

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2015

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THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.1576 of 2003
and C.M.P.Nos.339 of 2015 and 14553 of 2004

Judgment reserved on 06.07.2015	Judgment pronounced on 14.07.2015
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1.Muthuraja

2.Purushothaman ... Defendants 1 & 2/Appellants/Appellants

Vs

Lakshminarayana ... Plaintiff/Respondent/Respondent

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 10.01.2003 in A.S.No.24 of 2002 on the file of the Principal District Court, Villurpuram confirming the Judgment and Decree dated 30.03.2001 in O.S.No.306 of 1999 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellants : Mr.N.Suresh

For Respondent : Mr.S.Kriushnasamy

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 10.01.2003 in A.S.No.24 of 2002 on the file of the Principal District Court, Villurpuram confirming the Judgment and Decree dated 30.03.2001 in O.S.No.306 of 1999 on the file of the Principal District Munsif Court, Ulundurpet.

2.The averments made in the plaint are as follows:-

Originally the property were owned by the plaintiff's grandfather Thiruvengadam Padayachi and he was in enjoyment of the property by paying kist to the Government. After his death, his only son Mannankatti Padayachi, who is the father of the plaintiff has inherited the property and he was in possession and enjoyment of the

same. Patta No.177 and UDR Patta No.687 has been issued and he was in possession till his death. He died on 26.11.1993 leaving behind his sons, namely, the plaintiff and his brother Muthu Govinda Venkataraman and three daughters, namely, Kaliammal, Saraswathi and Sivagami. The plaintiff's brother and sisters relinquished their right over the properties in favour of the plaintiff on 12.12.1993. They are enjoying the property for more than 63 years and hence the plaintiff prescribed titled by adverse possession. While so, the defendants attempted to interfere with the possession of the plaintiff by denying his title and hence, he was constrained to file a suit for declaration of title and injunction.

3.The gist and essence of written statement filed by the defendants are as follows:

The property in S.No.481/1 to an extent of 1 acre 71 cents originally owned by Krishnasamy Raja and Narayanasamy Raja. They sold 40 cents in favour of the plaintiff's mother Kichaiammal and the remaining extent of 1 acre 31 cents has been sold to one Devaraja and then it was sub-divided into S.No.481/1. Out of that, he sold 60 cents in favour of Kaveriammal, who is none other than the sister of Venkata Perumal Raja on 28.01.1946 under the stated boundaries. The said Kaveriammal died intestate without any issues. So, the defendants got the property. The balance 71 cents has been purchased by the father of the defendants 1 and 2 and husband of the 3rd defendant, namely, Venkata Perumal Raja from the said Devaraja on 17.05.1951. So, they are in possession and enjoyment of the property. The plaintiff has no right over the property and the defendants prescribed title by adverse possession. It is further submitted that the father of the plaintiff Mannankatti Padayachi filed O.S.No.221 of 1989 on the file of the District Munsif Court, Thirukovilur for declaration and injunction and after that, it was transferred to the Principal District Munsif Court, Ulundurpet and re-numbered as O.S.No.161/1995. The said suit was dismissed as abated without impleading the legal heirs of the said Mannankatti Padayachi. Now, the plaintiff has come forward with this suit and so, the suit is mere abuse of court and the suit is bad for non-joinder of necessary parties. Hence, he prayed for dismissal of the suit

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.3, D.W.1, D.W.2 and Exs.A1 to A22, Exs.B1 to B6, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.24 of 2002 on the file of the Principal District Court, Villupuram.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the defendants 1 and 2.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1.Whether the plaintiff's suit was not barred by Order 9 Rule 9 CPC, especially when the earlier suit filed against the defendants in respect of the same subject matter for declaration and injunction by the plaintiff's father was dismissed for default and it had not been restored to file, as evidenced by Exhibit B10?

2.Whether the plaintiff was incompetent to maintain the suit on the basis of an alleged oral release from his brothers and sisters, which was found to be not established by the Trial Court and not set aside by the appellate Court, especially when the suit was not filed in the capacity as a co-owner on behalf of his brothers and sisters also"

7.At the time of arguments, the following additional Substantial Question of Laws were framed for consideration.

