

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.1233 of 2013

and

M.P.No.1 of 2013

1.Emperuman
2.Jothi
3.Balakrishnan
4.Indira
5.Parameswari
6.Nalini
7.Bhanupriya
8.Suseela
9.Vijaya Lakshmi ... Appellants 1 to 9/Respondent 1 to 9/Defendants 1 to 9

- Vs -

1.Rangarajan
2.Adimoolam ... Respondents 1 & 2/Appellants/Plaintiffs
3.Sivakami
4.Muthumuniandi
5.Arulvaradaraj
6.Paramasivam ... RR3 to 6/RR 10 to 13/Defendant 10 to 13

Prayer : Second Appeal is filed under Section 100 C.P.C. against the judgment and decree, dated 19.09.2013 and made in A.S.No.10 of 2012 on the file of the learned Principal District Judge, Villupuram, reversing the Judgment and Decree, dated 13.09.2011 and made in I.A.No.493 of 2011 in O.S.No.59 of 2011 on the file of the learned Principal Subordinate Judge, Tindivanam.

For Appellants : Ms.Chitra Sampath, Senior Counsel
for M/s.R.Sunil Kumar

For Respondents 1 & 2 : Ms.R.Meenal

For Respondents 3 to 6 : No Appearance

J U D G M E N T

Challenging the Judgment and Decree, dated 19.09.2013 and made in the appeal in A.S.No.10 of 2012 on the file of the learned Principal District Judge, Villupuram, reversing the Judgment and Decree, dated 13.09.2011 and made in the Interlocutory Application in I.A.No.493 of 2011 in O.S.No.59 of 2011 on the file of the learned Principal Subordinate Judge, Tindivanam, this memorandum of Second Appeal is filed under Section 100 of the Code of Civil Procedure.

2. The defendants 1 to 9 in the suit in O.S.No.59 of 2011 are the appellants herein whereas the plaintiffs are the respondents 1 and 2 and the defendants 10 to 13 in the suit are the respondents 3 to 6 herein.

3. The respondents 1 and 2 had filed the suit in O.S.No.59 of 2011 on the file of the learned Principal Subordinate Judge, Tindivanam, as against the appellants as well as against the respondents 3 to 6 seeking the relief of a preliminary decree for partition and separate possession of their half share in the suit properties as well as their share in the future income.

4. During the pendency of the suit, the appellants 1 to 9, who are the defendants had filed an application in I.A.No.493 of 2011 under Order 7 Rule 11 of C.P.C. to reject the plaint for the reasons stated in the affidavit filed in support of that application.

5. Despite strenuous objection was made by the respondents 1 and 2 / plaintiffs 1 and 2, the learned Principal Subordinate Judge, had proceeded to allow that application on 13.09.2011, which was resulted in the rejection of the plaint in the suit in O.S.No.59 of 2011.

6. Challenging the correctness of the order, dated 13.09.2011, the respondents/plaintiffs 1 and 2 had filed an appeal in A.S.No.10 of 2012 on the file of the learned Principal District Judge, Villupuram.

7. After hearing both sides, the learned Principal District Judge, Villupuram, had proceeded to allow the appeal and the order of rejection of the plaint passed by the trial court was set aside and the application in I.A.No.493 of 2011 was remitted back to the trial court for fresh disposal after giving due opportunities to both the parties to adduce evidences.

8. Challenging the order of remand passed by the first appellate Court, the defendants 1 to 9, who are the applicants in I.A.No.493 of 2011, stand before this Court with this second appeal.

9. Heard Ms.Chitra Sampath, learned Senior Counsel appearing for Mr.R.Sunil Kumar, who is on record for the appellants/defendants 1 to 9 and Ms.R.Meenal, learned counsel appearing for the respondents 1 and 2.

10. Ms.Chitra Sampath, learned Senior Counsel has mainly articulated her arguments on the sole ground of limitation.

11. She has also identified the following substantial question of law to that effect for the better disposal of this second appeal.

'a. When the plaintiffs admit in their plaint that the defendants' father had denied their claim for a share in the suit properties in and by his reply, dated 20.10.1992 (Ex.P.73), whether the court below was correct in ignoring the law of limitation for making such a claim after a lapse of 19 years ?''

12. In addition to this substantial question of law, the learned Senior Counsel has also identified the other two substantial questions of law which are shown hereunder:-

''(i) When the plaintiffs admittedly had not disclosed the earlier litigation in O.S.No.852 of 1991 between the parties in relation to the very same issue of partition in 1938, whether the Court below was right in ignoring the conduct of suppression of material facts by the plaintiff to maintain the present suit ?

