

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2016
DELIVERED ON : 10.02.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Review Application No.93 of 2016

1.A.R.Suresh
S/o.A.Rangasamy

2.Jayalakshmi Ganesan
W/o.Ganesan

3.S.Ganapathi
S/o.Late G.S.Subramaniya Iyer

4.R.Murali
S/o.A.Rangasamy ... Petitioners/Petitioners

vs.

1.M/s.TEK Smart Group,
represented by its Sole Proprietor,
Mr.S.Magesh

2.M/s.Poornaa Firm,
represented by its Partner,
Ravirathinam ... Respondents/Respondents

Review Petition filed under Order XLVII Rule 1 r/w Section 114 of the Civil Procedure Code against the order of this Court passed in C.R.P.(PD) No.2267 of 2015 on 11.05.2016.

For Petitioners : Mr.D.Sadhasivam
For Respondents : Mr.S.V.Jayaraman, senior counsel
for Mr.S.P.Harikrishnan [R1]
Mr.K.M.Vijayan, senior counsel
for Mrs.R.T.Shyamala [R2]

ORDER

This application seeks review of the order of this Court passed in C.R.P.(PD) No.2267 of 2015 on 11.05.2016.

2. O.S.No.461 of 2015 on the file of learned District Munsif, Alandur, is a suit preferred by first respondent herein/plaintiff and on contention that the second respondent/fifth defendant and its partners, owners of the suit property, had leased out the same to it under a lease deed dated 30.03.2015 registered as Document No.2551 of 2015. Informing that it had paid a sum of Rs.5,00,000/- as advance and the agreed rental per month was Rs.75,000/-, that it had been put in possession of the suit property on the date of the lease deed viz., 30.03.2015, that spending a sum of Rs.10,00,000/- it had levelled the land towards making it suitable for its business purposes and that petitioners/defendants 1 to 4, having waited its levelling the land, thereafter sought to trespass into the suit property towards forcibly evicting it and that a complaint lodged with the police had not any restraining effect on petitioners/defendants 1 to 4, first respondent/plaintiff sought relief of:

“permanent injunction restraining the defendants, their men, servants and agents from evicting it without adhering due process of law.”

3. Contending that the suit property was in their possession, the contention of first respondent/plaintiff of its being in possession was false, that the question

of title to the suit property have been determined in their favour under judgment dated 27.01.2006 in O.S.No.6992 of 2001 on the file of learned VII Additional Judge, City Civil Court, Chennai and that the claim of the partners of second respondent/fifth defendant in the suit was negatived and the suit in O.S.No.461 of 2015 was an abuse of process and vexatious in nature, petitioners/defendants 1 to 4 sought exercise of powers under Article 227 of the Constitution of India towards striking off the same. Informing that dismissal of the Civil Revision Petition reflected many errors apparent on the face of the record and hence, was liable to be interfered with, petitioners have moved the present review application.

4. Heard learned counsel for petitioners and learned senior counsel for respondents.

5. Learned counsel for petitioner submitted that the partners of second respondent having preferred suit in respect of the suit property and having suffered adverse decrees therein right up to the Supreme Court had set up a puppet plaintiff in preferring O.S.No.461 of 2015 in an attempt to re-litigate settled issues. It was no surprise that such plaintiff had, anticipating a petition under Article 227 of the Constitution of India challenging the suit, filed a caveat. At the stage of admission, first respondent had taken notice. This Court then was of the view that nothing would happen if interim orders were passed. Petitioners had rushed to the Court below and placed before it all that had been suppressed

by first respondent. Despite being made aware that the matter in suit was covered by orders of both this Court as also that of Supreme Court and despite being informed that an order of police protection had been passed by this Court in favour of petitioners 2 and 3 and 3 others and despite being apprised of the findings of this Court in second appeal, the Court below had continued to extend the order of interim injunction passed by it. A transfer petition in Transfer O.P.No.25/2015 on the file of Principal and District and Sessions Judge at Chengalpet had been moved by second respondent and the order of interim injunction passed by the Court below continuously was extended. On 04.04.2016, this Court had required both sides to file their written statements and the matter was posted to 12.04.2016 for further statements, if necessary. On such date, in response to queries, clarifications have been made by counsel. Written submissions were also submitted on such date as were a list of authorities along with copies of judgments. Orders have been reserved on 12.04.2016. This Court had closed for summer vacation on 29.04.2016 and orders came to be passed in chambers on 11.05.2016, the date of retirement of the Judge seized of the matter. Special Leave Petition No.3045 of 2016 moved by partners of second respondent against the order of police protection passed in favour of petitioners 2 and 3 and 3 others by this Court in Crl.O.P.No.4983 of 2015 was dismissed on 22.04.2016. Such fact was not brought to the notice of this Court. Order of police protection has been passed by this Court on 24.04.2015 and towards circumventing the same, the abuse of preference of O.S.No.461 of 2015 had been resorted to immediately.

6. Second respondent, informed to be the owner of the suit property in O.S.No.461 of 2015, is a partnership firm represented by one Ravirathinam. Such Ravirathinam was the third plaintiff in O.S.No.6992 of 2001 on the file of learned VII Assistant Judge, City Civil Court, Chennai. First plaintiff therein was his father, the fifth plaintiff his mother and plaintiffs 2 and 4, his brothers. This comprises the entire list of plaintiffs in O.S.No.6992 of 2001 and they sought relief of permanent injunction against seven persons. Their claim to the suit property was on the basis of a sale deed dated 15.09.2000 executed in their favour by one Krishnarathi Ammal and Santhanalakshmi Ammal/defendants 1 and 2 therein. The other defendants in the suit viz., defendants 3 to 7 had been represented by their Power Agent one A.R.Suresh. Such A.R.Suresh was shown to be the first defendant in O.S.No.461 of 2015. There are four other defendants, defendants 2 and 3 being defendants 4 and 7 in O.S.No.6992 of 2001. The fourth defendant is the brother of the first defendant A.R.Suresh. The fifth and last defendant is the firm by name M/s.Poornaa Firm represented by its partner Ravirathinam, the third plaintiff in O.S.No.6992 of 2001. Save Ex.A1, sale deed dated 15.09.2000, executed in favour of plaintiffs in O.S.No.6992 of 2001 by Krishnarathi Ammal and Santhanalakshmi Ammal/defendants 1 and 2 therein, no other document of title had been produced by plaintiffs therein and such document marked as Ex.A1 had been held by the trial Court to be a sham and nominal one and the relief prayed for was not granted. The appeal against such finding in A.S.No.707 of 2006 was dismissed under judgment of learned V Additional Judge, City Civil Court, Chennai, dated

06.03.2007. Appellants in A.S.No.707 of 2006/plaintiffs in O.S.No.6992 of 2001 had moved a petition in C.M.P.No.77 of 2007 under Or.41 R.27 CPC for marking additional documents. The said petition was dismissed. Against the judgment in A.S.No.707 of 2006, S.A.No.1458 of 2007 was preferred before this Court and against the rejection of petition under Or.41 R.27 CPC in C.M.P.No.77 of 2007 in A.S.No.707 of 2006, C.R.P.(NPD) No.3952 of 2008 was preferred by plaintiffs in O.S.No.6992 of 2001. Under common judgment dated 01.10.2012, both the Second Appeal and Civil Revision Petition had been dismissed by this Court by an elaborate judgment upholding the findings of Courts below. Concurrent findings had been arrived at both by the trial and appellate Courts as also this Court in Second Appeal. On thorough appreciation of judgments relating to the suit property and on being fully satisfied that the revision/review petitioners were in possession, an order for police protection were made in their favour by this Court under orders in Crl.O.P.No.4983 of 2015.

7. Learned counsel for petitioners submitted that given the above position, the order in C.R.P.(PD) No.2267 of 2015 dated 11.05.2016 informing that there was no definite or clear cut finding on title and that both parties stood on the same footing and in effect respondents had better title caused grave prejudice to review petitioners. The basis of the learned Judge saying so is that in earlier second appeal between the vendors of the plaintiffs in O.S.No.6992 of 2001, a compromise decree had been passed. O.S.No.904 of 1976 on the file of learned

District Munsif, Poonamallee, had been preferred by Santhanalakshmi Ammal against Krishnarathi Ammal and under judgment and decree dated 30.07.1992, Santhanalakshmi Ammal had been held entitled to the 'B' schedule property as also granted the relief of permanent injunction. Against such finding Krishnarathi Ammal had preferred A.S.No.20 of 1992 before the Sub Court, Poonamallee and the decision therein went in favour of the appellant. There against, Santhanalakshmi Ammal preferred S.A.No.870 of 1994 before this Court. In such second appeal, a compromise was entered into whereunder Santhanalakshmi Ammal received a sum of Rs.2,00,000/-. The second appeal was dismissed as not pressed. Learned counsel submits that such litigation was only between two ladies wherein one acknowledged the title of the other. In O.S.No.6992 of 2001, the partners of second respondent had claimed title under a deed dated 15.09.2000 executed by both Santhanalakshmi Ammal and Krishnarathi Ammal. Such document, has been held to be sham and nominal. Learned Judge has failed to appreciate such position and also failed to see that the subject matter of such suit is the same as that in O.S.No.461 of 2015 and the earlier action viz., O.S.No.6992 of 2001 culminated with the dismissal of S.A.No.1458 of 2007 and the rejection of S.L.P. (Civil) Nos.33689-33690 of 2012. Learned Judge had wrongly ignored the finding that defendants 3 to 7 therein had been declared to be real owners as children of the original owner Subramaniya Iyer who had held the property even during the British period. Learned counsel submitted that O.S.No.6992 of 2001 was a suit for bare injunction, plaintiffs therein being a husband (now deceased), wife