"1.Whether the Courts below erred in decreeing the present suit, when admittedly the plaintiff had approached the Court by suppressing the material fact of filing of the earlier suit in O.S.No.221 of 1989 (O.S.No.161 of 1995) by his father and he died during the pendency of suit and consequently the suit got abated?

2.Whether the Courts below erred in decreeing the suit in spite of the bar under Order 22 Rule 9 CPC when the relief and cause of action in the earlier suit in O.S.No.221 of 1989 (O.S.No.161 of 1995) and the present suit are one and the same?

3.Whether the judgment and decree of the Courts below are liable to be interfered with for non-framing of the issue and non-consideration of the bar of suit under Order 22 Rule 9 CPC?

8.Challenging the concurrent finding of both the Courts below\, the learned counsel appearing for the appellants would submit that the suit is barred under Order 22 Rule 9 CPC. He further submitted that the respondent/plaintiff is guilty of suppression of facts and he has not come to the Court with clean hands. He would submit that he filed documents from the year 1936 onwards. The property in S.No.481 to an extent of 1 acre 71 cents was originally owned by

Krishnasamy Raja and Narayanasamy Raja and from whom, Devaraja purchased 1 acre 21 cents under Ex.B4. From the said Devaraja, the appellants father purchased under Ex.B5 on 17.05.1951 i.e. S.No.481/1. One Kaveriammal purchased 60 cents out of 71 cents on 28.01.1946 from Narayanasamy Raja. Exs.B5 and B6 are the Encumbrance Certificates and so, they proved the title. Further, the respondent's father Mannankatti filed a suit for the same relief i.e. declaration and also injunction in respect of Patta No.177. The suit was dismissed. He further submitted that the respondent filed application for setting aside the abatement along with the petition to condone the delay and to bring the legal heirs of the deceased Mannankatti. The said applications were returned which was evidenced under Exs.A19 to A21. But without pursuing with the suit filed by his father, the respondent/plaintiff has filed the present suit. Hence, the suit is hit by Order 22 Rule 9 CPC. He further submitted that the suit filed by the plaintiff's father was not disclosed by the respondent/plaintiff. Once he come to the Court for discretionary relief, he ought to have put forth all the case and because of suppression of facts, the plaintiff is guilty of suppression of facts. He would also submit that Patta is not a title document and revenue records did not confer title. To substantiate his argument, the learned counsel appearing for the appellants relied upon the following decisions:

1. 2010 (2) SCC 114 (Dalip Singh vs. State of Uttarpradesh and others)
2. 2010 (4) SCC 728 (Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others)
3. AIR 1983 SC 676 (Madan Naik (dead by LRs.) and others vs. Mst.Hansubala Devi and others)
4. AIR 1920 Madras 580 (Rahimunnissa Begamd and others vs. M.A.Srinivasa Ayyangar)
5. AIR 2014 SC 937 (Union of India and others vs. Vasavi Co-op. Housing Society Ltd. and others)
6. AIR 1989 SC 1809 (Corporation of the City of Bangalore vs. M.Papaiah and another)
7. CDJ 2011 MHC 5400 (V.P.Salu and others vs. R.Vadivelu)
8. 1937 (1) MLJ 33 (O.A.O.K.C.T. Chidambaram Chettiar (minor) and others vs. Swaminathan alias Samidurai Thevar and others)
9. AIR 1968 Madras 426 (Kamatchi Ammal vs. Athigamudaya Pillai and others)

Hence, he prayed for allowing the appeal.

9.Resisting the same, the learned counsel appearing for the respondent would submit that the suit is not hit by Order 22 Rule 9 CPC and Order 9 Rule 9 CPC. He would submit that the cause of action of both the suits are different and there is no suppression of fact. There is no evidence to show that how Krishnasamy Raja and

Narayanasamy Raja have got the property. So, both the Courts below have considered the same in proper perspective and came to the correct conclusion. Unless the judgment of both the Courts below is perverse, this Court is not entitled to set aside the concurrent judgment. Hence, he prayed for dismissal of the appeal.

