

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.788 to 791 of 2017
and Cross.Obj.Nos.11 to 14 of 2018
and C.M.P.Nos.19759 to 19766 of 2017

Judgment reserved on 06.07.2018	Judgment pronounced on 21.08.2018
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R.Chandra Gupta ... Appellant
in S.A.No.788 of 2017

J.R.Asesh Kumar ... Appellant
in S.A.No.789 of 2017

G.Sathyanarayana ... Appellant
in S.A.No.790 of 2017

S.Rajendran ... Appellant
in S.A.No.791 of 2017

Vs.

1.V.Mehanathan
2.N.Vimala
3.N.Suriaprakasam
V.Lakshmanan (deceased)
4.V.Bhaskaran
5.V.Kumar
6.V.Mohan
7.V.Kantha
8.M.Vijayalakshmi
9.V.Kalaivani
10.Vedammal
11.Poonammal
12.L.Sakthivel
13.L.Sathyaseelan
14.M.Sathish Kumar

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(Respondents 1 to 14 represented by
their duly appointed Power of Attorney agent
Veeraraghavan)

15.The District Collector
Chennai District.

16.The Tahsildar
Egmore-Nungambakkam Taluk
Chennai-600 031.

.. Respondents
in all the Second Appeals

COMMON PRAYER: Second Appeals are filed under Section 100 of C.P.C against the judgment and decree dated 06.01.2017 made in A.S.Nos.345, 343, 344 and 346 of 2015 on the file of the XV Additional City Civil Court, Chennai, reversing the judgment and decree dated 28.07.2015 made in O.S.Nos.668 of 2003, 6411 of 2002, 822 and 669 of 2003 respectively, on the file of the XII Assistant City Civil Court, Chennai.

For Appellants : Mr.A.Palaniappan
For R1 to R14 : Mr.S.Parthasarathy, Senior Counsel
for Mr.N.Anand
For R15 & R16 : Mr.V.S.Sethuraman
Addl.Adv.General-I assisted by
Ms.A.Madhumathi, AGP (CS)

Cross-Objection Nos.11 to 14 of 2018:

1.V.Mehanathan
2.N.Vimala
3.N.Suriaprakasam

V.Lakshmanan (deceased)

4.V.Bhaskaran
5.V.Kumar
6.V.Mohan
7.V.Kantha
8.M.Vijayalakshmi
9.V.Kalaivani
10.Vedammal
11.Poonammal
12.L.Sakthivel
13.L.Sathyaseelan
14.M.Sathish Kumar

(Respondents 1 to 14 represented by
their duly appointed Power of Attorney agent
Veeraraghavan) .. Cross-Objectors

vs.

1.R.Chandra Gupta

.. Ist respondent in Cross-
Objection No.11 of 2018

1.J.R.Ashesh Kumar

.. Ist respondent in Cross-
Objection No.12 of 2018

1.G.Sathyanarayana

.. Ist respondent in Cross-
Objection No.13 of 2018

1.S.Rajendran

.. Ist respondent in Cross-
Objection No.14 of 2018

2.The District Collector
Chennai District.

3.The Tahsildar
Egmore-Nungambakkam Taluk
Chennai-600 031.

.. Respondents 2
and 3 in all the Cross-Objections

COMMON PRAYER: Cross-Objections are filed under Order 41 Rule 22 C.P.C against the judgment and decree dated 06.01.2017 made in A.S.Nos.345, 343, 344 and 346 of 2015 on the file of the XV Additional City Civil Court, Chennai, reversing the judgment and decree dated 28.07.2015 made in O.S.Nos.668 of 2003, 6411 of 2002, 822 and 669 of 2003 respectively, on the file of the XII Assistant City Civil Court, Chennai.
In all the Cross-Objections:

For Cross-Objectors : Mr.S.Parthasarathy, Senior Counsel
for Mr.N.Anand

For 1st respondents : Mr.A.Palaniappan

For R2 & R3 : Mr.V.S.Sethuraman
Addl.Adv.General-I assisted by
Ms.A.Madhumathi, AGP (CS)

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COMMON JUDGMENT

Second Appeals are filed against the judgment and decree dated 06.01.2017 made in A.S.Nos.345, 343, 344 and 346 of 2015 on the file of the XV Additional City Civil Court, Chennai, reversing the judgment and decree dated 28.07.2015 made in O.S.Nos.668 of 2003, 6411 of 2002, 822 and 669 of 2003

respectively, on the file of the XII Assistant City Civil Court, Chennai.