(ii) When the relief sought for in the plaint had been under-valued by the plaintiffs whether the court below was right in ignoring this important issue with regard to the pecuniary jurisdiction of the trial court.''

13. Before answering to the above substantial questions of law, this Court finds it better to extract the provisions of Rule 11 of Order 7 C.P.C.

"R.11 Rejection of Plaint - The plaint shall be rejected in the following cases -

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to

correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

(Clause 'e' has been inserted by the CPC (Amendment) Act, 1999 (46 of 1999), s.17 (w.e.f. 1.7.2002) vide Notfn.S.O.603 (E), dt.6.6.2002).

(Clause 'f' has been substituted by CPC (Amendment) Act, 2002 (22 of 2002), Section 8 (w.e.f.1.7.2002) vide Notfn.S.O.604 (E), dt.6.6.2002, Section 8 (ii) for clauses (f) and (g)).

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

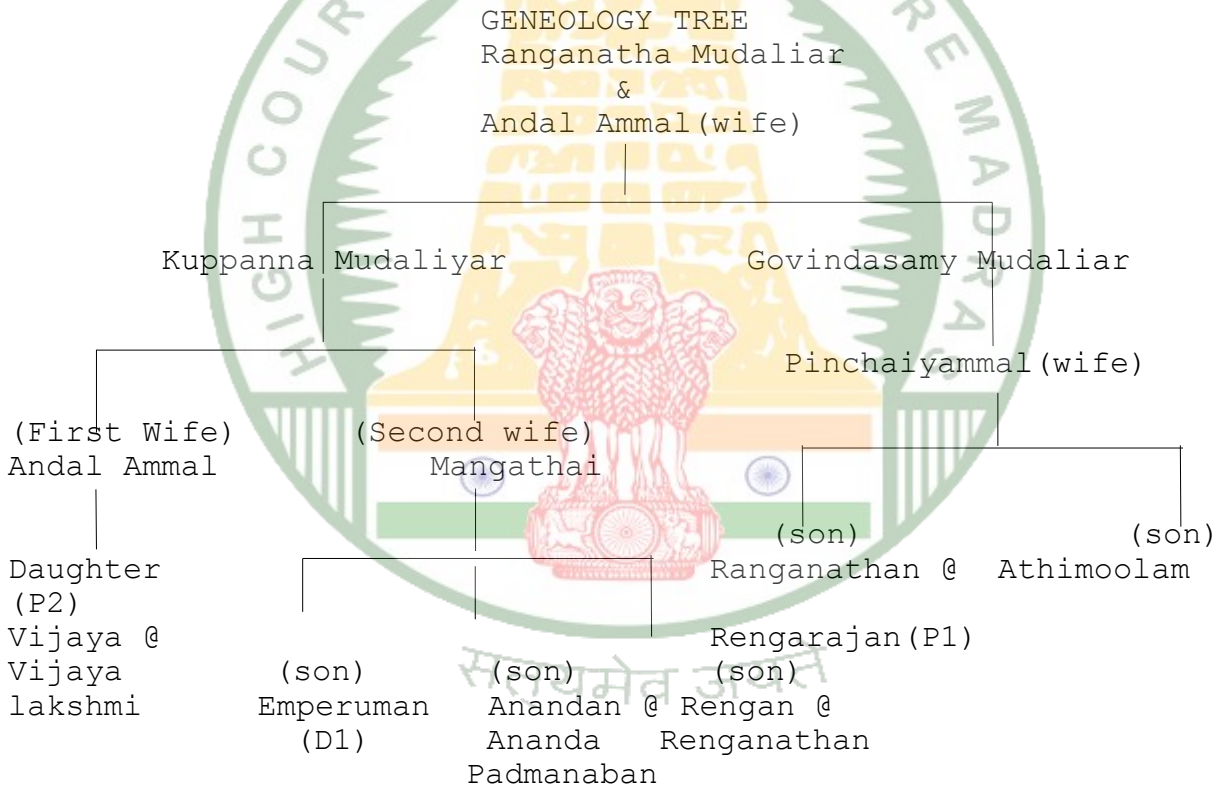
14. The above proviso to Rule 11 of Order 7 has been inserted by CPC (Amendment) Act 104 of 1976, S.57. (w.e.f. 1.2.1977).

