

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 14.11.2016
PRONOUNCED ON: 30.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE T.RAVINDRAN
S.A.No.262 of 2011
& MP.No.1 of 2011

Chinnavedi

... Appellant/Appellant/
Defendant

Vs.

1.Kanniga
2.Chinnathai

... Respondents/Respondents/
Plaintiffs

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 23.12.2010 passed in A.S.No.13 of 2009 on the file of the Subordinate Judge, Tiruppattur, confirming the decree and judgment dated 02.12.2006 passed in O.S.No.266 of 2000 on the file of the learned District Munsif, Tiruppattur.

For Appellant : Mr.S.Subbiah
For Respondents : Mr.P.Jagadeesan

J U D G M E N T

The defendant has in this Second Appeal impugned the judgment and decree dated 23.12.2010 passed in A.S.No.13 of 2009 on the file of the Subordinate Judge, Tiruppattur, confirming the judgment and decree dated 02.12.2006 passed in O.S.No.266 of 2000 on the file of the District Munsif Court, Tiruppattur.

2.Suit for declaration and permanent injunction.

3.The case of the plaintiffs in brief is as follows:

The suit properties belonged to Periya Vedi, who is the father of the plaintiffs and he was in possession and enjoyment of the same by obtaining patta and paying kist etc. Periya Vedi out of his love and affection had executed a registered Settlement Deed dated 22.10.1998 in favour of the plaintiffs and the same was accepted by the plaintiffs and pursuant to the above said Settlement deed, the plaintiffs have taken possession of the suit properties and enjoying the same. The patta has also been mutated in favour of the plaintiffs in respect of the suit properties and the chitta and adangal also stand in the

name of the plaintiffs. The plaintiffs have also been paying kist in respect of the suit properties. The defendant, who is the brother of the plaintiffs' father has no right, title or interest over the suit properties. In as much as the defendant attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties, the suit has been laid.

4.The case of the defendant in brief is as follows:

The suit is not maintainable either in law or on facts. The relationship between the parties is admitted. The defendant and his brother Periya Vedi are the sons of Boyan. The suit properties and the other properties are the ancestral joint family properties of Boyan and he was in possession and enjoyment of the same. After his death, the suit properties and the other properties devolved upon the defendant and his brother Periya Vedi and both of them were jointly in possession and enjoyment of the said properties. It is false to state that the suit properties exclusively belonged to Periya Vedi and he was in exclusive possession and enjoyment of the same. The suit properties are the ancestral joint family properties of the defendant and his brother Periya Vedi. The defendant and his brother Periya Vedi had also out of the joint labour and income from the ancestral properties purchased another property in the name of the plaintiffs' mother Rukmani Ammal under a registered Sale Deed dated 25.11.1993 and the same also has been treated as the joint family property. There was no actual division or partition between the defendant and his brother Periya Vedi. In order to escape from the family debts Periya Vedi had executed a settlement deed in favour of the plaintiffs and the defendant does not know about the same and came to know about the settlement deed only after the filing of the suit and that he is one of the attestors to the settlement deed. Now the defendant has come to know that in the said settlement deed his attestation was obtained by coercion and undue influence. The defendant being an illiterate person, his signature has been obtained fraudulently. The settlement deed has not been acted upon and the plaintiffs are not in possession and enjoyment of the suit properties. Till the execution of the settlement deed, the patta was in the name of Boyan. Under the guise of the settlement deed to grab the suit properties, the patta has been transferred in the name of the plaintiffs. The alleged interference made by the defendant to the plaintiffs is false, and hence the suit is liable to be dismissed.

5.In support of the plaintiffs' case, PW1 to 3 have been examined. Exs.A1 to 12 were marked. On the side of the defendant, DW1 to 3 have been examined. Exs.B1 to 7 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial court was pleased

to decree the suit as prayed for. The Appeal preferred by the defendant also failed. Hence, the defendant has come forward with this Second Appeal.

6.The Second Appeal is admitted and the following substantial questions of law are formulated for consideration in this Second Appeal.

(a)When the plaintiffs claim their right to the property by way of a partition under an oral family arrangement between their father and his brother, is it not the onus of proof that there was a family partition between the two brothers of the plaintiffs.

(b)When the pleadings are significantly silent regarding the oral partition said to have been entered and when the alleged document relied upon by themselves did not refer to any such oral partition, is it legal for the court to accept such an oral arrangement.