and three sons against seven defendants. Defendants 1 and 2 were Santhanalakshmi Ammal and Krishnarathi Ammal, parties to the action in O.S.No.904 of 1976, A.S.No.20 of 1992 and S.A.No.870 of 1994 wherein compromise was entered into on 04.03.1998. Defendants 3 to 7 in O.S.No.6992 of 2001 are the real owners of the property. The case of the plaintiffs therein was of purchase of the scheduled property from Krishnarathi Ammal and that Santhanalakshmi Ammal was a confirming party to such sale and that defendants 1 and 2 joined hands with defendants 3 to 7 to trouble plaintiffs therein. Such case had been dismissed right up to the Supreme Court. Clear findings of Ex.A1 in O.S.No.6992 of 2001, under which the plaintiffs claim title, being a sham and nominal document as also on the title of defendants 3 to 7 had been rendered. Defendants 3 to 7, real owners, had proceeded to develop the property. Suddenly another suit in O.S.No.461 of 2015 in respect of the same property for bare injunction has been moved by a new plaintiff seeking relief against five defendants. Defendants 2 and 3 are the defendants 4 and 7 in the earlier suit. First defendant, who stands included, was the Power of Attorney of defendants 3 to 7 in the earlier suit. Fourth defendant is an agreement holder under defendants 3 to 7 in the earlier suit and had also been examined therein as defence witness No.2. The earlier suit had been fought for 15 long years. Towards re-litigating the issue, a partnership firm, the fifth defendant in the present suit, 'M/s.Poornaa Firm' had been fraudulently created, such firm having been registered on 11.03.2015. Such firm is shown as represented by Ravirathinam who was the third plaintiff in O.S.No.6992 of 2001. First plaintiff in

O.S.No.6992 of 2001 being no more, the other plaintiffs in O.S.No.6992 of 2001 are shown as partners of the second respondent. The second respondent firm's address has been shown as the suit property in the partnership deed. The partners of second respondent were parties in Crl.O.P.No.4983 of 2015 wherein under orders dated 24.04.2015, defendants 2 and 3 and 3 others in the present action, O.S.No.461 of 2015, were granted relief of police protection in respect of the suit property. Orders in Crl.O.P.No.4983 of 2015 were reserved on 20.03.2015 and fearing an order against them and with intent to circumvent the same, the so called second respondent firm comprising plaintiffs 2 to 5 in O.S.No.6992 of 2001 had registered a lease deed on 30.03.2015 in favour of plaintiff in O.S.No.461 of 2015 claiming that they were the absolute owners of the suit property. The contention of petitioners that the plaintiff in O.S.No.461 of 2015 is a close relative of the partners of second respondent in the suit has not been denied. In filing such suit, defendants 3, 5 and 6 in the earlier suit have been left out. Order of police protection in favour of petitioners 2 and 3 in review petition and 3 others had been passed in Crl.O.P.No.4983 of 2015 on 24.04.2015 and alleging interference with his possession, plaintiff in O.S.No.461 of 2015 had preferred the action on 29.04.2015 in a clear attempt to overreach this Court. Learned counsel submitted that parties should not have to re-agitate or re-litigate over the same issue after having succeeded up to the Supreme Court. Amidst the list of documents in the plaint, first respondent has informed of a police complaint of 28.04.2015. Let alone the registration of case thereon, not even a Community Service Register

(CSR) number there regards has been informed. Without making any whisper in the earlier suit, the new plaintiff had obtained an order of *ex parte* interim injunction. Court below kept extending the same despite all materials having been placed before it and the factual position having been brought to its notice.

8. A detailed submission regards the unlawful interference with possession of the property by review petitioners, the registration of case in connection therewith and the order of police protection passed in their favour in Crl.O.P.No.4983 of 2015 on 24.04.2015 had been informed in the grounds of revision. It had specifically been pleaded that such petition came to be allowed after holding that rights regarding possession and title to the property in the hands of review petitioners had already been decided by this Court and confirmed by the Supreme Court. Review petitioners were found to be lawful owners in possession of the property. It is during the pendency of Crl.O.P.No.4983 of 2015 that the partners of the fifth defendant in O.S.No.461 of 2015, being mother and sons, had fraudulently registered a partnership deed on 11.03.2015 in the name of 'M/s.Poornaa Firm'/second respondent. Under the Partnership Deed created for the purpose of re-litigation, they claimed equal share in the entire extent of 1 acre 50 cents, informing the address of the firm and the property thereof as the very same property in respect of which question of title had been decided in the earlier action. Partners of second respondent filed M.P.No.1 of 2015 in Crl.O.P.No.4983 of 2015 towards impleading themselves as parties thereto on 03.03.2015 and such

petition was allowed. Even while the said petition was argued on 12.03.2015, the alleged creation of Partnership Deed was not disclosed. Another petition in M.P.No.2 of 2015 in Crl.O.P.No.4983 of 2015 was filed challenging the maintainability of the said petition. The case was thus again posted for hearing on 20.03.2015. Even then, the creation of the fraudulent Partnership Deed was not disclosed. In perpetuation of the fraud and towards re-agitating settled issues, the partners of second respondent had created another fraudulent document/lease deed in favour of the plaintiff in O.S.No.461 of 2015. The proprietor of Rathna Stores, brother of the lessee of the second respondent, is one of the witnesses in both the Partnership Deed and Lease Deed both of which had been created during the pendency of Crl.O.P.No.4983 of 2015. This Court's finding in S.A.No.1458 of 2007 and confirmation thereof by the Supreme Court in its order dated 23.11.2012 in SLP (Civil) Nos.33689-33690 of 2012 has also been informed in the grounds towards informing the fraudulent and collusive nature of the action in O.S.No.461 of 2015. The total non-consideration thereof is a glaring omission in rendering the finding in C.R.P.(PD) No.2267 of 2015 susceptible to review. In filing the Special Leave Petition against the order of Crl.O.P.No.4983 of 2015, the partners of second respondent had suppressed the filing of the new suit in O.S.No.461 of 2015 as also the pendency of C.R.P.(PD) No.2267 of 2015 before this Court towards striking off of such suit. The question of law raised by them in filing Special Leave Petition was 'Is the impugned order of the Hon'ble High Court sustainable in law, as this Hon'ble Court has repeatedly held that where a person is in settled possession of

the property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse to law?'. In the fresh suit in O.S.No.461 of 2015, the prayer is 'decree for permanent injunction restraining the defendants, their men, servants and agents from evicting the plaintiff without adhering due process of law from the suit schedule property.' Petitioners having entered caveat in the Special Leave Petition, both sides were heard and finding no ground for interference the Special Leave Petition was dismissed. In O.S.No.6992 of 2001, it clearly was found that the partners of second respondent and their father claimed title on the basis of the compromise decree passed in S.A.No.870 of 1994, the compromise having been entered into between Krishnarathi Ammal and Santhanalaksmi Ammal. S.A.No.870 of 1994 arose against the finding in A.S.No.20 of 1992. In A.S.No.20 of 1992 on the file of learned Assistant Judge, Poonthamallee (certified copy of judgment therein marked as Ex.B92 in the suit), it specifically had been found that the plaintiff in O.S.No.904 of 1976 viz., Santhanalakshmi Ammal had claimed to have purchased an extent of 1.90 acres in Paimash No.165, Neelangarai Village under a sale deed dated 17.10.1962. Such was the suit property therein. Plaintiff therein had claimed that Survey No.84/1 corresponded to Paimash No.165. Tellingly, it had been found that Survey No.84/1 correlated to Paimash Nos.166, 167, 168A and 171A (Ex.B20 and description of property in O.S.No.6992 of 2001). It was also found that property covered by Paimash No.165 was Government poromboke. It clearly had been held that the compromise effected in S.A.No.870 of 1994 was in respect of property covered in Paimash

No.165 i.e. Government poromboke. It is thus that the claim of the partners of second respondent to the suit property through sale deed dated 15.09.2000 executed by Krishnarathi Ammal. When Santhanalakshmi Ammal is the confirming party to the sale deed and whose dispute had been in respect of property covered by Paimash No.165, found to be Government poromboke and not relating to property in S.No.84/1, it came to be decided that Ex.A1, sale deed in favour of partners of second respondent and the husband/father was a sham and nominal one. However, learned single Judge in passing orders in C.R.P.(PD) No.2267 of 2015 wrongly held that Paimash No.165 correlated to Survey No.84/1A. The same is an error apparent on the face of the record and telling on the facts of the case.

9. Referring to the correlation table to be found in judgment of the City Civil Court, Chennai, in A.S.No.707 of 2006 dated 06.03.2007 against judgment in O.S.No.6992 of 2001 on the file of learned VII Assistant Judge, City Civil Court, Chennai, learned counsel submitted that it was Paimash Nos.166, 167, 168A and 171A which correlated to S.No.84/1 and the irregularity in the claim thereto by respondents/their predecessors in interest fully was explained and the document on the basis of which the respondents stake claim was held to be sham and nominal one. Property covered by Paimash No.165 correlated to Survey No.85 and as Government poromboke land was allotted to the Harijan Welfare Board. Learned Judge, in passing orders in the Civil Revision Petition on 11.05.2016, had most erroneously observed that there was no clear cut finding of title. The failure

of the learned Judge to consider the judgments of the trial Court, the appellate Court as also this Court in second appeal amounted to a most material irregularity resulting in a travesty of justice and therefore, the review petition is to be accepted. In S.A.No.1458 of 2007, under judgment dated 01.10.2012, this Court dealt with the following substantial questions of law:

“i) Whether the Court below was right in holding that the suit for bare injunction is not maintainable without the prayer for declaration of title ?

ii) Whether the findings of the Court below regarding the title and possession of defendants 3 to 7 is sustainable in view of the order passed in O.S.No.481 of 2001 ?

iii) Whether the finding of the Court below is right in holding that the respondents 3 to 7 are resisted by the interim injunction when he is not the true owner ?”