15. Insofar as this second appeal is concerned, Clauses 'b', and 'd', of Rule 11 are very much relevant.

16. Since the maintainability of the plaint in the suit in O.S.No.59 of 2011, is questioned mainly on the grounds of law of limitation, suppression of material facts and under valuation of the plaint with regard to pecuniary jurisdiction of the trial court, the other facts averred in the affidavit filed in support

of the petition in I.A.No.493 of 2011 are extrenious excepting the following facts:-

One Ranganatha Mudaliar and Andal Ammal are husband and wife. They begotten two sons, namely, Kuppanna Mudaliar and Govindasamy Mudaliar. The first wife's name of Kuppanna Mudaliar is also Andal Ammal. The 9th defendant in the suit, Vijaya @ Vijayalakshmi is their daughter. One Mangathai is the second wife of Kuppanna Mudaliar. She begotten three sons through Kuppanna Mudaliar, namely, Emperuman (1st defendant), Anandan alias Anandapadmanaban and Rangan alias Ranganathan. One Pachaiammal is the wife of Govindasamy Mudaliar, who is the second son of Ranganatha Mudaliar and Andal Ammal. They begotten two sons by name, Ranganathan alias Rangarajan (first plaintiff) and Athimoolam (second plaintiff). Ranganatha Mudaliar, Andalammal, Kuppanna Mudaliar, Andal Ammal, Mangathai, Anandan alias Anandapadmanaban, Rangan alias Rangathan, Govindasamy Mudaliar and Pachaiammal were dead.



17. As afore stated, the plaintiffs 1 and 2 are the sons of Govindasamy Mudaliar and Pachaiammal.

18. As it is revealed from the averments of the affidavit filed by first defendant/first petitioner in I.A.No.493 of 2011, Kuppanna Mudaliar and his brother Govindasamy Mudaliar had orally divided their family properties on 29.9.1938 in the presence of panchayatdars.

19. In the said partition, the properties set out in paragraph No.6 of the affidavit were allotted to the share of Kuppanna Mudaliar.

20. Similarly, the properties specified in paragraph No.7 of the affidavit were allotted to the share of Govindasamy Mudaliar.

21. From the properties allotted to his share in the above said partition, dated 29.9.1938, Kuppanna Mudaliar had executed a settlement deed (Ex.P.6), dated 5.3.1956 in favour of his daughter (D9) born through his first wife and thereby, he had settled some portions.

22. The settlement deed under Ex.P.6, was accepted and acted upon and by virtue of the said settlement deed, the 9th defendant had been in possession and enjoyment of the same.

23. It is alleged that on 25.5.1991, the plaintiffs and their parents, viz., Govindasamy Mudaliar and Pachaiammal were trying to trespass into 9th defendant's property (item No.23) and owing to this reason, the 9th defendant had filed a suit in O.S.No.852 of 1991 against them on the file of the District Munsif Court, Tindivanam. That suit was decreed as prayed for on 28.3.1995. The plaintiffs herein and their parents had not preferred any appeal against the judgment passed in O.S.No.852 of 1991 and therefore, the judgment and decree passed in O.S.No.852 of 1991 has become final. However, this fact has not been disclosed by the plaintiffs in their plaint.

24. As it is seen from paragraph No.19 of the affidavit filed in support of the application in I.A.No.493 of 2011, since a dispute was arisen between Kuppanna Mudaliar and his brother Govindasamy Mudaliar, an agreement of consent was executed between them on 30.8.1962 in the presence of panchayatadars and accordingly, their dispute was settled. This agreement of consent, dated 30.8.1962 would ratify the fact that there was an oral partition between Kuppanna Mudaliar and Govindasamy Mudaliar on 29.9.1938.

25. According to the petitioners, the total market value of the properties specified in the Schedule would be Rs.85,02,343. But the respondents/ plaintiffs had deliberately and wantonly undervalued the property and therefore, the trial Court does not have pecuniary jurisdiction to entertain the suit.

26. That on 7.10.1992, the first respondent/plaintiff had issued a notice (Ex.P.72) to Kuppanna Mudaliar claiming partition. Kuppanna Mudaliar had issued a reply to the first respondent/plaintiff on 20.10.1992 (Ex.P.73). After receiving

the said reply, dated 20.10.1992, the respondents / plaintiffs had never raised the issue of partition.

27. The petitioners/defendants 1 to 9 have stated that the respondents/plaintiffs had slept over for about 19 years and only thereafter, they have come forward with this suit for partition and therefore, the suit itself is squarely barred by law of limitation.

28. Besides this, they have also contended the suit has also been affected by the doctrine of res judicata, and that they had perfected their title to the suit property by way of long and uninterrupted possession. Apart from this it is also their case that the suit is also affected by the doctrine of ouster.

29. On the other hand, the respondents have filed their objection contending that at this stage the allegations made in the plaint only could be looked into and that the defence that was taken by the petitioners/defendants 1 to 9 was not germane.