(c)When the evidence of two witnesses regarding the oral partition ran contrary to and mutually destructive, is not the finding by the court accepting such oral partition is perverse.

(d)When the plaintiff themselves neither plead nor let in any evidence regarding the attestation of the settlement deed by the other coparcener, whether the attestation of such a document without any other evidence would operate as an act of estoppel as against the attester.

(e)Whether the patta issued in the name of the beneficiary under the settlement deed without changing the patta from the original name to his legal heir and then to change in the name of the beneficiary to confer or establish the title in favour of the person in whose favour the patta was got to be transferred.

7.The plaintiffs claim title to the suit property by way of the registered Settlement Deed dated 22.10.1998 marked as Ex.A1 and Ex.A1 is stated to be executed in favour of the plaintiffs by their father Periya Vedi. It is not in dispute that the defendant is the brother of Periya Vedi and the defendant and Periya Vedi are the sons of Boyan. In the plaint, the plaintiffs have not spelt out any thing as to how their father Periya Vedi has title to the suit properties. Therefore, the contention of the defendant that as regards the source of title of the suit properties in favour of Periya Vedi, the

particulars in the plaint are hazy and indistinct is to be accepted. It has not been mentioned in the plaint as to how Periya Vedi has title to the suit properties so as to enable him to settle the same in favour of his daughters namely the plaintiffs. The defendant has taken a defence that the suit properties and the other properties are the ancestral joint family properties belonging to Boyan and his sons namely the defendant and Periya Vedi were in possession and enjoyment of the suit properties and the other properties jointly and no division has been effected between them and therefore, according to the defendant, the plaintiffs' father Periya Vedi has no exclusive title over the suit properties and the other joint family properties and therefore according to the defendant Periya Vedi has no competency to execute the settlement deed in favour of his daughters namely the plaintiffs in respect of the suit properties and therefore according to the defendant, the plaintiffs would not be entitled to claim any title in respect of the suit properties under the alleged settlement deed marked as Ex.A1 and further according to the defendant the suit properties and the other properties are still in the joint possession and enjoyment of the defendant and Periya Vedi.

8.The further case of the plaintiffs is that in the settlement deed marked as Ex.A1, the defendant has attested and therefore the defendant being one of the attestors to Ex.A1, on account of the partition effected between the defendant and his brother Periya Vedi, the defendant has no right to question the validity of Ex.A1, Settlement Deed.

9.Per contra, it is the case of the defendant that only after the filing of the suit he has come to know that the Settlement Deed has been executed by Periya Vedi in favour of the plaintiffs and that he has also been shown as one of the attestors and according to the defendant, he being an illiterate person, fraud has been played upon him and his signature has been obtained in the Settlement Deed, Ex.A1 under coercion and undue influence and according to the defendant the settlement deed was not acted upon and the plaintiffs would not be entitled to claim any title in respect of the suit properties based upon the Settlement Deed.

10.Be that as it may, still the plaintiffs in the plaint has not disclosed as to how their father Periya Vedi has title to the suit properties. Therefore, we will have to see as to what has been recited in the Settlement Deed, Ex.A1 by Periya Vedi to trace his source of title to the suit properties.

11.A perusal of Ex.A1, would go to show that therein Periya Vedi has admitted that the suit properties are the ancestral properties. It could therefore be seen that the defendant's case that the suit properties are the ancestral properties of

the defendant and Periya Vedi have been admitted by Periya Vedi in Ex.A1. That the character of the suit properties is ancestral has been clearly mentioned in Ex.A1. Further Periya Vedi has also recited in Ex.A1 that the suit properties being ancestral properties he has obtained the same under the partition. Therefore, as per Ex.A1, Periya Vedi seems to have traced his source of title to the suit properties under a partition. However, in the settlement deed, it has not been mentioned as to whether the partition disclosed therein is oral or made under a written instrument. In addition to that it has also not been clearly mentioned as to when, between whom and in whose presence and in respect of what properties the so-called partition was effected. Therefore, it could be seen that even in Ex.A1, the partition being shown as the source of title over the suit properties by Periya Vedi, the particulars with reference to the same are vague and obscure.

12.Now according to the plaintiffs, as disclosed during the course of evidence, the suit properties devolved upon their father under the partition. If that be so, the plaintiffs having knowledge that the suit properties devolved upon their father under the partition it has not been explained as to why the plaintiffs have not disclosed about the same in the plaint.