Learned counsel informs as most relevant the following to be found in the judgment of this Court in S.A.No.1458 of 2007 dated 01.10.2012:

“7. ... By contrasting the said ratio with the case on hand, it should be pointed out here that when D3 to D7 filed a detailed written statement, strongly questioning the title and ownership of the plaintiffs over the suit property and also disputing the alleged sale deed Ex.A1 dated 15.09.2000, which is categorised based on sound reasoning of the courts below as a sham and nominal document, rightly the courts below declined to grant the relief in favour of the plaintiffs as they miserably failed to prove the very basic aspects regarding the sale transaction involved for valuable consideration and also possession of the plaintiffs. When title became the core issue in the matter, the plaintiffs/appellants also

failed to make suitable prayer for declaration of tile and consequential relief of possession. As pointed out above, even in the suit for injunction, in order to exceptionally consider the issue of title, the plaintiffs did not have a good case as there was a strong question hanging on the factum of purchase itself and their continuous possession in the property for the relevant period. Therefore, I am of the considered opinion that when a cloud is cast over the plaintiffs' title on the suit property, the plaintiffs should have either amended the prayer for larger relief of declaration of tile and consequential relief of possession or after withdrawing the suit, should have filed a comprehensive suit. The findings of the courts below in this regard being in perfect order, I answer the above two questions of law against the appellants and in favour of the defendants.

10. I find considerable force in the above submission of the learned counsel for respondents-3 to 7 for the simple reason that what are all the observations and findings rendered by the courts below on this particular issue are based on clear documentary evidence and that this Court is not even able to discard a single finding as the materials make it clear that neither Krishanrathi Ammal nor Santhanalakshmi Ammal had any good title over the property in question nor was in possession and enjoyment of the suit land and at best, they can only be termed as 'strangers' to the suit property. Inasmuch as defendants 3 to 7 are entitled to resist the interim injunction as they are the lawful owners of the suit property in S.No.84/1 correlated to paimash Nos.166A etc., the third substantial question of law should be answered against the appellants and done accordingly.

12. ... Further, even in their own suit, when the plaintiffs/appellants were obliged to prove their own case for grant

of injunction by substantiating that from the date of purchase of the suit property till the date of filing of the suit, they have been in possession of the property, they miserably failed to establish such basic and vital requirement. On the other hand, defendants-3 to 7, by producing all oral and documentary evidence, traced their clear title to the property and their continuous possession therein from 1950 in respect of S. No.84/1 correlated to Paimash Nos.166A etc.”

10. Learned counsel also pointed out that in S.A.No.1458 of 2007, learned senior counsel for appellants therein had, referred to the principles of *res judicata* as outlined in Section 11 CPC and submitted that defendants 3 to 7 suffered from their own suit by getting the injunction application dismissed by the trial court which order was not interfered with on appeal and revision and ultimately, the suit of defendants 3 to 7 was withdrawn without the leave of the Court, hence, the same would operate as *res judicata*. As the withdrawal of the suit by defendants 3 to 7 is after the dismissal of the First Appeal filed by plaintiffs/appellants, now there is a legal vacuum inasmuch as the suit filed by defendants for injunction was dismissed and the suit filed by plaintiffs/appellants was also dismissed; therefore, nobody would be in a position to claim any relief. So submitting, he prayed this Court to remit the matter back to the trial court for fresh disposal as such plea is fair and proper. In answering such submission, this Court had observed that 'at any rate, the entire realm of records was completely analysed by both the courts by their exhaustive and well considered orders to give an emphatic legal and factual finding that the records clearly spell out that the

appellants and respondents-1 and 2, who are strangers to the suit property, smartly colluded together to take away the property of the rightful owners/D3 to D7 who are respondents 3 to 7 herein, and on a careful scrutiny, this Court finds not even a single ground including the point of res judicata as held above to upset the well considered orders of the courts below. Therefore, the ultimate substantial question of law is also answered against the appellants.' This Court had gone on to observe that the issue raised before the courts below was in respect of establishing the possession over the property and admittedly, when the revision petitioners (CRP (NPD) No.3952 of 2008) who are the plaintiffs, miserably failed to prove by adducing oral and documentary evidence the basic and fundamental requisite that they were in possession right from the date of purchase till the date of filing of the suit or at least the possession of the suit property by their vendors, at this point of time, when concurrent findings have been given based on clear reasonings with logical conclusion, entertaining the revision petitioners' prayer to mark the additional documents is opposed to all the settled legal principles and even otherwise, no useful purpose would be served now by passing orders in this revision petition.

11. Against the dismissal of S.A.No.1458 of 2007 and C.R.P.(NPD) No.3952 of 2008, Special Leave Petitions (Civil) Nos.33689-33690 of 2012 had been preferred. Petitioners having entered caveat therein, both sides have been heard with the result that both Special Leave Petitions were dismissed under judgment dated

23.11.2012. Thus, the Civil litigation between the parties has attained finality and petitioners 2 and 3 and their 3 brothers continue to be in physical possession and enjoyment of the suit property. Computer Patta No.5510 for the suit property has been given and patta granted during the settlement proceedings restored in favour of petitioners 2 and 3 and their 3 brothers. Originally patta was granted during the settlement proceedings under the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 in favour of G.Subramaniya Iyer, the father of petitioners 2 and 3 and their 3 brothers. Subsequently, without the knowledge of G.Subramania Iyer, the name of Mrs.Santhanalakshmi Ammal, who claimed the poromboke land was fraudulently added along with G.Subramania Iyer based on fraudulent document. It is submitted that the District Revenue Officer by his order dated 31/12/2013 restored the earlier Order of Tahsildar, Tambaram and directed the patta to be in the name of petitioners 2 and 3 and their 3 brothers relying on Civil Court judgments and decrees and order in the SLP passed by the Supreme Court of India. The order of the District Revenue Officer refers to the entire patta proceedings. It is relevant to state that this Court was pleased to grant stay of the order of RDO dated 26.12.2001 in W.P.M.P.No.38474/2001 in WP.No.26002/2001 filed by petitioners 2 and 3 herein and their 3 brothers for quashing the order of the RDO. The order of stay was made absolute. In spite of this, the Tahsildhar and S.R.Selvaraj and others colluded together and made mutation entries fraudulently in wilful disobedience of the order passed by this Court. This necessitated the filing of Contempt Petition No.522/2006 by petitioners 2 and 3 and their 3 brothers

against S.R.Selvaraj and partners of second respondent. The RDO, Chengalpet, passed an order dated 17.7.2007 in compliance of the order passed by this Court in the stay petition. In view of this, the contempt petition was closed. W.P.No.1220/2014 and W.P.No.3371/2014 have been filed by Mrs.Santhanalakshmi Ammal and S.R.Selvaraj and others against the order of District Revenue Officer dated 31.12.2013. The petitions were posted for admission and were adjourned and are pending admission before this Court. Learned counsel submits that in passing orders for police protection in favour of petitioners 2 and 3 and 3 others in Crl.O.P.No.4983 of 2015, it had been observed as follows:

“15. Therefore, this Court has not only found that the respondents 4 to 7 herein were not in possession of the property but also found that the petitioners were in possession and also they have title for the property and therefore, it is not open to the respondents 4 to 7 to contend now that the petitioners are not in possession of the property and they are in possession of the property. As a matter of fact, Respondents 4 to 7 are bound by the judgment and decree passed in S.A.No.1458 of 2007.

17. According to me, the arguments of the learned Senior Counsel is self contradictory. He argues that the petitioners are not the decree holders and therefore, they are not entitled to seek police protection to enforce the decree passed in their favour and on the other hand, he would contend that they will have to follow the procedure contemplated under Order XXI CPC if their possession is disturbed. Order XXI, Rules 35, and 97 to 101 of the CPC deals with the right of the decree holder or purchaser. Section 3 of the CPC defines “decree holder” as any person in whose favour a decree has been passed or an order capable of execution has been made.

Section 2 of the CPC defines “decree” as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Therefore, as per the definition of decree, when the rights of the parties are conclusively determined in favour of one person, he becomes a decree holder though no formal decree has been passed in his favour.

24. In the judgment reported in (1994) 5 Supreme Court Cases 547 in the matter of Premji Ratansey Shah and others Versus Union of India and others, it is held as follows:-

“5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

25. In the judgment reported in (2004) 3 Supreme Court Cases 137 in the matter of Sopan Sukhdeo Sable and others Versus Assistant Charity Commissioner and others, it is held as follows:-

24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that

“If any person is dispossessed without his consent from immovable

property other wise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit."

That a person without title but in "settled" possession as against mere fugitive possession can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh v. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate v. Mrs. Shobha Venkata Rao, (1989 (4) SCC 131, at p.136), Ram Rattan v. State of U.P. (1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (1989 (2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma v. Union of India (AIR 1954 Bom. 358).

25. Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963 can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction? In *Mahadeo Savlaram Sheike v. Pune Municipal Corporation* (1995 (3) SCC 33), it was held, after referring to Woodroffe on "Law relating to injunction; L.C. Goyal 'Law of injunctions; David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted *Shiv Kumar Chadha v. MCD* (1993 (3) SCC 161) wherein it was observed that injunction is discretionary and that:

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

26. Reference was also made to *Dalpat Kumar v. Prahlad Singh* (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of

convenience' and observed in Mahadeo's case (*supra*) that:

"9. It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

26. Therefore, having regard to the fact that in Second Appeal, the petitioners herein were found to be in possession of the property and they were also found to be owners of the property having title to the same and the Respondents 4 to 7 herein were not in possession of any property, the Respondents 4 to 7 herein cannot claim any right over the property and even assuming that they were found to be in possession of the property, the law will only assist the true owner to enjoy the property and the possession of Respondents 4 to 7 as claimed by them can only be illegal possession and that cannot be allowed to perpetuate by resisting the Application filed by the petitioners for police protection.