10. Considered the rival submissions made on both sides and perused the material records and both oral and documentary evidence.

11. The respondent as a plaintiff filed a suit for declaration and injunction against the appellants herein. Now, this Court has to decide whether the suit is hit by Order 22 Rule 9 CPC? It is appropriate to consider the written statement filed by the appellants/defendants, wherein it was not specifically mentioned that the suit is barred under Order 22 Rule 9 CPC. However, in paragraph No.9 of the written statement, it was mentioned that without pursuing the suit O.S.No.161 of 1995 the present suit is abuse of process of Court and it is bad for non-joinder of necessary parties. But admittedly the Trial Court has not framed the issue in respect of the earlier suit, whereas the Trial Court has framed the issue in respect of non-joinder of necessary party. But the Trial Court has decreed the suit. Against which, the appeal has been preferred by the appellants/defendants. In the First Appellate Court, the appellants raised a plea that the suit is barred by resjudicata in ground Nos.18 to 21, which read as follows:

"18. The Lower Court had failed to note that the suit itself is barred by res-judicata.

19. The Lower Court had failed to glean Exhibits A19 to A22 and B1 to B3, which would nail the claim of the plaintiff.

20. The Lower Court had failed to note that by virtue of O.S.No.161/1995 the plaintiff is barred from re-agitating the same.

21. The Lower Court had failed to note that in any event the plaintiff himself had conceded that he had no right in the suit property by virtue of the earlier suit ought to dismissed the suit."

12. Even though there is no specific ground that the suit is barred under Order 22 Rule 9 CPC, the First Appellate Court has framed the issue in respect of that whether the suit is barred under Order 9 Rule 9 CPC and non-joinder of necessary parties and decide the matter. In such circumstances, the arguments advanced by the learned counsel appearing for the appellants that the First Appellate Court has not framed issues and not considered the bar under Order 22 Rule 9 CPC does not merit acceptance. Even in the grounds of appeal and Substantial Question of Laws, the appellants raised the plea in respect of Order 9 Rule 9 CPC and not Order 22 Rule 9 CPC.

13. At this juncture, it is appropriate to incorporate Order 22 Rule 9 CPC, which is as follows:

9. Effect of abatement or dismissal

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the [Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).

[Explanation—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order]

14. In Order 22 Rule 9 CPC, it was specifically mentioned that when the suit is abated or is dismissed under this Order no fresh suit shall be brought on the same cause of action. It is appropriate to consider the previous suit filed by the respondent's father Mannankatti. Plaintiff of the suit O.S.No.161 of 1995 filed by the plaintiff's father has not filed. In such circumstances, without marking the plaint, this Court is not in a position to decide whether the present suit has been filed on the same cause of action. But he filed the Suit Register, Ex.B10 wherein only particulars has been given as that the cause of action arose on 01.04.1989 and 06.04.1989. Whereas in the plaint, it was stated that cause of action arose on 12.12.1993, when the brother and sisters of the plaintiff relinquished their right on 20.10.1989 and when the defendants attempted to interfere with his possession at Perumbakkam, within the jurisdiction of the Court where the suit property is situated. Since the previous plaint has been filed and marked, I am of the view that the defendants have not proved that for the same cause of action the present suit has been filed.

15. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellants reported in AIR 1920 Madras 580 (Rahimunnissa Begamd and others vs. M.A.Srinivasa Ayyangar), wherein it was held that an abatement order

if not set aside is conclusive about the title and possession. It is appropriate to incorporate the relevant portion of the judgment, which reads as follows:

"An order of abatement operates as a judgment in favour of the defendant and the only course open to a legal representative of the deceased plaintiff to escape the effect of the abatement order is to apply to set aside the abatement. If he does not succeed in vacating the judgment and so long as the defendant continues in possession, the order of abatement is conclusive of the defendant's rights to the property."