13.As adverted to earlier, the source of title of Periya Vedi over the suit properties has not been spelt out in the plaint in any manner. For the first time during the course of evidence the plaintiffs have taken a plea that the suit properties devolved upon their father under the partition. However, even during the course of evidence, the plaintiffs have not made out a clear case as to how and in what mode, when, between whom and in respect of which properties, the partition pleaded by them has been effected. According to the defendant in as much as the plea of partition has been set up by the plaintiffs for the first time during the course of evidence, the plaintiffs are unable to give clear particulars with reference to the same or substantiate the same through proper materials.

14.In such view of the matter, now we have to analyse whether the plaintiffs have established their plea of partition so as to enable the court to hold that the suit properties devolved upon their father Periya Vedi under partition. The first plaintiff examined as PW1, during the course of cross examination has admitted that the suit properties originally belonged to their grandfather, Boyan. Further, according to her, other than the suit properties, her grandfather was also entitled to about 30 acres of land. It could therefore be seen that as pleaded by the defendant, the suit properties and the other properties belonged to Boyan as his ancestral properties. It could therefore be seen that the defendant and Periya Vedi, who constitute the joint family alongwith their father Boyan,

the defendant would also be entitled to his share in the suit properties and the other joint family properties.

15. Further PW1 has also admitted, after the death of Boyan, the defendant and her father enjoyed the suit properties alongwith the other properties jointly and therefore the suit properties are the joint family properties of the defendant and her father. For the first time, PW1 during the cross examination, has admitted that the partition between her father and the defendant took place in the year 1998 and it was under a written instrument. Therefore, it could be seen from the evidence of PW1 that based upon the Partition Deed, the brothers namely the defendant and Periya Vedi had effected partition of their joint family properties including the suit properties. Further, according to PW1, the partition was effected in the presence of the mediators namely Hanuma Gounder, Koravedi, Kuppusamy vedi and Kuppan and all the above said persons are alive and all the above said persons attested in the said partition deed. According to PW1, under the above said partition deed, the suit properties were allotted to the share of her father Periya Vedi. Further, according to PW1 in as much as her father derived title to the suit properties under the partition as afore said, her father had executed the settlement deed in their favour and further according to PW1, pursuant to the partition effected, her father had been in exclusive possession and enjoyment of the suit properties and patta also been obtained by her father in respect of the suit properties.

16. In the light of above evidence of PW1, when according to PW1, Periya Vedi had derived title to the suit properties under the partition deed effected during the year 1998 and when according to the defendant no partition has been effected between him and Periya Vedi till date and when further according to the defendant, the suit properties and the other properties still continue to be the joint family properties and when the defendant has also impugned the validity of the Settlement Deed Ex.A1, based upon which, the plaintiffs claim title to the suit properties, as rightly argued, the plaintiffs could have easily established their case by producing the partition deed pleaded and spoken to by PW1, during the course of evidence.

17. However, though it has been stated by PW1, that there is a partition deed depicting that the suit properties had been allotted to the share of her father and the same had been attested by various persons, for the reasons best known to the plaintiffs, the partition deed has not been produced before the court. Till date, the alleged partition deed has not seen the light of the day. The plaintiffs have examined their father Periya Vedi as PW2. PW2 in his evidence, during the chief examination has not stated any thing that the suit properties

had been allotted to his share under the partition effected between him and his brother. PW2 during the course of cross examination, has admitted that the defendant is his brother and the suit properties are the ancestral joint family properties. According to PW2, other than the suit properties there are no other ancestral properties.

18. Further, according to PW2, he had executed Ex.A1, Settlement Deed based upon his title to the suit properties derived under the partition deed. According to him, the partition was effected about 16 years ago. PW2, further stated that even during the life time of his father, their father had effected the partition. However, he is unable to give the particulars of the properties allotted to the share of the defendant. He has simply testified that his brother had been allotted seven acres of land. If PW2's version is to be accepted, he being examined in the year 2006 and when according to him, the partition took place about 16 years ago, it could be seen that the partition referred to by him had taken place in the year 1990. PW2 in his evidence has not stated any thing as to under what mode the partition has been effected whether orally or under a written instrument. As regards the above fact, PW2's evidence is very very nebulous and not clear.