30. Therefore, when the rights have not been determined by the Civil Court, police protection cannot be sought for. In this case, rights regarding possession and title were already decided by this Court in Second Appeal and confirmed by the Apex Court and the petitioners are found to be the lawful owners and also found to be in possession of the property. Therefore, they are entitled to approach this Court for protection of rights declaring the decree or an order passed by the Civil Court.

31. In the judgment reported in (2007) 6 Supreme Court Cases 517 *supra*, the Hon'ble Supreme Court held that disputed question of fact cannot be gone into by the Court while dealing with the Writ Petitions. In this case, there is no dispute regarding the possession of the property and it is the Respondents 4 to 7 who claim to be in possession of the property but as per the decree they are not in

possession of the property and the petitioners are in possession of the property and as stated supra, if Respondents 4 to 7 have got possession after the disposal of the Second Appeal as contended by them, their possession can only be illegal and they cannot be permitted to sustain their illegal possession and the Court cannot shut its eyes to help the decree holder or help a person in whose favour findings were given and this Court has got inherent powers under Section 482Cr.PC to direct the police to provide police protection to a person who is the owner of the property and who has been forcibly dispossessed. Therefore, the petitioners who are lawful owners and who are found to be in possession of the property are entitled to seek the aid of this Court to protect their property.”

The binding nature of the findings in O.S.No.6992 of 2001, A.S.No.707 of 2006 and S.A.No.1458 of 2007 there against as also the findings in CrI.O.P.No.4983 of 2015 whereunder police protection was afforded to review petitioners was sought to be explained in ground Nos.9,10 and 11 of the Civil Revision Petition and in the detailed written arguments. In a glaring omission, learned Judge has failed to make any mention whatsoever there regards.

12. Learned counsel submitted that towards explaining the collusive nature of the action in O.S.No.461 of 2015, a detailed list of dates and events had been furnished but the learned Judge had failed to consider the same. The action in O.S.No.461 of 2015 was one initiated through a puppet plaintiff on the contention of being a lessee under a registered lease deed and under persons who are total strangers to the property. In such circumstance, the contention of the civil Court

being seized of the matter is nothing but an attempt to draw a red line across the herrings tail. Entertainment of such contention would lead to harassment of review petitioners. The present was not a case in which Or.7 R.11 CPC would apply. Rather, it was the fit case for exercise of powers under Article 227 of the Constitution of India. In support of his contention, learned counsel referred to several decisions.

13. Learned senior counsel for first respondent/plaintiff in O.S.No.461 of 2015 submitted that such respondent was a person in possession of property under a registered lease deed dated 30.03.2015. The prayer in the suit is for a decree for permanent injunction restraining the defendants, their men, servants and agents from evicting the plaintiff without adhering due process of law. Admittedly, this respondent was not a party to the earlier proceedings nor is it alleged that he was aware thereof. Thus, as far as this case is concerned, there was no evidence before the trial Court and it cannot be faulted for entertaining the suit. To impress the need for exercising restraint in exercise of powers under Article 227 of the Constitution of India, learned senior counsel relied on judgment of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai and others* [2003 (4) CTC 176], wherein it has been held as follows:

“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to

exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(6) A patent error is an error which is self-evident, i.e, which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view of the error cannot be called gross or patent.”

Learned senior counsel submitted that in entertaining the suit, Court below has not exercised jurisdiction not vested in it and the errors canvassed on behalf of petitioners are not self-evident but involved a long term process of reasoning, an exercise not permissible under Article 227 of the Constitution of India. In the order sought to be reviewed, learned Judge has informed various reasons for dismissal and expressed the view that it was not a fit case for exercise of power under Article 227 of the Constitution of India. It has also been observed that review petitioners may well move a petition seeking rejection of the plaint under Or.7 R.11 CPC. The view expressed by the learned Judge might even be erroneous but such would not be reason enough to entertain a review petition. Learned senior counsel referred to decision of the Supreme Court in **Kamlesh Verma v. Mayawati & Ors. [AIR 2013 SC 3301]** to contend that *'an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of*

review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error.' Learned senior counsel also relied on the following propositions culled out in such judgment:

“16 (B) (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

Learned senior counsel submitted that in passing orders in C.R.P.(PD) No.2267 of 2015 dated 11.05.2016, learned Judge had entered upon a detailed discussion. Learned Judge had also considered the position that O.S.No.481 of 2001 on the file of learned District Munsif, Alandur, preferred by petitioner party against the predecessors in interest of the lessors, seeking injunction, had been dismissed as withdrawn. Learned senior counsel submitted that petitioners had preferred O.S.No.481 of 2001 on the file of learned District Munsif cum Judicial Magistrate, Alandur, against the vendors of the second respondent in the review petition seeking relief of permanent injunction. Therein, application for interim relief had been moved in I.A.No.2115 of 2001. Against dismissal of such application, petitioners had appealed in C.M.A.No.21 of 2002 on the file of learned Principal

Subordinate Judge, Chengelpet. Petitioners had also preferred C.R.P.Nos.1020 and 1021 of 2007 against the dismissal of I.A.SR No.10098 of 2002 in C.M.A.No.21 of 2002 by learned Principal Subordinate Judge, Chengalpet, whereunder petitioners had sought to invoke Or.41 R.27(aa) CPC to reopen the case and to summon the first defendant therein for cross-examination and for receipt of 33 additional documents. A common order of dismissal of C.R.P.(PD) Nos.1020 and 1021 of 2007 was passed by this Court on 05.06.2007. Pertinently, it had been observed that “the lower appellate Judge also recorded a finding that it cannot be held that the plaintiffs are in possession and enjoyment of the suit property. In view of the categorical findings of the Courts below on factual aspects, no interference is warranted in this revision under Art.227 of the Constitution of India, which is primarily a supervisory jurisdiction and that too concurrent findings of the courts below shall not be interfered with, unless grave irregularity or illegality has occurred”. Thereafter, review petitioners had withdrawn O.S.No.481 of 2001 on the file of learned District Munsif, Alandur, on 14.12.2007. Learned senior counsel submitted that thus the review petitioners had given up their action. Learned senior counsel submitted that exercise of powers under Articles 226 and 227 of the Constitution of India was discretionary and there could not be review of an order passed in discretion. Through the Civil Revision Petition, petitioners had sought to trace their right to the property through dismissal of suit for injunction in O.S.No.6992 of 2001 by partners of second respondent and their father. They have failed to do so. They have also withdrawn their suit in O.S.No.481 of 2001 on the

file of learned District Munsif, Alandur. Contending that the very suit property was different, learned senior counsel for first respondent submitted that the grounds raised in the review petition did not reflect an error apparent on the face of the record and as such, the order under challenge is not susceptible to review. Contending that this Court could not go into other factual contentions raised, learned senior counsel placing reliance on judgment of this Court in ***L.Mohanan v. Mohammed Idris and others [2007 (1) CTC 308]*** submitted that an order could be reviewed only in keeping with Or.47 R.1(1) CPC and mere erroneous statements therein which had no bearing on the final decision rendered would not justify review.

14. Learned senior counsel referred to decision of this Court in ***Ayya Pillai v. Subeda Beevi and others [2001 (4) CTC 407]*** to impress that power of review is not an appellate power and unless there was a mistake or error apparent on the face of the record, the same was not to be exercised.

15. Learned senior counsel relied on the judgment of the Apex Court in ***Ramnik Vallabhdas Madhvani and others v. Taraben Pravinlal Madhvani [2004 (1) SCC 497]*** wherein the following observations in ***Kunhayammed v. State of Kerala [2000 (6) SCC 359]***

“The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court

can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.”

have been referred to, towards submitting that the dismissal of Special Leave Petition did not amount to a judgment upholding the finding in the second appeal where against the same had been preferred. Learned senior counsel relied on the judgment of the Apex Court in ***Jacky v. Tiny alias Antony and others [2014 (6) SCC 508]***, wherein it has been held thus:

“15. A petition under Article 226 or Article 227 of the Constitution of India can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether on party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of the 1st respondent that the order passed by the Munsif Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution of India can be exercised to question a plaint.”

16. Learned senior counsel referred to judgment of the Apex Court in ***Jai Singh and others v. Municipal Corporation of Delhi and another [2010 (9) SCC***

385] to contend that jurisdiction under Article 227 of the Constitution of India cannot be exercised like a 'bull in a china shop' to correct all errors of Court acting within limits of its jurisdiction.

17. Learned senior counsel submitted that petitioners have not established their right to property anywhere, the order of police protection in their favour was of no bearing and the review petition is to be dismissed as not maintainable.