16. He has also relied upon the decision reported in AIR 1983 SC 676 (Madan Naik (dead by LRs.) and others vs. Mst. Hansubala Devi and others), wherein it was held that the abatement takes place on its own force by passage of time. It is appropriate to incorporate paragraph No.5, which reads as follows:

"5. Order 22, Rule 11 of the CPC read with Order 22 Rule 4 makes it obligatory to seek substitution of the heirs and legal representatives of deceased respondent if the right to sue survives. Such substitution has to be sought within the time prescribed by law of limitation. If no such substitution is sought, the appeal will abate. Sub-rule (2) Rule 9 of Order 22 enables the party who is under an obligation to seek substitution to apply for an order to set aside the abatement and if it is proved that he was prevented by any sufficient cause from continuing the suit which would include an appeal, the Court shall set aside the abatement. Now where an application for setting aside an abatement is made, but the Court having not been satisfied that the party seeking setting aside of abatement was prevented by sufficient cause from continuing the appeal, the Court may decline to set aside the abatement. Then the net result would be that the appeal would stand disposed of as having abated. It may be mentioned that no specific order for abatement of a proceeding under one or the other provision of Order 22 is envisaged, the abatement takes place on its own force by passage of time. In fact, a specific order is necessary under Order 22 Rule 9, C. P. C. for setting aside the abatement."

But the above citation is not applicable to the facts of the present case.

17. He has also relied upon the decision reported in AIR 1968 Madras 426 (Kamatchi Ammal vs. Athigamudaya Pillai and others), wherein it was held that if the plaintiff whose suit has abated cannot again bring a fresh suit on the same cause of action and the earlier decision should be deemed to be a decision against him and he

cannot get rid of the effect of the earlier decision just because he happens to be a defendant in the subsequent suit. It is appropriate to incorporate paragraph No.3, which reads as follows:

"3.The Privy Council in Brij Indar Singh v. Lala Kanshiram, 33 Mad LJ 486 = (AIR 1917 PC 156) had stated that Section 371 of the old Civil Procedure Code, corresponding to Order 22, Rule 9 only hurts the plaintiff. Then they pointed out that an order abating a suit may be said to be really tantamount to a judgment in favour of the defendant. This observation is relied upon on behalf of the appellant. But then this decision did not deal with a case of a plaintiff in an earlier suit being a defendant in a subsequent suit. In Rahim Unnissa Begum v. Srinivasa Aiyangar, 38 Mad LJ 266 = (AIR 1920 Mad 580) a Bench of this Court had to consider the effect on the right of parties in a subsequent suit, of the result of an earlier suit which had been allowed to abate. In considering that question the Bench referred to the dictum of the Privy Council above mentioned and then stated that so long as the plaintiff is unable to vacate the judgment and so long as the defendant continues in possession he can plead against the plaintiff and those claiming under him that the order of abatement is conclusive of rights to the property, and that the only course open to the legal representative if he wants to escape the abatement order is to apply for setting aside the abatement and so long as it is unreversed it would be binding on him. The discussion is only about the effect of the abatement of the earlier suit when the plaintiff in the earlier suit or his legal representatives bring the subsequent suit.

But the Bench also referred to the decision in Jayasing v. Gopal, (1904) 6 Bom LR 638, wherein a Bench of the Bombay High Court held that where the legal representatives of the plaintiff, on whose death the suit abated, got into possession of the property they were entitled to resist the suit brought to oust them from possession, and that the previous order of abatement did not preclude them from setting up title. If this decision of the Bombay High Court is correct, there is no doubt that in this case defendants 2 to 7 would, notwithstanding the abatement of the earlier suit brought by the father, be entitled to set up their own title. What is urged on behalf of the respondents is that when the Bench of this Court often referring to this decision, in the next sentence say that accepting this judgment as rightly laying down the law it does not affect the present one, the Bench should be deemed to have accepted as correct the decision in (1904) 6 Bom LR