30. They have also contended that the documents produced by the petitioners could not be looked into as they had got cause of action to maintain the suit and proper court fee was also paid on the plaint.

31. No oral evidence was adduced on behalf of both sides. Seven documents (Exs.P1 to P7) were marked on the side of the petitioners/defendants. On the other hand, no document was produced on behalf of the respondents.

32. After hearing both sides, the learned Principal Subordinate Judge, Tindivanam, had proceeded to allow the petition, which resulted in the rejection of the plaint.

33. Questioning the correctness of the order, dated 13.09.2011, the respondents/plaintiffs 1 and 2 had preferred an appeal before the Principal District Court at Villupuram in A.S.No.10 of 2012. That appeal was allowed and the order passed by the trial Court was set aside and the petition in I.A.No.493 of 2011 in O.S.No.59 of 2011 was remitted back to the trial Court with a direction to dispose the suit within 60 days from the date of receipt of the material records. It is significant to note here that no reference is available in the impugned order as to whether the petition in I.A.No.493 of 2011 was dismissed.

34. Challenging the order of remand passed by the first appellate Court, the petitioners in I.A.No.493 of 2011, who are the defendants 1 to 9 in the suit stand before this Court with this second appeal.

35. M/s.Chitra Sampath, learned Senior Counsel has stuck on to the first substantial question of law with regard to the point of limitation. The learned Senior Counsel has contended that the trial Court had mainly allowed the petition under Order 7 Rule 11 of C.P.C. on the ground of limitation.

36. She has also maintained that no specific provision was available in the law of limitation with regard to the suit for partition. However, Article 113 of the Limitation Act, 1963, being the residuary provisions could be made applicable to the suit for partition and accordingly, any suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation is three years which starts from the date on which the right to sue accrues.

37. Insofar as Article 113 of the Limitation Act is concerned, this Court would like to say that this is the residuary Article for suits not covered by any other Article. It corresponds to Article 120 of the previous Act, only with the addition of the word 'any' at the beginning of the first column of the present Article, and the period of limitation having been reduced from six to three years so that no special advantage would be gained by any one seeking to prove that the residuary Articles could be applied.

38. The applicability of this Article is to govern suits for which no period of limitation is prescribed anywhere in the Act.

39. The learned Senior Counsel has invited the attention of this Court to paragraph No.22 of the affidavit filed in support of the petition, wherein it is stated that on 7.10.1992 the first petitioner/plaintiff had issued a notice to Kuppanna Mudaliar claiming partition and he in turn, had issued a reply, dated 20.10.1992 and thereafter, admittedly, the respondents/plaintiffs had never raised the issue of partition.

40. As argued by the learned Senior Counsel, the plaintiffs have slept over for about 19 years from 20.10.1992 and all of a sudden, they came forward with a suit for partition in O.S.No.59 of 2011, which seems to have been filed on 27.4.2011.

41. She has also added that the right to sue accrues for the respondents/plaintiffs on and from 20.10.1992, i.e., from the date of denial of partition. Therefore, the

respondents/plaintiffs ought to have filed the suit on or before 19.10.1995. But unfortunately, the suit was not filed within that stipulated period, instead it is filed after the lapse of 19 years.

42. In support of her contention, the learned Senior Counsel has made reference to the decision of the Apex Court made in Krishna Pillai Rajasekharan Nair vs. Padmanabha Pillai (Dead) by Lrs. and others reported in ((2004) 12 SCC 754).

43. In this case, while speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr. Justice R.C. Lahoti, in paragraph No.22 has observed as under:-

'22. In our opinion, the suit filed in the present case being a suit for partition primarily and predominantly and the relief of redemption having been sought for only pursuant to the direction made by the High Court in its order of remand, the limitation for the suit would be governed by Article 120 of the Limitation Act, 1908. For a suit for partition the starting point of limitation is - when the right to sue accrues, that is, when the plaintiff has notice of his entitlement to partition being denied. In such a suit, the right of the redeeming co-mortgagor would be to resist the claim of non-redeeming co-mortgagor by pleading his right of contribution and not to part with the property unless the non-redeeming co-mortgagor had discharged his duty to make contribution. This equitable defence taken by the redeeming co-mortgagor in the written statement would not convert the suit into a suit for redemption filed by the non-redeeming co-mortgagor.'

44. The learned Senior Counsel has also made reference to an another decision of the Apex Court in Hardesh Ores (P) Ltd., vs. Hede and Company with Civil Appeal No.2518 of 2007 (Sociedade de Fomento Industrial (P) Ltd., vs. Hede and Company ((2007) 5 SCC 614).