18. In reply, learned counsel for petitioners submitted that errors in order sought to be reviewed and apparent on the face of the record have been explained in detail. The collusion between respondents had been clearly spelt out. Even in their counter, the lessee/first respondent had not so much as denied such allegation. First respondent, claiming to be a bonafide lessee having no knowledge of earlier proceedings, has, in further counter filed on 18.08.2016 informed that the lease in his favour has been renewed under Document No.2778 of 2016 on the file of Sub Registrar Office, Neelankarai dated 01.04.2016. The execution of such document even during the pendency of Civil Revision Petition is further proof of collusion between respondents. Learned counsel submitted that as the order sought to be reviewed has resulted in grave miscarriage, reflects errors apparent on the face of the record and also reflects glaring omissions in that the order of police protection afforded to petitioners has not so much as received consideration, a most fit case for exercise of powers for review under Article 227

of the Constitution of India is made out. Learned counsel relied on decision of the Apex Court in *Sow Chandra Kante and Anr. v. Sheikh Habib [AIR 1975 SC 1500]* to submit that the order under challenge reflects glaring omission and patent mistakes occasioned by judicial fallibility thus rendering the same susceptible to review. Learned counsel contented that the errors in the order under challenge were so apparent in that no need for fishing out or searching therefor arose. Learned counsel further submitted that the contentions of learned senior counsel by placing reliance in the orders in C.R.P.(PD) Nos.1020 and 1021 of 2007 already had been dealt with in second appeal and had been rejected.

19. Learned counsel for petitioners also submitted that the collusive nature of the action was laid bare from the following:

During the pendency of Crl.O.P.No.4983 of 2015 on the file of this Court for Police Protection, S.Ravirathinam partner of 2nd respondent/5th defendant herein along with his mother, S.Kudiyarasu Devi and his 2 brothers S.SureshKumar, S.Rajarathinam, fraudulently created a registered partnership deed dated 11th day of March 2015, for carrying on business under the name and style of 'M/s Poornaa Firm', second respondent herein. In the partnership deed, it is falsely recited as follows :

“The registered office of the firm is Door No. 3/545, East Coast Road, Neelankarai, Chennai - 115.

The main business of the firm is to do Real Estate Business Construction and to promote the land at Door No.3/545, East Coast

Road, Neelankarai, Chennai - 115 measuring 1 acre and 50 cents in S.No. 84/1A, Village No. 145, subsequently, 115 and at present 134, Neelankarai Village, Tambaram Taluk (previously Saidapet Taluk) and also the allied works of Real Estate Business, viz. leasing out the premises, etc. The parties herein are having equal share in the entire land of 1 acre and 50 cents of land mentioned above.”

The partners of the firm, who are none other than the parties in the earlier long drawn legal battle against the petitioners 2 and 3 and their 3 brothers, have with the sinister motive of creating another litigation in respect of the very same property have in these two clauses of the partnership deed given the address of the suit property and schedule of property, the very property covered by the earlier litigation. Furthermore, they have asserted that they are having equal share in the entire land of 1 Acre 50 Cents of land. During the pendency of the CrI.O.P.No.4983 of 2015, S.Ravirathinam herein along with his family members, namely S.Kudiyarasu Devi, S.SureshKumar and S.Rajarathinam, had filed M.P.No.1/2015 for impleading themselves as party on 03.03.2015, but, on 12.03.2015 while arguing before this Court they never disclosed the alleged creation of partnership deed. This document was deliberately suppressed with ulterior motive. It is shocking to find that the Advocate who appeared for the interveners, who are the partners of the firm, herself drafted this deed of partnership. Their action is not only abuse of process of Court, but also is a clear case of contempt of Court. They conspired and created a fraudulent partnership deed. They are liable to be prosecuted for Criminal Contempt of this Court. Their action amounts to interfering with the administration of Justice. On 12.03.2015

the Crl.O.P.No.4983 of 2015 was reserved for orders. Meanwhile, the partners of second Respondent filed another M.P.No.2/2015 in Crl.O.P.No.4983/2015 for dismissing the Crl.O.P.No.4983 of 2015 as not maintainable. This petition was taken up for argument on 20.03.2015. Elaborate arguments by learned senior counsel, Mr.K.M.Vijayan were heard. The counsel on record Ms.R.T.Shyamala, who drafted the partnership deed, did not disclose the same to this Court. During the arguments she was present in Court, assisting her senior counsel. Ms.R.T.Shyamala, is the counsel on record in all the proceedings viz., Second Appeal No.1458/2007, SLP Nos.33689-33690/2012 and District Revenue Officer proceedings Na.Ka.3403/2001. She was aware of the fact that the sale deed Registered as Document No.2626/2001 is “Sham and Nominal document” i.e., bogus document as found by the Civil Courts and upheld by the Supreme Court of India.

20. After the orders in Crl.O.P.No.4983 of 2015 was reserved on 20.03.2015, the four partners of the fraudulent firm again created another fraudulent document, an alleged lease deed in favour of M/s.TEK Smart Group represented by its Sole Proprietor S.Magesh collusively, in respect of the same suit property and registered the same as document No.2551 of 2015 on 30.03.2015 on the file of the SRO, Neelankarai, knowing that they have no title over the property as held by the competent civil courts and the Supreme Court of India. S. Mahesh, the alleged lessee, is a close relative of the partners and also the proprietor of Rathna Stores. His brother S. Ganesh Kumar is one of the witnesses in both the partnership deed

and the lease deed. The two documents have been created during the pendency of Crl.O.P.No.4983/2015 for police protection. These documents have been deliberately prepared only for the purpose of filing a false and vexatious suit against petitioners. Crl.O.P.No.4983 of 2015 was allowed by this Court on 24.04.2015. It is submitted that the counsel for impleading parties, was present in court when the petition was allowed and on the same day she applied for carbon copy of the order. Before the carbon copy of the order was furnished to the parties, S.Ravirathinam, the partner of the second respondent/fifth defendant and his brother S. Suresh Kumar another partner of the firm purchased stamp papers for Rs.25,000/- each and two settlement deeds settling 1/5th share of the suit property in favour of their children were executed and registered on 29.04.2015 as document Nos.3323 and 3324 of 2015 at SRO, Neelankarai. These documents have been drafted by the very same counsel who appeared for them in the S.A.No.1458 of 2007 and SLP Nos. 33689-33690/2012 and Crl.O.P.No.4983 of 2015. On 29.04.2015, S. Magesh the sole proprietor of M/s.TEK Smart Group, the 1st Respondent/Plaintiff, filed the false, frivolous and vexatious suit for the same property for a permanent injunction restraining petitioners herein and also the second respondent/fifth defendant, their men, servants, agents, from evicting the plaintiff without adhering due process of law from the suit schedule property in collusion with the second respondent/fifth defendant, namely, M/s.Poorna Firm represented by its partner S.Ravirathinam, against the petitioners and making the partnership firm as the fifth defendant. The present suit is vexatious, initiated to

circumvent the binding decree passed earlier in respect of the same suit property by this Court in S.A.No.1458/2007 and confirmed by Supreme Court of India in SLP Nos.33689-33690/2012 and also to defeat the directions issued by this Court in Crl.O.P.No.4983 of 2015. The filing of the suit is clear abuse of process of law. First respondent is a close relative of partners of second respondent and the suit itself is instituted in collusion with the partners of second respondent, who have lost upto Supreme Court, by a puppet plaintiff. There has been fraud and collusion between the first respondent and partners of second respondent. The suit has been filed by suppressing the entire earlier civil litigation upto Supreme Court of India in respect of the same property and playing fraud on Court. Institution of suit is vexatious and obstructive. The filing of suit is clear case of re-litigation and it is abuse of process of court and contrary to justice and public policy for a party to re-litigate the same issue, which has been already tried and decided earlier against them by setting up their own close relative to institute the suit as their puppet plaintiff.

21. This Court has considered the rival submissions.

22. Plaintiff in O.S.No.461 of 2015 on the file of learned Distirct Munsif, Alandur, claim to be a lessee under the defendant in the suit. Informing of interference with their possession of the lease hold property by petitioners, plaintiff has sought relief of permanent injunction. It is the case of petitioners

that one S.R.Selvaraj and partners of the fifth defendant in the suit, who are none other than his wife and sons, had suffered a decree in O.S.No.6992 of 2001 on the file of learned VII Assistant Judge, City Civil Court, Chennai and their case stood rejected through out right up to the Supreme Court. It clearly had been held that they had no interest whatsoever in the suit property. Towards re-litigating the issue, they had set up the plaintiff, fraudulently executed a lease deed in his favour and thereby sought to unsettle settled issues. Petitioners having sought striking off of the suit in C.R.P.(PD) No.2267 of 2015, they seek review of such order. It is necessary for this Court to first consider whether the case is one fit for review. On careful consideration of the materials on record and on perusal of the order under challenge, this Court finds that under orders dated 11.05.2016, learned Judge erroneously has informed property in the suit claimed by S.R.Selvaraj and the partners of the second respondent was covered by Paimash No.165 which correlated to Survey No.84/1A (Survey No.84/1A being the property in O.S.No.461 of 2015). This is an error going to the root of the matter.

23. Learned Judge has proceeded on the basis that in litigation emanating in O.S.No.904 of 1996 on the file of learned District Munsif, Poonamallee, a compromise was effected between litigants, wherein one admitted the title and possession of the other and the person so entitled executed a sale deed in favour of S.R.Selvaraj and the partners of the second respondent in review petition. Learned Judge has totally ignored the findings in earlier actions that in

proceedings pursuant to O.S.No.904 of 1996, title to the property never was established. Property in dispute fell under Paimash No.165 found to be poromboke land which, as informed herein one above, learned Judge wrongly has held to be correlated to Survey No.84/1A. Learned Judge has held 'the dismissal of O.S.No.6992 of 2001 cannot be construed to be a recognition or declaration of title or possession of defendants 1 to 4/revision petitioners. It is pertinent to note that the previous suit was dismissed holding that Paimash No.165 correlated to Survey No.84/1A and the same was classified as poramboke; that the title was also disputed by defendants therein and hence, the suit for injunction without a prayer for declaration of title was not maintainable.' Learned Judge has also expressed the view that such suit was dismissed for the failure of plaintiffs therein to seek declaration of title and such finding was confirmed by the High Court in Second Appeal and Special Leave Petition filed there against was also dismissed. It has further been observed that a reading of the judgment of the appellate Court and the judgment of the High Court in Second Appeal shows that neither clear finding regarding the title and possession claimed by plaintiffs in O.S.No.6992 of 2001 nor a definite finding regarding title and possession claimed by defendants came to be rendered. The said finding absolutely is erroneous and again ignores the clear findings in the earlier action.