2.The appellants, who succeeded before the trial Court and lost before the First Appellate Court, have come out with the present Second Appeals. The appellants are plaintiffs and respondents are defendants in O.S.Nos.668 of 2003, 6411 of 2002, 822 and 669 of 2003. The facts and issues involved in all the four Second Appeals are one and the same and they are disposed of by this common judgment. The parties are referred to as per their ranks in the suits.

3.The plaintiffs originally filed suits for declaration that the plaintiffs are the absolute owners of the suit properties, permanent injunction restraining the defendants 1 to 10 not to disturb peaceful possession and enjoyment of the suit properties by the plaintiffs and for permanent injunction restraining the defendants 1 to 10 from selling the suit properties. Subsequently, by amendment, they included the relief of mandatory injunction directing the defendants 1 to 10 to demolish and remove the compound wall put up by the defendants 1 to 10 on the northern and southern side of the larger extent of properties, mandatory injunction directing the defendants 1 to 10 to remove the iron gate erected and put up on the southern side of the larger extent of the suit properties, for mandatory injunction directing the defendants 1 to 10 to remove the temporary thatched two huts put in the larger extent of the properties and permanent injunction restraining the defendants 1 to 10 in any manner interfering with the possession of the larger extent of the properties including the suit properties or in any manner changing the physical features of the said properties by putting up any further constructions or alterations to change the physical features of the larger extent of the properties and thereby, in any manner hamper or diminish the absolute right claim entitlement and usage of the suit properties by the plaintiffs, as per the orders dated 02.07.2012 made in I.A.No.18342 of 2011 in O.S.No.668 of 2003, I.A.No.18334 of 2011 in O.S.No.6411 of 2002, I.A.No.18336 of 2011 in O.S.No.822 of 2003 and I.A.No.18338 of 2011 in O.S.No.669 of 2003.

3(i) According to the plaintiffs, they purchased respective suit properties measuring an extent of 6 ½ cents equivalent to 2880 sq.ft., value Rs.49,000/- vide sale deed dated 30.04.1987 bearing document No.1555 of 1987; extent of 6 ½ cents equivalent to 2880 sq.ft., value Rs.49,000/- vide sale deed dated 30.04.1987 bearing document No.1556 of 1987; extent of 5 ½ cents equivalent to 2400 sq.ft., value Rs.49,000/- vide sale deed dated 10.12.1988 bearing document No.37 of 1989; extent of 5 ½

cents equivalent to 2400 sq.ft., value Rs.49,000/- vide sale deed dated 10.12.1988 bearing document No.36 of 1989, from M/S.Tarapore and Co. Brick Works, through its partners. From the date of purchase, they are in possession and enjoyment of the vacant lands and also paying necessary taxes to the Government. The vendor of the plaintiffs put up a thatched superstructure for residence of their brick kiln workers, which was in dilapidated condition, when the plaintiffs purchased the suit properties. Originally one Kandaswamy Mudaliar purchased the suit properties in the name of his wife Visalakshi Ammal, who had one son viz., A.K.Sundaraja Mudaliar and two daughters viz., Kuppammal, Gunabushani Ammal. His daughter Gunabushani Ammal filed O.S.No.34 of 1945 for declaration of her title and recovery of possession of house and other properties relating to S.Nos.21/6, 21/7 and 17/2. The said suit was dismissed by the District Munsif Court, Poonamallee and the above property was allotted to A.K.Sundaraja Mudaliar along with the suit schedule properties. His sisters Kuppammal and Gunabushani Ammal released their shares in the suit property in favour of their brother A.K.Sundaraja Mudaliar by the deed of release dated 18.04.1955. A.K.Sundaraja Mudaliar and S.Sampath, son of A.K.Sundararaja Mudaliar sold the suit properties along with other vacant lands to M/S.Tarapore and Co. Brick Works, on 07.09.1955 bearing document No.1640/1955.