19. As seen earlier, according to PW1, the mediators, who had effected partition had signed the partition deed and they are still alive. The plaintiffs have examined PW3 to establish their plea of partition. PW3, Hanuman, in his chief examination has not disclosed any thing about the partition, which is said to have been taken place between the defendant and Periya Vedi. During the cross examination, he has deposed that they had effected partition between the defendant and the plaintiff's father in the year 1984 and they were about 18 acres of land and about 10 persons mediated in the partition. However, PW3 has not disclosed as to who all played a part in effecting the partition between the defendant and Periya Vedi. Even PW3, has not stated clearly as to whether the partition took place under the partition deed or orally. The above is the evidence adduced by the plaintiffs to establish their plea of partition.

20. Now according to PW1, the partition was effected under a document in the year 1998. As per PW2's version, the partition took place in the year 1990. However, he has not testified as to whether it was made orally or under the written instrument. As per the evidence of PW3, the partition took place in the year 1984. Therefore, now we have three versions regarding the alleged partition pleaded by the plaintiffs for the first time, during the course of evidence. The partition is the source of title for the plaintiffs father in respect of the suit properties. According to PW2, Periya Vedi, the partition took place even during the life time of their father Boyan. But

as regards the above version of PW2, PWs.1 and 3 have not disclosed any thing. As per the version of PW1 and 3, the partition was effected by the elders of the village namely panchayatars. Other than PW3, none has been examined on the side of the plaintiffs to establish the case of partition.

21.If really the partition had been effected under the partition deed, nothing prevented the plaintiffs to produce the alleged partition deed to substantiate their case. If the partition deed had been produced much would have come to light as to whether as pleaded by the plaintiffs the suit properties had been allotted to the share of the plaintiffs father under the said partition. But for the reasons best known to the plaintiffs, they have not produced the partition deed. On the other hand, the plea of partition projected by the plaintiffs during the course of evidence, as adverted to earlier, are found to be inconsistent and varying. As to when actually the partition took place, there is no consistent answer, as to under what mode the partition was effected there is no clear picture, as to whether actually the suit properties were allotted to the share of Periya Vedi, no reliable evidence, the so called partition deed has not been produced, as to what are the properties allotted to the share of the defendant, nothing is placed before the court. According to the plaintiffs as spoken to by PW1 after the partition was effected, the patta was transferred in the name of Periya Vedi and that he has been in exclusive possession and enjoyment of the suit properties. To evidence the same, no material is forthcoming to show that at any point of time Priya Vedi had been in exclusive possession and enjoyment of the suit properties as true owner thereof.

22.Therefore, as rightly put forth by the learned counsel for the defendant, the onus of proof that the partition has been effected between the brothers squarely rests upon the plaintiffs. The plaintiffs having not pleaded anything about the same in the plaint and when the Settlement Deed, Ex.A1, does not throw any light with reference to the same and when the evidence adduced on the side of the plaintiffs regarding the partition are inconsistent and mutually destructive and when the alleged partition deed spoken to by the plaintiffs during the course of evidence has not been produced and when the Panchayatars, PW3, examined on the side of the plaintiffs to prove the factum of partition is unable to give reliable evidence on the said issue it could be seen that the Courts below have completely ignored the evidence adduced on the side of the plaintiffs as regards their case of partition and it could therefore be seen that the approach and findings of the Courts below that the plaintiffs have established the factum of partition between Periya Vedi and the defendant are nothing but perverse and erroneous.

23.As discussed supra, it has been admitted by the plaintiffs during the course of evidence that the suit properties and the other properties are the joint family properties of the defendant and Periya Vedi. The plaintiffs case of partition disclosed during the course of evidence has not been established. Partition is the only source of title projected by the plaintiffs to claim that their father Periya Vedi had title to the suit properties. When the said plea of partition has not been established in any manner, the corollary to the same would be that the suit properties and the other properties belonging to the joint family still remain intact.