638. I do not think that this is correct. It only means that even if the Bombay judgment is accepted to be correct it did not affect the case before the Bench. In any case the ratio of the decision of the Bench was not the same as in (1904) 6 Bom LR 638, and therefore, there is no decision of this Court which is binding on me and which could compel me to hold that where the previous suit has abated the plaintiff in that suit can in a subsequent suit against him plead that the decision in the earlier suit would not bar his defence. The Lahore High Court in Raju v. Ramchand, AIR 1933 Lah 752 has taken a view contrary to the Bombay view. The Lahore High Court does not refer to the decision in (1904) 6 Bom LR 638. They merely say that where the plaintiff cannot bring a fresh suit to establish his title he cannot resist the claim of the plaintiff (in the fresh suit) in spite of the definite finding in the earlier suit.

It appears to me that the decision of the Lahore High Court is more in accordance with the principles embodied in Order 22, Rule 9. Surely if the plaintiff whose suit has abated cannot again bring a fresh suit on the same cause of action, and the earlier decision should be deemed to be a decision against him, he cannot get rid of the effect of the earlier decision just because he happens to be a defendant in a subsequent suit. Even in the subsequent suit where he is a defendant it should be held that he would be barred from agitating the same questions which he could have agitated in the earlier suit and which because of the provisions of Order 22, Rule 9 he is prohibited from agitating in a subsequent suit as a plaintiff. The fact that he is merely a defendant in the subsequent suit does not seem to affect the Principle embodied in Order 22, Rule 9. I am therefore, of opinion that the decision of the Lahore High Court is preferable to the decision of the Bombay High Court. Following the decision of the Lahore High Court I hold that defendants 2 to 7 are barred from raising the questions which the father of defendants 2 to 6 had sought to raise in the earlier suit in O. S. 211 of 1959. It follows, therefore, that the plaintiff is entitled to succeed in the suit."

18. He has also relied upon the decision reported in 1937 (1) MLJ 33 (O.A.O.K.C.T. Chidambaram Chettiar (minor) and others vs. Swaminathan alias Samidurai Thevar and others), wherein it was held that when the suit was dismissed as abated for not taking steps to bring the legal representatives, the subsequent suit is incompetent. It is appropriate to incorporate the relevant portion, which reads as

follows:

"The only question for decision is whether the suit is barred by Order 22, Rule 9 of the Civil Procedure Code. It is not disputed that the cause of action in this suit is the same as that on which O.S. No. 88 of 1925 was based, vis., the right of the plaintiffs or their benamidar Ramaswami Chettiar to get possession of the property and the infringement of that right by the defendants. It is also not disputed that on the death of Ramaswami Chettiar his representatives were not brought on record and an application filed by the plaintiffs to bring them on record as legal representatives was ultimately dismissed by the High Court. The result was that no one was brought on record as the representative of Ramaswami Chettiar and that an order was made that the suit abated. Now, under Order 22, Rule 9 of the Civil Procedure Code:

"Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action."

19. He has also relied upon the decision reported in CDJ 2011 MHC 5400 (V.P.Salu and others vs. R.Vadivelu), wherein it was held that once the suit is dismissed as abated, fresh suit is barred under Order 22 Rule 9 CPC. The suit filed by the Predecessor in title is barred. It is appropriate to incorporate paragraph Nos.8 and 9, which reads as follows:

"8. Therefore, as per the cause of action paragraph in both the suits, it is seen that the declaratory relief of easementary right was sought on the basis of the property purchased by Mr.O.M.George, on 31.5.2009, and in the earlier suit, his right was interfered and that was stated as the cause of action and in the present suit also, when the appellants/plaintiffs' right was disturbed, the suit was filed.

9. Therefore, the cause of action for the main relief of declaration is one and the same in both the suits and that was rightly appreciated by the First Appellate Court and held that, when the earlier suit on the same cause of action was dismissed as abated, under the provisions of Order 22, Rule 9 of C.P.C., no fresh suit shall be brought on the same cause of action. Unfortunately, this was not properly appreciated by the trial Court and the trial Court held that the cause of action in both the suits are different without properly appreciating that the declaratory relief sought for in both the suits is on the same cause of action. Therefore, the First Appellate Court correctly appreciated the same and held that the present suit is

barred under Order 22, Rule 9 of C.P.C. and dismissed the appeal filed by the appellants and allowed the appeal filed by the respondent. Hence, I do not any reason to interfere with the judgment and decree of the First Appellate Court and no substantial question of law arises for consideration."