3(ii) The Government issued notification under Section 4(1) of the Tamil Nadu Land Acquisition Act, for acquiring the land and subsequently, the same was withdrawn in the year 1982. The authorities under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, initiated proceedings and after a detailed enquiry by the competent authority under the Act, held that there is no excess land in the hands of the plaintiffs' vendors. Survey number of the suit property was changed from S.No.9/1 to S.No.9/8. On application by the plaintiffs, the Tahsildar/12th defendant, after verification of the relevant documents, by the order dated 01.03.1988, restored old S.No.9/1 and made separate entry. In O.S.No.668 of 2003, again old S.No.9/1 part was sub-divided and entered as S.No.9/17 to an extent of 6 ½ cents; In O.S.No.6411 of 1012, again old S.No.9/1 part was sub-divided and entered as S.No.9/16 to an extent of 6 ½ cents; In O.S.No.669 of 2003, again old S.No.9/1 part was sub-divided and entered as S.No.9/31; Before cancelling sub-division, the objections were called for and after detailed enquiry, the change was effected on 01.03.1988. In O.S.No.668 of 2003, Town S.No.54 was given; In O.S.No.6411 of 2002, Patta No.1379 and Town S.No.49 was given; In O.S.No.669 of 2003, Patta No.1509 was given. The plaintiffs applied for grant of new survey number in their names. They sent reminders on 27.08.2002 to the Tahsildar, Egmore-Nungambakkam Taluk. On enquiry, Tahsildar reported that pattas issued in favour of the plaintiffs were cancelled as per direction of the

District Collector, Chennai/11th defendant. The plaintiffs came to know that pattas were issued to the legal heirs of one C.Velu and C.Rathinam. Pattas were cancelled without any notice to the plaintiffs and without any enquiry and fresh pattas were issued to the defendants 1 to 10. The defendants 1 to 10 at no point of time had title to the suit properties and they are not connected with the suit properties. They had never in possession and enjoyment of the suit properties. Taking advantage of the suit properties being vacant lands for decades, the defendants 1 to 10 seem to have applied for patta and obtained the same behind the back of the plaintiffs. The defendants 1 to 10 were disputing the title of the plaintiffs and are trying to interfere with their possession. Hence, the plaintiffs filed the suits for declaration and injunction.

3(iii) Pending suits, defendants 1 to 10 started putting up compound wall on eastern and southern side of the larger extent on 23.09.2011, which includes suit properties and also erected an iron gate on the southern side and put up two thatched huts in the suit properties. The plaintiffs have amended the plaints to include the relief of three mandatory injunction and additional permanent injunction. The first defendant had unlawfully entered into larger extent of the property including suit property and changed the physical features affecting the interest of the plaintiffs. The plaintiffs filed various applications for amendment including applications for appointment of Advocate Commissioner. The plaintiff/Chandragupta in S.A.No.788 of 2017 gave a complaint to the Inspector of Police, Koyambedu Police Station. Based on the said complaint, first defendant was called for enquiry, on 27.09.2011. He attended the enquiry and gave an undertaking that he will remove the iron gate and compound wall illegally put up within two days. In the meantime, first defendant filed W.P.No.22687 of 2011 and by moving lunch motion, obtained exparte order of injunction. Based on the exparte order of injunction in M.P.No.1 of 2011, first defendant had sought to change the physical feature of the property in entirety. First defendant is trying to alter the physical features of the suit property with a view to consolidate his unlawful illegal claim in respect of the suit properties with larger extent. The defendants 1 to 10 instigated third party to file various writ petitions for laying road touching larger extent of the property, but they failed in their attempt. Defendants 1 to 10 by influencing the corporation authorities had laid road in an hurried manner during Dasara holidays, when this Court was on vacation.

4.Fourth defendant died pending suits. The defendants 13 to 17 are brought on record as legal heirs of deceased fourth defendant.

5.The defendants 1 to 10 and 13 to 17 filed written statement and denied all the averments made in the plaints. According to them, the plaintiffs have not properly valued the suits. They purchased the suit properties in the year 1987 and 1988 for a sum of Rs.49,000/- respectively and they have valued the suits in the year 2002 and 2003 for the same value, after 15 or 16 years respectively. At the time of filing of the suits, value of the suits are more than Rs.15 Lakhs. The reliefs sought for in the suits are contradictory. The Courts below cannot grant relief "b" to the plaintiffs. The defendants 1 to 10 were given ryotwari patta under Section 11 of the Tamilnadu Act 26 of 1948. The said Act is a self-contained legislation with a right of appeal under Section 15(2)(a) of the Act to the Tribunal. The plaintiffs or the predecessors in title nor the Government have challenged the grant of patta under the provisions of the Act 26 of 1948. The grant of patta has become final and the same cannot be questioned by the plaintiffs at the belated stage. The patta granted by the settlement officer was notified under Sections 22 and 22(4) of the Act in the year 1962 and the same cannot be called in question in any Court of law. In view of the same, relief "c" is barred by limitation and cannot be entertained.