24.In this connection, it could be seen from the decision relied upon by the learned counsel for the appellant reported in 2007(4) SCC 163(Chinthamani Ammal Vs. Nandagopal Gounder and Another) that the party raising the plea of partition has to prove the same since in law there is presumption in regard to continuance of a joint family. The plaintiffs having failed to establish their plea of partition and when it is admitted that the suit properties and the other properties are the joint family properties of the defendant and Periya Vedi, in the absence of partition, it could be seen that even as on date, the suit properties in particular remain the joint family properties of the defendant and his brother Periya Vedi. When it is found that the suit properties are the joint family properties of the defendant and his brother Periya Vedi, it is clear that the defendant's brother Periya Vedi would not be competent in law to settle the suit properties in favour of the plaintiffs. It could therefore be gathered that the Settlement Deed marked as Ex.A1, said to have been executed by Periya Vedi in favour of the plaintiffs has no sanctity in the eyes of law. When Periya Vedi has no legal competency or entitlement to execute the settlement deed in respect of the suit properties and on the other hand when the suit properties remain the joint family properties of the defendant and Periya Vedi as on date. As rightly argued by the learned counsel for the appellant the Settlement Deed, Ex.A1 would be an invalid and a void document. No title can be derived based upon the same by the plaintiffs to the suit properties.

25.However, the plaintiffs would also contend that the defendant having attested the Settlement Deed, Ex.A1, would be precluded from denying the validity of the same and therefore, on that plea it is argued that even in case, the court does not uphold the plea of partition projected by the plaintiffs, based upon the attestation of the Settlement deed by the defendant, the court should hold that the plaintiffs have established their case of partition.

26.However, the above argument does not stand scrutiny in the eyes of law. When it is found that Ex.A1, Settlement Deed

is a void document, it need not be set aside as per law and when Periya Vedi has no legal entitlement in any manner to execute the settlement deed in respect of the suit properties, the attestation of the void document by the defendant would not in any manner legally clothe any right over the suit properties upon the plaintiffs.

27. Now according to the defendant, taking advantage of his illiteracy, fraud has been played upon him and his signature has been obtained in the settlement deed. That the defendant is an illiterate person has been admitted by the plaintiffs. In this connection, PW2, Periya Vedi has admitted that the defendant is an illiterate person. Even, PW1 has also admitted that the defendant is an illiterate. Therefore, the attestation of the defendant in Ex.A1 would not confer any title over the suit properties either on Periya Vedi or the plaintiffs as a case may be.

28. As regards the plea of attestation projected by the plaintiffs, as rightly argued by the learned counsel for the appellant, acceptable material is not forthcoming on the side of the plaintiffs to establish that the defendant after knowing the contents of Ex.A1 had signed in the settlement deed. DW1 in his evidence has deposed that at the time of attestation without knowing the contents on misrepresentation he had attested the same. No doubt there are inconsistent versions about how the attestation had been obtained in the settlement deed. That apart he had also deposed that after the attestation has been obtained, he came to know four, five days later that his attestation has been obtained in the settlement deed. Therefore, based upon the above admission of DW1, it is argued by the learned counsel for the plaintiffs that when subsequent to the attestation, the defendant had knowledge about the settlement deed, if really he had not subscribed to the same voluntarily, he would have challenged the settlement deed in the manner known to law. According to the learned counsel for the plaintiffs in as much as the defendant has not moved his little finger impugning the settlement deed, the court should accept the case of the plaintiffs holding that the conduct of the defendant would operate as an estoppel on his part to attack or resist the case of the plaintiffs. But the above contention does not merit acceptance.

29. As found earlier, the settlement deed is found to be a void document. It does not require any challenge by the defendant in a court of law. The defendant is not a party to the settlement deed. No doubt he has attested the same. According to the defendant, his attestation was obtained fraudulently. There is no plea or proof on the side of the plaintiffs that the defendant knowing fully about the contents of Ex.A1, had attested the same. In this connection, the learned counsel for

the defendants placed reliance upon the decision reported in 2003(1) CTC 745(K.A. Selvanachi and Another Vs. Dr. S.R.Sekar and Another), wherein, it has been held that:

''Attestation of a document does not, in our view, entitle any of the parties thereto or any one claiming under them to regard such attestation, per se, as acceptance on the part of the attesor that the contents of the document are true and that such attesor had knowledge of the same unless there is evidence before the Court either intrinsic in the document itself or extrinsic to show that the attesor had knowledge of the contents and had accepted the same as correct.