24. This Court is in no doubt that the above amount to errors apparent on the face of the record, that the same do not merely reflect the views of a Judge

on the merits of the rival cases but render the order dated 11.05.2016 amenable to review. This Court rejects the submission of learned senior counsel for first respondent that learned Judge has dismissed the revision as not maintainable, finding that the merits of the rival cases has been entered upon. To reiterate, this Court enters upon the appreciation of rival cases in Civil Revision Petition for the reason that the order of the learned Single Judge dated 11.05.2016 reflects not only a very misunderstanding of the property in dispute but also that most material and factual findings relating to the property in suit have been ignored.

25. In O.S.No.6992 of 2001 on the file of learned VII Additional Judge, City Civil Court, Chennai, it was found that Ex.B92, certified copy of the judgment in A.S.No.20 of 1992 dated 25.11.1992, it has been held that Paimash No.165 is a poromboke land. As the appeal against such finding has resulted in compromise and has been withdrawn, it is clear that Paimash No.165 is a poromboke land. It is the duty of the plaintiffs to prove their title and how they acquired such property. While it was the case of plaintiffs that they had been put in possession of the property pursuant to a compromise entered between Santhanalakshmi Ammal and Krishnarathi Ammal, it was the case of defendants that subject property in such appeal is Paimash No.165, which has been declared as poromboke land. Without seeking the relief of declaration of title, plaintiffs had sought only permanent injunction and hence, the suit was not maintainable.

26. In the judgment in A.S.No.707 of 2006, the appellate Court has held that the Survey No.84/1, which correlates to paimash Nos.166, 167A, 168, 171A in the settlement proceedings comprised a total extent of 20 Acres 85 Cents. G.Subramaniya Iyer after selling an extent of 18 Acres 95 cents in S.No.84/1, retained 1 Acre 90 Cents in survey No.84/1, and subsequently it was sub-divided into 84/1A for an extent of 40 Cents, the subject matter of litigation in O.S.No.6992/2001 on the file of VII Assistant Judge, City Civil Court at Chennai and the present suit in O.S.No.461/2015 on the file of District Munsif Court at Alandur. On a detailed appreciation of the evidence in the case, the appellate Court, in A.S.No.707 of 2006, had found that in the plaint, plaintiffs have stated that S.No.84/1 correlates to Paimash No.165. However, the defendants have filed Ex.B20 to show that S.No.84/1 correlates to Paimash Nos.166/A, 167, 168/A and 171/A. As rightly contended by defendants S.No.84/1, on which the plaintiffs claim right, is not correlated to Paimash No.165. Instead, as per Ex.B20, it correlates to Paimash Nos.166/A, 167, 168/A and 171/A. It is not the case of plaintiffs that Ex.B20 is a false or fabricated document. Once the genuineness of Ex.B20 is not disputed, it is established that S.No.84/1 is not correlated to Paimash No.165. Ex.A1 in O.S.No.6992 of 2001, sale deed dated 15.09.2000, the document of title, executed by Krishnarathi Ammal with Santhanalakshmi Ammal as the confirming party has been held to be a sham and nominal document which did not pass any title. It was found that the appellants S.R.Selvaraj and partners of second respondent had not established how the first respondent (their vendors) and her

predecessors in interest acquired title to the suit property. Of relevance is the following to be found in judgment in A.S.No.707 of 2006:

“67. As per Ex.A1 and Ex.B.87 the appellants have purchased the property from Krishnarati Ammal who has purchased from R.S.Srinivasa Naicker. It is brought to the notice of that court that in this sworn affidavit in Para-2 in W.P.No.25873 of 2001 in the High Court of Judicature at Madras. S.R.Selvaraj the 1st plaintiff herein has averred as follows: “I submit that the said land was purchased by Mrs.Santhanalakshmi Ammal by doc No.2851 of 1962. In respect of the said property joint patta was issued along with Smt.Santhanalakshmi Ammal, Subramaniya Iyer and Ananda Narayanan by P.T.No.4953/72 dated 4.10.1963 in Patta No.139. But one R.S.Srinivasa Naicker had fabricated the document for the said property and sold it to Mr.Krishnarathi Ammal, which leads dispute between Smt.Santhanalakshmi and Smt.Krishna Rathi Ammal. Subsequently they had filed the compromise memo before the Court. Both Mrs.Santhanalakshmi and Smt.Krishna Rathi Ammal had jointly sold the property to myself and my family members”.

68. According to the respondents 3 to 7 in the impleading petition for impleading the appellants in C.M.A.No.21 of 2001 to O.S.No.481 of 2001 in the court of sub-judge, Chenglepattu the appellants have stated the above story.

69. In the written statement in O.S.No.481 of 2001 filed by the first respondent on her behalf and on behalf of the 2nd respondent therein the paragraph 10 it is stated as follows: “I submit that the first respondent is the only daughter to her parents who was not in position to look after her parents and also the suit schedule property, taking advantage of that one R.S.Srinivasa Naicker, fabricated document and obtained patta in his name from

Tahsildar Saidapet dated 22.07.1974 in 84/1A for about 1.50 acre in patta No.275. The said R.S.Srinivasa Naicker in turn sold the 1.50 acres of land in S.No.84/1A of paimash No.165 of Neelangarai Village to the second petitioner herein under sale deed document No.6035/1975 dated 8.8.1975”.

70. Krishnarathi Ammal was the Second defendant in O.S.No.481 of 2001. Santhanalakshmi Ammal was the first defendant. It is evident that Krishnarathi Ammal has categorically admitted in this common written statement that R.S.Srinivasa Naicker her vendor fabricated document and obtained patta in his name from Tahsildar Saidapet dated 22.07.1974 in 84/1A for about 1.50 acre in patta No.275. The said R.S.Srinivasa Naicker in turn sold the 1.50 acre of and in S.No.84/1A of paimash No.165 of Neelangarai Village to the second petitioner herein under sale deed document No.6035/1975 dated 8-8-1975.

71. Having purchased the property from Krishnarathi Ammal the appellants are tracing their title through B.Santhanalakshmi Ammal the confirming party in Ex.A1 and the second respondent herein.

72. The appellants have not produced any kist receipt for the period from the date of their purchase to the date of filing of the suit. They have not also filed any documentary evidence to prove that their predecessors in interest Mrs.Krishnarathi Ammal, their Vendor, was in possession of the suit land from the date of her purchase on 8.8.1975 from Srinivasa Naicker and Srinivasa Naicker who has purchased from Rangesamy Pillai in 29.12.1959.

73. Thus, it is clear that the appellants have not proved that they are in possession of the suit and got any right to interest in the suit property.”

Again, on a detailed appreciation of evidence, the following finding had been rendered:

“83. Thus, by oral and documentary evidence of DW1, DW2 and DW3 respondents 3 to 7 have established that they are in possession and enjoyment of the suit land right from 1943.”

27. In the order dated 11.05.2016, learned Judge has observed that the suit in O.S.No.6992 of 2001 on the file of learned VI Assistant Judge, City Civil Court, Chennai, filed by S.R.Selvaraj and his family members, partners of second respondent in O.S.No.461 of 2015, was an action for bare injunction in respect of property bearing survey No.84/1A and that in such suit it was observed that Paimash No.165 was correlated to Survey No.84/1A. Learned Judge has ignored the finding of trial Court in O.S.No.6992 of 2001 under judgment dated 21.07.2006. It specifically had been found that S.R.Selvaraj and his family members, partners of fifth defendant, had claimed title to the property through purchase at the hands of defendants 1 and 2 in O.S.No.6992 of 2001 pursuant to compromise effected by such defendants in S.A.No.870 of 1994 but the action wherein compromise was effected related to property in Paimash No.165 classified as Government poromboke and that it was such Government poromboke land which had been purchased by S.R.Selvaraj and others, partners of fifth defendant.

28. In the order dated 11.05.2016, learned Judge has observed that upon compromise effected, S.A.No.870 of 1994 was withdrawn and thereby, the title

and possession of Krishnarathi Ammal to the property was confirmed and it was only thereafter that S.R.Selvaraj and others, partners of fifth respondent purchased the property from Krishnarathi Ammal under sale deed dated 15.09.2000 in which Santhanalakshmi Ammal also signed as a confirming party. Learned Judge ignored the finding of learned V Additional Judge, City Civil Court, Chennai, in A.S.No.707 of 2006, the appeal preferred by S.R.Selvaraj and partners of fifth defendant against the judgment and decree in O.S.No.6992 of 2001 that petitioners 2 and 3 herein and their three brothers alone had title to the suit property and the finding that neither S.R.Selvaraj or Krishnarathi Ammal or Santhanalakshmi Ammal, his predecessors in title, had any title whatsoever in respect of the suit property. The clear finding is that the sale deed executed on 15.09.2000 by Krishnarathi Ammal and Santhanalakshmi Ammal in favour of S.R.Selvaraj and partners of fifth defendant was sham and nominal and did not pass any title in their favour. The further finding that petitioners 2 and 3 and their brothers have clear title and were in possession of the suit property was also ignored. Having failed to achieve their purpose through O.S.No.6992 of 2001, having failed again in the appeal in A.S.No.707 of 2006, S.R.Selvaraj and partners of second respondent preferred S.A.No.1458 of 2007. This Court found much wrong in their case in its judgment dated 01.10.2012. It would suffice merely to reproduce the following:

“10. I find considerable force in the above submission of the learned counsel for respondents-3 to 7 for the simple reason that what are all the observations and findings rendered by the courts

below on this particular issue are based on clear documentary evidence and that this Court is not even able to discard a single finding as the materials make it clear that neither Krishanrathi Ammal nor Santhanalakshmi Ammal had any good title over the property in question nor was in possession and enjoyment of the suit land and at best, they can only be termed as 'strangers' to the suit property. Inasmuch as defendants 3 to 7 are entitled to resist the interim injunction as they are the lawful owners of the suit property in S.No.84/1 correlated to paimash Nos.166A etc., the third substantial question of law should be answered against the appellants and done accordingly.

