2014 and A.D.No.40981 of 2014 are ordered to be numbered.

16.02.2015

Internet : Yes / No

Index : Yes / No

R.SUBBIAH, J.,

SSV

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