30.As there is nothing found intrinsic in the document, Ex.A1 about the defendant having knowledge about the contents of the same at the time of attestation, it could be gathered that the defendant had no knowledge about the contents of the document at the time of the attestation. However, according to the defendant, subsequently, he came to know that his signature had been obtained fraudulently in the settlement deed. Even that admission of the defendant would not in any manner undermine his defence. If the attestation even assuming to be true when it is found the document on which the defendant's attestation had been secured is a void document and Periya Vedi had no legal entitlement to execute the same and when the defendant has no requirement under law to challenge the same in a court of law, he being not a party to the document in the strict sense his attestation of the document in question or his failure to challenge the same subsequent to his knowledge about the nature of the document would not in any manner as per law operate as an estoppel against the defendant to resist the case of the plaintiffs. If according to the plaintiffs, the defendant had attested the document in question after knowing about the partition recital found therein, as rightly argued, the plaintiffs would have endeavored to examine the other attestors to the document to establish their case. The other attestors have not been examined. No reason has been assigned for the same. Still Ex.A1 having been found to be an invalid and a void document and as no legal right would accrue to the plaintiffs based upon the same to claim title over the suit properties, the failure of the defendant to challenge the settlement deed later would not in any manner be helpful to accept and uphold the plaintiffs case when in particular, the plaintiffs have miserably failed to establish that the suit properties had been allotted to Periya Vedi under the partition pleaded by them and on the other hand when it is found that the suit properties still remain the joint family properties of the defendant and Periya Vedi. Therefore, the approach of the Courts below in throwing out the defence set up by the defendant based upon his attestation to the settlement deed in question,

as rightly argued by the learned counsel for the appellant is erroneous, perverse and not acceptable in the eyes of law.

31.The learned counsel for the appellant would also contend that the settlement deed being found to be a void document and in such circumstances, the relief of cancellation need not be asked for pertaining to the same and when it is found that when the plaintiffs have no title to the suit properties barring Ex.A1, the Settlement Deed, the plaintiffs case should be rejected and in this connection, he placed reliance upon the decision reported in 2014(7) MLJ 600(Subramanian Vs. Kosalai Ammal(deceased) and Others). The principles of law enunciated in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the present case. The learned counsel for the appellant also placed reliance upon the decision reported in 2014 2 SCC 269(Union of India and Others Vs. Vasavi Co-operative Housing Society Limited and Others) for the proposition that the plaintiffs have to stand or fall on the strength of their own case and the burden is squarely upon the plaintiffs to establish their case irrespective of whether the defendant proves his case or not. The plaintiffs cannot be allowed to sustain their case sans proof and the weakness of the defendant's case cannot be a ground to grant the relief to the plaintiffs.

32.The learned counsel for the plaintiffs further contended that to establish their possession and enjoyment of the suit properties, the plaintiffs have produced patta and the kist receipts. As rightly argued by the learned counsel for the appellant and also following the decision relied upon by him reported in 2014 2 SCC 269(Union of India and Others Vs. Vasavi Co-operative Housing Society Limited and Others), we could see that based upon the entries in the revenue records the court cannot uphold the plaintiffs title.

33.A perusal of the revenue records projected by the plaintiffs would go to reveal that the patta had been obtained by the plaintiffs, just prior to the institution of the suit. Most of the kist receipts are found to be after the institution of the suit. When it is found that the suit properties still remain intact as the joint family properties of the defendant and Periya Vedi, it has not been explained by the plaintiffs as to how they had been granted patta by the revenue authorities in respect of the suit properties and also allowed them to pay kist in respect of the suit properties. According to PW1 based upon Ex.A1 they had been granted patta. When Ex.A1 is found to be a void and invalid document it could be seen that the revenue records projected by the plaintiffs would not stand legal acceptance and have to be rejected. It has not been established that the plaintiffs have obtained patta and paying kist in respect of the suit properties to the knowledge and acceptance

of the defendant.

34.In the light of the above discussions, I hold that the appellant has established that the Courts below have approached the case of the parties erroneously on a wrong appreciation of the evidence and thus proved that the findings of the Courts below in accepting the case of the plaintiffs are nothing but perverse. Therefore, the substantial questions of law formulated in this Second Appeal are answered in favour of the appellant and against the respondents.

35.In conclusion, the judgment and decree of the Courts below are set aside and the suit filed by the plaintiffs is dismissed. Accordingly the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Court,
Tiruppattur

2.The District Munsif Court,
Tiruppattur

+1 cc to Mr.S.Subbiah Advocate sr 70673

+2 cc to Mr.P.Jagadeesan Advocate sr 70448,70402

S.A.No.262 of 2011

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