12. ... Further, even in their own suit, when the Plaintiffs/appellants were obliged to prove their own case for grant of injunction by substantiating that from the date of purchase of the suit property till the date of filing of the suit, they have been in possession of the property, they miserably failed to establish such basic and vital requirement. On the other hand, defendants 3 to 7, by producing all oral and documentary evidence, traced their clear title to the property and their continuous possession therein from 1950 in respect of S.No.84/1 correlated to Paimash Nos.166A etc.

15. At any rate, the entire realm of records was completely analysed by both the courts by their exhaustive and well considered orders to give an emphatic legal and factual finding that the records clearly spell out that the appellants and respondents-1 and 2, who are strangers to the suit property, smartly colluded together to take away the property of the rightful owners/D3 to D7 who are respondents 3 to 7 herein, and on a careful scrutiny, this Court finds not even a single ground including the point of res judicata as held above to upset the well considered orders of the courts below.”

29. Despite such unequivocal findings, learned Judge, in his order dated 11.05.2016, has observed that the position of the plaintiff and the 5th defendant/respondents 1 and 2 is better than that of the defendants 1 to 4/revision petitioners insofar as the title of Krishnarathi Ammal, the vendor of the partners of the 5th defendant firm/partners of the second respondent firm, stood recognised and acknowledged in S.A.No.870/1994. On the other hand, the position of defendants 1 to 4/revision petitioners in the revision, is different insofar as their suit in O.S.No.481/2001 on the file of the District Munsif Court, Alandur was withdrawn and neither their title nor their possession stood judicially recognised.

30. In holding the withdrawal of O.S.No.481 of 2001 on the file of District Munsif Court, Alandur, by petitioners, learned Judge again has ignored that this Court in its judgment in S.A.No.1458 of 2007 considering the same inconsequential.

31. This Court considers it appropriate to reproduce herein paragraphs 11 to 15 of the judgment in S.A.No.1458 of 2007:

“11. While elaborating on substantial question of law No.4, learned Senior Counsel submitted that when there are suits in respect of the same suit property, one by D3 to D7 as plaintiffs in O.S. No.481 of 2001 and another suit filed by the appellants herein/plaintiffs in O.S. No.6992 of 2001, without staying the subsequent suit, the earlier suit filed by defendants-3 to 7 should not have been taken up for hearing since the mandate in Section 10

CPC directs that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed; inasmuch as pendency of the suit in another court certainly precludes the suit filed subsequently to be taken up for hearing. Further, when the matter in issue in the later suit being directly and substantially the same as in the previous suit, respondents 3 to 7/D3 to D7, who have earlier filed their suit in O.S. No.481 of 2001, should have moved an Application before this Court not to proceed with the matter till the disposal of their suit; but, in the present case, the suit filed by defendants 3 to 7 was withdrawn by them after their interlocutory applications were dismissed against them by the trial court and the lower appellate court as well as the High Court, refusing to grant them injunction. The legal position that D3 to D7 having lost their suit for injunction are not entitled to contest the present suit, has been completely overlooked by the courts below. Therefore, in terms of what is provided under Section 10 CPC, if any later suit filed by anybody is not brought to the notice of the court hearing the later suit and finally a decree is passed, the same would become nullity. In support of his argument, learned Senior Counsel placed reliance on the decision of the Apex Court in Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd. (1998 (5) SCC 69) and in particular referred to para No.8 of the Judgment which runs thus:-

" Therefore, the word "trial" in section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to 'proceed with the trial of any suit in

which the matter in issue is also directly and substantially in issue in a previously instituted suit'. The object of the prohibition contained in section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the later suit with earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to section 10 is not to proceed with the 'trial' of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense."

12. A mere reading of the above ratio of the Hon'ble Apex Court shows that Section 10 is a general provision applicable to all category of cases, however, the object of the prohibition contained in section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits. The provision which is in the nature of a rule of procedure does not affect the jurisdiction of the court to entertain and deal with the later suit nor does it create any substantive right in the matters. Further, it is not a bar to the institution of a suit and to pass any interlocutory order. In the present case also, the suit filed by D3 to D7 was not disposed of and only the interim application was dealt with and pursued and ultimately, R3 to R7 herein withdrew the suit. Therefore, in effect, when the main suit filed by those defendants was not at all taken up for hearing and dealt with on legal issues and the ratio laid down by

the Hon'ble Apex Court in the decision highlighted by the learned Senior Counsel himself is very clear on the point to the effect that 'the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense', the argument advanced by him cannot be sustained. Learned counsel for the respondents-3 to 7 rightly pointed out that mere filing of an application under Section 10 CPC does not in any manner put an embargo on the power of the court to examine the merits of the matter and he also referred to a decision of the Apex Court reported in AIR 2004 SC 3504 (PUKHRAJ D. JAIN AND OTHERS vs. G. GOPALAKRISHNA) which is directly on the point, and the relevant portion is extracted below:-

"The object of the section is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted for expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side."

The above ruling of the Apex Court reiterates that the object of Section 10 CPC. is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue and that the provision deals only with a rule of procedure and it does not affect the jurisdiction of the court to

entertain and deal with the later suit nor does it create any substantive right in the matters. Thus, if two suits are filed in two courts in respect of same cause of action even though filing of two suits by same party is legally impermissible, as could be seen from the present case, D3 to D7 though filed the suit in O.S. No.481 of 2001, moved an application in I.A. No.2115 of 2001 for grant of interim injunction and even though the relief was granted initially, the trial court, on entertaining the application to vacate the relief, vacated the same, as against which, the CMA and the consequent CRP filed having been dismissed, ultimately, the suit in O.S. No.481 of 2001, for the reasons best known to D3 to D7, was withdrawn by them. Therefore, legally speaking, the suit filed by D3 to D7 had no effect on the subsequent suit filed by the plaintiffs with reference to nullity. Further, even in their own suit, when the plaintiffs/appellants were obliged to prove their own case for grant of injunction by substantiating that from the date of purchase of the suit property till the date of filing of the suit, they have been in possession of the property, they miserably failed to establish such basic and vital requirement. On the other hand, defendants-3 to 7, by producing all oral and documentary evidence, traced their clear title to the property and their continuous possession therein from 1950 in respect of S. No.84/1 correlated to Paimash Nos.166A etc. Therefore, in the light of the ratio laid down by the Apex Court in the above mentioned Judgment holding that Section 10 CPC enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity, and of the fact that the subsequent suit, upon which the earlier suit had no effect at all even otherwise to technically apply Section 10 CPC, was contested by all the parties by raising legal grounds and adducing available evidence and ultimately decided in correct perspective, one cannot be heard to say that D3

to D7 failed to move appropriate application to stay the subsequent suit and that the said suit which is the subject matter of the present Second Appeal is hit by nullity. In view of the clear legal position as pointed above, this substantial question of law is also answered against the appellants.

13. Arguing on the interconnected substantial questions of law Nos.5 and 6, learned Senior Counsel for the appellants, by referring to the principles of res judicata as outlined in Section 11 CPC., submitted that D3 to D7 suffered from their own suit by getting the injunction application dismissed by the trial court which order was not interfered with on appeal and revision and ultimately, the suit of D3 to D7 was withdrawn without the leave of the Court, hence, the same would operate as res judicata. As the withdrawal of the suit by D3 to D7 is after the dismissal of the First Appeal filed by the plaintiffs/appellants, now there is a legal vacuum inasmuch as the suit filed by the defendants for injunction was dismissed and the suit filed by the plaintiffs/appellants was also dismissed; therefore, nobody would be in a position to claim any relief. So submitting, he prayed this Court to remit the matter back to the trial court for fresh disposal as such plea is fair and proper.

14. Learned counsel appearing for respondents-3 to 7 would submit that the suit filed by the plaintiffs/appellants was taken up for full hearing and after dismissal of the same, the matter was taken to the first appellate court and the said court also confirmed the verdict of the trial court and rejected the appeal by its well reasoned impugned Judgment herein and only after the concurrent findings passed by the courts below, the defendants-respondents 3 to 7 herein withdrew the suit. Therefore, the legal position having regard to the factual background in which the matters were canvassed and the ultimate results they reached being clear that the

principles of res judicata can never be made applicable to the case, the argument of the learned Senior Counsel advanced in that regard may be watered down. He referred to a decision of the Apex Court reported in AIR 1964 SC 993 (1) (Arjun Singh v. Mohindra Kumar and others), wherein, the Apex Court, while considering the scope of the principle of res judicata held that it is not confined to what is contained in Section 11 but is of more general application; the reason being, interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge.

According to the learned counsel, in view of the above clear position, when the interlocutory applications filed by D3 to D7 seeking temporary injunction was rejected and the same was also affirmed by the appellate court, it does not mean that D3 to D7 have been forbidden from producing more sufficient evidence to prove their case of possession on the basis of various documents. So submitting, learned counsel reiterated that there is no point at all in raising the plea of res judicata to apply the same pointlessly for the present proceedings.