5(i)The plaintiffs have also statutory remedy under Section 12 of the Patta Pass Book Act. The Court has no jurisdiction to entertain the relief "C" in the plaint.

5(ii) The plaintiffs have impleaded the defendants 11 and 12, who are the District Collector and Tahsildar as parties to the suits. They have not issued any notice under Section 80(2) C.P.C. and the suits are liable to be dismissed for non-compliance under Section 80 of C.P.C.

5(iii) The plaintiffs have not impleaded Settlement Tahsildar, who issued ryotwari patta under Act, 26 of 1948 to C.Velu and C.Rathinam and therefore, suits are bad for non-joinder of proper and necessary parties as plaintiffs have not impleaded settlement tahsildar as party to the suits.

5(iv) The suit property is entirely different property from the properties purchased by the plaintiffs. The plaintiffs have purchased the property in S.No.9/3b, Koyambedu Village. S.No.9/3, Koyambedu village was converted in the year 1959 as S.No.9/1 and plaintiffs' vendor could only convey the property, which he had purchased in the year 1959 and not any other property. The property in S.No.9/3, Koyambedu Village, is not suit schedule property. The property in S.No.9/3 belonged to A.K.Sundaraja Mudaliar, who sold the same to the vendor of the plaintiffs by sale deed dated 07.09.1955, who in turn sold the suit property to the plaintiffs on 30.04.1987 mentioning survey

number as 9/3B. In the plaint schedule, suit properties are described as old S.No.9/1 part, sub-divided as S.No.9/16, T.S.No.49 and patta No.1378.

5(v) The plaintiffs' vendor M/S.Tarapore and Co. Brick Works purchased the property vide sale deed dated 07.09.1955 and sold the same vide four sale deeds dated 30.04.1987 and 10.12.1988 respectively, in favour of the plaintiffs. In the sale deed dated 07.09.1955, the property relates only to S.No.9/3, Koyambedu Village and plan also relates only to S.No.9/3 in the year 1987. The plaintiffs are now claiming the property in S.No.9/1, for which there is no document to prove the title to the plaintiffs. A.K.Sundaraja mudaliar was only a lessee in respect of 56 cents prior to ryotwari settlement, which was extinguished after coming into force the Act 26 of 1948.

5(vi) The defendants 1 to 10 filed documents to show that ryotwari patta was granted in favour of C.Velu and C.Rathinam, the ancestors of defendants 1 to 10. No appeal was filed or no rival claim was made questioning the grant of ryotwari patta in their favour in respect of old S.No.9/3, New S.No.9/1, Koyambedu Village. Revenue Tahsildar, Egmore-Nungambakkam Taluk has no power to cancel or modify the entries made in the settlement proceedings and without any material rectified the patta, that was in existence since 1955, the date of purchase by the plaintiffs vendor and settlement proceedings, on 1955.

5(vii) In the Urban Land Ceiling proceedings, it was mentioned that they were hut dwellers and plaintiffs have not explained how the suit properties became vacant site in the possession of the plaintiffs. Patta issued in favour of the plaintiffs were cancelled only after due notice and enquiry by the competent authority. No cause of action has arisen and cause of action alleged by the plaintiffs is misconceived and prayed for dismissal of the suits.