20. In the above citation, it was held that if the cause of action is one and the same, fresh suit is barred once the suit was dismissed as abates under Order 22 Rule 9 CPC. But here, in the present case, in order to verify whether the suit has been filed on the same cause of action, the plaint of the earlier suit has not been filed and only the suit register alone has been filed. In such circumstances, the appellants have not proved that the plaintiff has filed the present suit on the same cause of action as that of the suit filed by his father. Thus, Additional Substantial Question of Law Nos.1 and 2 were answered against the appellants.

21. The learned counsel appearing for the appellants even though in Ground No.7 of Memorandum of Appeal, raised the plea that the suit itself was barred by Provision of Order 9 Rule 9 CPC, he has not advanced any argument in respect of this aspect. On perusal of Exs.A19 to A21 and B1 to B3 has clearly proved that the plaintiff's father has filed a suit for declaration and injunction. He died and his legal heirs were not impleaded. Subsequently, the plaintiff filed an application for bringing the legal heirs along with an application to condone the delay and to set aside the abatement. The said applications were returned as per Exs.A19 to A21. In such circumstances, the suit is not dismissed for default. So, it is appropriate to incorporate Order 9 Rule 9 CPC, which reads as follows:

9. Decree against plaintiff by default bars fresh suit

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

HIGH COURT AMENDMENT (MADRAS): Add the following as sub-rule (3) to Rule 9:

(3) The provisions of Section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule.

So, the plaintiff's suit is not barred under Order 9 Rule 9 CPC. Since the appellants/defendants have not filed the plaint in previous suit O.S.No.161 of 1995, this Court held that the defendants have not proved that the present suit has been filed by the plaintiff on the same cause of action. Hence, Substantial Question of Law No.1 is answered against the appellants.

22.The learned counsel appearing for the appellants mainly focusing his argument that the respondent has not come to the Court with clean hands and he suppressed the material facts. The respondent/plaintiff in paragraph No.4 of the plaint, has stated that his father Mannankatti died on 26.11.1993 and his brother and sisters have relinquished their right orally on 12.12.1993 and that has been incorporated in the cause of action also. But whereas in Exs.A19 to A21, which were filed on 22.01.1999, wherein in paragraph No.3 of Ex.A21, it was mentioned that Mannakatti has died leaving behind the legal heirs and the respondents 3 to 6 were not willing to join with him and so, they are added as respondents. It is appropriate to incorporate paragraph No.3 in Ex.A21, which is as follows:

"3.இறந்த 1ம் மனுதாரரின் வாரிசுகளான 3 முதல் 6 வரையுள்ள எதிர் மனுதாரர்கள் என்னுடன் சேர்ந்து இந்த தாவாவை நடத்த ஒத்து வராததால் அவர்களை இந்த மனுவில் எதிர் மனுதாரர்களாக சேர்த்துள்ளேன்."

23.So, the learned counsel appearing for the appellants would submit that the respondent/plaintiff in the plaint has stated that on 12.12.1993, his brother and sisters have orally relinquished their rights. But whereas in Ex.A21, it was stated that they are not willing to join with the plaintiff. Hence, he filed an application to implead as respondents and so, he has not come to the Court with clean hands. Admittedly, the respondent/plaintiff has given two different versions. He further submitted that the respondent has suppressed the material facts and hence, he is not entitled to any discretionary relief of injunction. It is pertinent to note that neither he pleaded about Exs.A19 to A21 in his plaint nor he deposed when he was in witness box at the time of chief examination. The respondent/plaintiff, in his chief examination has stated that he did not know whether the suit filed by his father has been dismissed. In his cross examination only he admitted that after the death of his father, he filed applications to implead the legal heirs of his father and also application to set aside the abatement and to condone the delay.