45. In this case, in paragraph No.25, Hon'ble Mr. Justice B.P. Singh has spoken on behalf of the Division Bench of the Apex Court as under:-

'25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that 'law' within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well.

It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I : (2004) 9 SCC 512 and Popat and Kotecha Property v. State Bank of India Staff Assn : (2005) 7 SCC 510."

46. On the other hand, Ms.R.Meenal learned counsel for the respondents 1 and 2 while advancing her argument has drawn the attention of this Court to the provisions of Rule 12 of Order VII of the C.P.C. In this connection, she has contended that the trial court while rejecting the plaint by its order dated 13.09.2011, which was challenged in the appeal in A.S.No.10 of 2012, had not followed proper procedure. Rule 12 of Order VII of C.P.C. Is extracted as under:-

Rule 12: Procedure on rejecting plaint.-

"Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order."

47. The learned counsel has also invited the attention of this Court to Paragraph No.9 of the order of the First Appellate Court wherein, the learned Principal District Judge (Villupuram) has observed that :-

"But, the lower Appellate Court has failed to explain as to how the ingredients for the rejection of the plaint are applicable to the present case on hand. If the lower Court had felt that the suit had not been properly valued and accordingly proper Court fees had not been paid, it could have directed the respondents/plaintiffs/appellants to pay proper

Court fees in consonance with the valuation of the suit properties within stipulated time. But, the lower Court has failed to explain as to how the suit properties have been under-valued by the plaintiffs/respondents/appellants and accordingly, lower amount of court fees had been paid by the plaintiffs/respondents/appellants.'

48. In paragraph 11 of the order also, the lower Appellate Court has observed as under :-

'Order 7, Rule 11 of C.P.C. clause (d) says, where the suit appears from the statement in the plaint to be barred by any law. In this regard, the lower court should have taken assistance from the Section 9 of C.P.C. which deals with suits of civil nature and suits which are not of civil nature to be barred under any law. But, the lower Court has not explained as to how the present suit is barred by any law.'

49. The findings of the First Appellate Court are not sustainable. For the simple reason that the First Appellate Court has not properly appreciated or considered the order passed by the trial court. In paragraph 9 of the Order dated 13.09.2011, the trial Judge had given a finding that the first plaintiff had issued a notice to Kuppanna Mudaliar claiming partition in the year 1992. But, the suit has been filed after 19 years, and therefore, the suit is consequently barred by limitation. In the operative portion of the above order, the trial court had found that the suit is not fit to be tried as it is barred by law of limitation, res-judicata and the doctrine of adverse possession.

50. Countering the argument advanced by Ms.R.Meenal, the learned Senior Counsel Ms.Chitra Sampath has adverted to that the question of limitation, insofar as the present suit was concerned, it was not a mixed question of law, as the limitation started from the date of receipt of reply from Kuppanna Mudaliar dated 20.10.1992.

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51. This Court has carefully struck a balance between the submission made by both the learned counsels. This Court has also perused the grounds of appeal along with the impugned order. As rightly contended by Ms.Chitra Sampath, learned Senior Counsel. Clause (d) of Rule 11 of Order 7 specifically says that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Insofar as the

second appeal is concerned, it hinges around the singular substantial question of law (i.e.) with reference to law of limitation.

52. As explained in the foregoing paragraphs and in the light of the observation made by the Apex Court in KRISHNA PILLAI RAJASEKHARAN NAIR (DEAD) BY LRS. vs. PADMANABHA PILLAI (DEAD) BY LRS. AND OTHERS (2004) 12 SCC 754 and HARDESH ORES (P) LTD. vs. HEDE AND COMPANY (2007) 5 SCC 614, this Court is of considered view that the trial court had rightly rejected the plaint as the suit is barred by limitation.

53. Keeping in view of the above fact, the substantial question of law as well as the additional substantial question of law are answered in favour of the appellants/defendants.

54. In the result, the second appeal is allowed. The impugned judgment and decree dated 19.09.2013 and made in the appeal in A.S.No.10 of 2012 are set aside and the order of the trial court dated 13.09.2011 and made in the application in I.A.No.493 of 2011 in O.S.No.59 of 2011 is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rnb/ssn
To

1. The Principal District Judge,
Villupuram.

2. The Subordinate Judge,
Tindivanam.

+1cc to Mr.S.Meenal, Advocate Sr.53529
+10 ccs to Mrs.R.Sunilkumar, Advocate Sr.26596 [10/3/2017]
+10cc to Mrs.R.Sunilkumar, Advocate Sr.26136 [10/3/2017]

S.A.No.1233 of 2013
and
M.P.No.1 of 2013

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