15. Again, the scales should be tilted only in favour of respondents-3 to 7 for more than one reason. The legal position is very clear that in deciding a matter with the present background of factual aspects, courts are not required to look into orders of an

interlocutory nature such as orders granting temporary injunction, appointing receiver, etc which do not purport to decide the rights of the parties finally, for, the Apex Court has time and again carved it out as an exception to the general rule. In the case on hand, the doctrine of res judicata clearly ruled out for the reason that even though the suit filed by D3 to D7 was pending, the matter was not fully contested on legal issues and ultimately, after the injunction was vacated and the appeal/revision failed, the suit itself was withdrawn. Therefore, whatever the orders passed in the interim application, not being final and ultimately, the same having been rendered to naught on account of withdrawal of the suit, the question of bar of res judicata would not apply inasmuch as the other suit embracing all the parties was well agitated by all before the trial court as well as the lower appellate court by way of First Appeal and this Court in this Second Appeal. Otherwise, learned Senior Counsel would not have argued by pointing out legal vacuum and sought for remanding back of the matter. Moreover, in the present case having peculiar background in which the suit of D3 to D7 was never contested and the interim relief though was granted initially, ultimately rejected forever and there was virtually no effective prosecution of the said suit itself till it was withdrawn, and what was fully contested was only the present suit, the effect of res judicata is completely eclipsed by the factual ground involved as repeatedly mentioned above. At any rate, the entire realm of records was completely analysed by both the courts by their exhaustive and well considered orders to give an emphatic legal and factual finding that the records clearly spell out that the appellants and respondents-1 and 2, who are strangers to the suit property, smartly colluded together to take away the property of the rightful owners/D3 to D7 who are respondents 3 to 7 herein, and on a careful

scrutiny, this Court finds not even a single ground including the point of res judicata as held above to upset the well considered orders of the courts below. Therefore, the ultimate substantial question of law is also answered against the appellants.”

Despite such clear and categorical findings, learned Judge, in his order dated 11.05.2016, has chosen to inform that the dismissal of the suit (O.S.No.6992 of 2001) cannot be construed to be a recognition or declaration of title to petitioners. Erroneously observing that it was pertinent to note that previous suit was dismissed, Paimash No.165 correlated to Survey No.84/1A and the same was classified as poromboke and ignoring the categorical findings in O.S.No.6992 of 2001, A.S.No.707 of 2006 and S.A.No.1458 of 2007, learned Judge has observed thus:

“18. A reading of the said judgment of the trial court, the judgment of the appellate court and the judgment of the High Court in the second appeal, will show that neither clear cut finding regarding title and possession claimed by the plaintiffs therein in O.S.No.6992 of 2001, nor a definite finding regarding the title and possession claimed by the defendants therein came to be rendered and that on the other hand, the failure to seek declaration of title, when the defendants therein made rival claims of title in them and thereby they had cast a cloud over the title of the plaintiffs therein were highlighted as the grounds to non-suit the plaintiffs therein to the relief of injunction prayed for. It is also obvious that the finding that Paimash No.165 correlated to S.No.84/1A, which was classified as poramboke also weighed with the court in arriving at the conclusion that the claim for injunction based on title should be negatived.”

32. Further, this Court, under orders in Crl.O.P.No.4983 of 2015 dated 24.04.2015, has observed as follows:

“30. ... In this case rights regarding possession and title were already decided by this court in Second Appeal and confirmed by the Apex Court and the petitioners are found to be the lawful owners and also found to be in possession of the property. Therefore, they are entitled to approach this court for protection of rights declaring the decree or an order passed by the Civil Court.

31. ... In this case, there is no dispute regarding the possession of the property and it is the Respondents 4 to 7 who claim to be in possession of the property but as per the decree they are not in possession of the property and the petitioners are in possession of the property and as stated supra, if Respondents 4 to 7 have got possession after the disposal of the Second Appeal as contended by them, their possession can only be illegal and they cannot be permitted to sustain their illegal possession and the Court cannot shut its eyes to help the decree holder or help a person in whose favour findings were given and this Court has got inherent powers under Section 482 Cr.P.C. to direct the police to provide police protection to a person who is the owner of the property and who has been forcibly dispossessed. Therefore, the petitioners who are lawful owners and who are found to be in possession of the property are entitled to seek the aid of this Court to protect their property.

32. Therefore, in my opinion, the petitioners are entitled to the relief of police protection. This Court has got power to grant protection to a person who is lawfully entitled to enjoy the property and who was also found to be in possession of the property by the judgment of this Court. Therefore, the argument of the learned

Senior Counsel for Respondents 4 to 7 cannot be accepted.

33. Hence, the Criminal Original Petition is allowed and M.P.No.2 of 2015 filed by Respondents 4 to 7 is dismissed. The third respondent is directed to give police protection to the petitioners to enjoy the property and in that regard, the first respondent and second respondent are directed to give suitable direction to the third respondent.”

33. It has been contended by learned senior counsel for respondent that the property is different. Such contention stems from the fact that the decree in O.S.No.6992 of 2001 informs the survey number of the property in suit to be 84/1. A reading of the plaint in such suit, the judgment of the trial Court as also the first appellate Court therein makes abundantly clear that the property in dispute in the earlier action was not in Survey No.84/1A, the suit property in the present action, i.e., O.S.No.461 of 2015. Placing reliance of judgment in ***Jacky v. Tiny alias Antony and others [2014 (6) SCC 508]***, learned senior counsel contended that the present action in O.S.No.461 of 2015 is not one which the Court seized of is not competent to try nor has such Court exercised any jurisdiction not vested in it. The question that arises for consideration merely is not whether such Court is empowered to try the suit in O.S.No.461 of 2015. The question is whether the process of such Court is being abused towards a wrongful end.

34. Plaintiff in O.S.No.461 of 2015 claim to be a lessee of the fifth defendant M/s.Poorna Firm. The partners of such firm are mother and sons. They

along with husband/father preferred O.S.No.6992 of 2001 seeking permanent injunction. The suit property in O.S.No.6992 of 2001 and in O.S.No.461 of 2015 is the same. O.S.No.6992 of 2001 was dismissed on finding that the plaintiffs though had informed of having become entitled to property under a sale deed dated 15.09.2000, had failed to explain how their vendors derived title. It was found that the plaintiffs claimed to have purchased the property pursuant to compromise effected by their vendors in S.A.No.870 of 1994 but the property which was covered by the compromise decree fell under Paimash No.165, land belonging to Government. As observed in judgment of this Court in S.A.No.1458 of 2007 the property in Survey No.84/1 correlated to Paimash No.166-A etc. Property in suit bears Survey No.84/1A sub-divided from Survey No.84/1. The sale deed in favour of S.R.Selvaraj dated 15.09.2000 has also held to be a sham and nominal document. Therefore, the present is a case where the plaintiff claims to be a lessee under persons found to have nothing to do with the suit property. Many allegations of fraudulent conduct and collusion between the plaintiff and fifth defendant have been made by petitioners and they have been informed in paragraph Nos.19 and 20 above. The relationship between parties alleged by petitioners had not been denied. Allegations of wrongful conduct by the counsel on record have also been made. This Court would allow such aspect on the matter to rest merely informing that if true, they present a very worrying picture.

35. The case is one calling for exercise of powers not under Or.7 R.11 CPC but under Article 227 of the Constitution of India. Before doing so, two other contentions of respondents are to be considered. The first is that O.S.No.6992 of 2001 was a suit preferred before a Court which had no territorial jurisdiction and hence, decree therein was a nullity. The answer lies in judgment of the Supreme Court in *Kiran Singh and others v. Chaman Paswan and others* [AIR 1954 SC 340]:

“7. ... With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as nullity cannot be sustained under Section 11 of the Suits Valuation Act.

17. ... the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his

own valuation cannot himself be heard to complain of any prejudice. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Court cannot recognise that as prejudice which flows from the action of the very party who complains about it.”

In the instant case, O.S.No.6992 of 2001 was an action moved by S.R.Selvaraj and partners of second respondent.

36. The judgment of this Court in ***Katamberi Chuzhali Bhagavati Amma's Onwer, Uralan and another v. Valia Ramunni and others [1938 (1) MLJ 193]*** informs as follows :

“It is a fundamental rule that a judgment of a Court without jurisdiction is a nullity and that want of jurisdiction cannot be waived. To this rule there are two exceptions recognised by the Indian Law; S.11 of the Suits Valuation Act deals with defects of jurisdiction due to wrong pecuniary valuation and S.21, Civil Procedure Code, makes a like provision when the place of suing has been wrongly chosen. But in another way, there is a distinction between inherent incompetency in a Court and irregular exercise of jurisdiction and under the Indian Statute Law, the two defects mentioned above are treated as irregularities which can be waived.”

37. The second contention is that no issues regards title to property was framed in O.S.No.6992 of 2001. Such contention is a non-issue. From the reading of the judgment of the trial Court, appellate Court as also judgment of this Court in Second Appeal, it is clear that voluminous evidence also documentary was

thoroughly considered in rendering findings that the plaintiffs had no title to property and that petitioners 2 and 3 and 3 others entitled thereto.

38. While it is true that power of review under Or.47 R.1 CPC is not to be exercised akin to a bull in a china shop, it is also the duty of Court to prevent justice from being trampled under the hooves of a wild horse running rampant.

The Review Application shall stand allowed. The suit in O.S.No.461 of 2015 on the file of learned District Munsif, Alandur, shall stand struck off of the file. No costs.

10.02.2017

Index:yes/no
Internet:yes
gm

To

The District Munsif,
Alandur.

C.T.SELVAM, J

gm

Pre-delivery order
in
Review Application No.93 of 2016