24.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellants reported in 2010 (4) SCC 728 (Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others), wherein it was held that suppressing the material facts within his knowledge is found to be guilty of concealment of material

facts. It is appropriate to incorporate paragraph Nos.20 and 22, which reads as follows:

"20.It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person

22.The above extracted observations were approved by the Court of Appeal in the following words: (Kensington case KB p.504)

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction: and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.... If an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted....."

His Lordship rightly pronounced: (Kensington case, KB p.508)

"The Court, for its own protection, is entitled to say:

We refuse this writ... without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed: (Kensington case KB p.509)

"It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him."

25.He has also relied upon the decision reported in AIR 1989 SC 1809 (Corporation of the City of Bangalore vs. M.Papaiah and another), wherein it was held that the revenue record is not document of title. It is appropriate to incorporate paragraph No.5, which reads as follows:

"5.In reversing the decision of the first appellate court the High Court committed several serious errors of law. The High Court appears to have been confused on the question whether the issue of title to the disputed property was involved in the suit or not. The judgment shows that the High Court has made several inconsistent observations. By way of illustration, the following passage at page 13 of the paper book (of this Court) may be seen:

"This Court must accept this argument in view of the circumstance that there was no issue involving the title has been satisfactorily established by the appellants and the respondent has failed to establish its title. Therefore, the first appellate court is wholly wrong in raising issues which did not arise in the case and reaching the conclusion that the suit was bad since the appellants did not seek the relief of declaration of title and possession.

We do agree that the suit cannot be dismissed on the ground that the relief of declaration of title and possession has not been specifically mentioned in the plaint. But the observations on the question whether the issue of title is involved in the suit or not are clearly discrepant. In some other part of the judgment the High Court has mentioned a portion of the relevant evidence on the question of title and possession and made adverse comments against the findings of fact recorded by the first appellate court without giving any valid reason therefor. So far the revenue records are concerned, the appellate court considered the same and held that they did not support the plaint. The High Court has reversed the finding saying that the interpretation of the first appellate court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside."

But the above citation is not applicable to the facts of the present case.

26.He has also relied upon the decision reported in 2010 (2) SCC 114 (Dalip Singh vs. State of Uttar Pradesh and others), wherein it was held that in order to meet the challenges posed by the new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. It is appropriate to incorporate paragraph Nos.1 and 2, which reads as follows:

"1.For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2.In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

27.He has also relied upon the decision reported in AIR 2014 SC 937 (Union of India and others vs. Vasavi Co-op. Housing Society Ltd. and others), wherein it was held that the plaintiff has to prove his title on his own, he cannot succeed on the weakness of the defendants case. It is appropriate to incorporate paragraph No.15, which reads as follows:

"15.The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that

even if the title set up by the defendants is found against, in the absence of establishment of plaintiffs own title, plaintiff must be non-suited."

28.Considering the above citations along with the facts of the present case, I am of the view that the respondent/plaintiff has suppressed the material facts and has not come to the Court with clean hands. Hence, he is not entitled to any relief. So, both the Courts below without considering the same has committed error in granting the judgment and decree. Hence, the decree and judgment passed by both the Courts below is perverse and the same are hereby set aside. The second appeal is liable to be allowed and it is hereby allowed.

29.In fine,

- Second appeal is allowed.
- Judgment and decree passed by both the Courts below are hereby set aside.
- Consequently, O.S.No.306 of 1999 on the file of the Principal District Munsif Court, Ulundurpet. stands dismissed.
- Connected Civil Miscellaneous Petitions are also closed.
- There is no order as to costs.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Principal District Court,
Villurpuram.

2.The Principal District Munsif Court,
Ulundurpet.

3.The Record Keeper,
V.R.Section, High Court, Chennai.

+1 cc to Mr.S.Krishnasamy, Advocate (Sr.35774)

+1 cc to Mr.N.Suresh (Sr.35688)

S.A.No.1576 of 2003
and C.M.P.Nos.339 of 2015 and
14553 of 2004

RV(co)
cp 11.08.2015