6.12th defendant, Tahsildar filed written statement and denied all the averments made in the plaints. According to the 12th defendant, when the plaintiffs' vendor purchased the property, survey number was 9/3. With effect from 01.07.1959, S.No.9/3 was converted as S.No.9/1. Old S.No.9/1 was converted as S.No.9/3 and the same was purchased by U.Krishnappa Maistry and Tmt.Valliammal by the sale deed dated 18.03.1960, bearing document No.809/1950. Based on the four sale deeds bearing document nos.1555/1987, 1556/1987, 37/1989 and 36/1989 produced by the plaintiffs, S.No.9/3 was sub-divided into S.Nos.9/9, 9/8, 9/9 and 9/7 respectively and patta was issued to the plaintiffs. When this conversion was found out, notice was issued to the plaintiffs' vendor as well as plaintiffs on 04.12.1987 and patta

was issued to the plaintiffs' vendor in S.No.9/1 for 59 cents and to the plaintiff J.R.Asesh Kumar in S.No.9/16 for 6 ½ cents, plaintiff R.Chandragupta in S.No.9/17 for 6 ½ cents, one P.Rajasekar in S.No.9/15 for 6 ½ cents and Sheela in S.No.9/14 for 6 ½ cents.

6(i) Ryotwari patta was granted to C.Velu and C.Rathinam in S.No.9/1 and old S.No.9/3, measuring 59 cents. Tahsildar has no power to change the name of the ryotwari patta holder and Commissioner of Land Administration directed the Tahsildar to restore patta as per Settlement A Register and pass orders after giving opportunity to all the parties concerned. Meanwhile, town survey number for Koyamedu Village was taken up and land in which patta granted in favour of the plaintiffs correspondence to T.S. No.49, Block No.55. As per the direction of the Commissioner, Land Administration, necessary changes registering the land in the names of C.Velu and C.Rathinam was carried out during the month of December 2001.

7. Based on the above pleadings, necessary issues and additional issues were framed. Before the learned Trial Judge, one Rajendra Prasath, father of plaintiff in O.S.No.6411 of 2002 was examined as P.W.1 and respective plaintiffs in O.S.Nos.668, 669 and 822 of 2003 examined themselves as P.Ws.2 to 4 and marked 55 documents as Exs.A1 to A55. On behalf of the defendants 1 to 10 and 13 to 17, one Veeraragavan was examined as D.W.1 and 29 documents were marked as Exs.B1 to B29. Memo filed by the Deputy Tahsildar, Egmore-Nungambakkam Taluk with town survey field register was marked as Ex.X1. Memo filed on behalf of the Settlement Officer (North) dated 25.06.2013 was marked as Ex.X2; Memo filed on behalf of the Settlement Officer (North) dated 03.07.2013 was marked as Ex.X3.

8. The learned Trial Judge considering the pleadings, oral and documentary evidence, judgments relied on by the learned counsel for the plaintiffs and defendants, decreed the suits as prayed for. Against the said judgment and decree dated 28.07.2015 made in O.S.Nos.668 of 2003, 6411 of 2002, 822 and 669 of 2003, the defendants 1 to 10 and 13 to 17 filed A.S.Nos.345, 343, 344 and 346 of 2015.

9. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge considering the materials on record, judgment of the Trial Court and re-appreciating the evidence, allowed the First Appeals and dismissed all the four suits.

10. Against the said judgment and decree dated 06.01.2017 made in A.S.Nos.345, 343, 344 and 346 of 2015 on the file of the XV Additional City Civil Court, Chennai, reversing the judgment and decree dated 28.07.2015 made in O.S.Nos.668 of 2003, 6411 of

2002, 822 and 669 of 2003 on the file of the XII Assistant City Civil Court, Chennai, the present four Second Appeals are filed by the plaintiffs/appellants.

11.The following Substantial Questions of Law are framed in all the Second Appeals at the time of admission:

"(a).Whether the judgment and decree rendered by the first appellate Court in dismissing the suit based upon the evidence of the Power of Attorney/Third Party whose bona-fides are found against by the trial Court, who has resorted to adduce evidence in the suit proceedings in respect of matters totally beyond the knowledge of the said power of attorney is sustainable in law in the light of all the contesting respondents herein have not chosen to enter the witness box being rightly considered by the trial Court is sustainable in law?

(b).Whether the judgment and decree of the I Appellate Court is sustainable on the sole reason of misconstruction of the contents of the document Ex.A1 sale deed dated 7.9.1955 in respect of recital pertaining to an extraneous item of property which is not connected to the suit property mistakenly in the plaint be the sole basis for rejecting the case of the appellant?

(c).Whether the I Appellate Court had failed to consider the entirety of the documents relied on by the respondents 1 to 15/defendants 1 to 10 are in respect of revenue records which are subsequent to the filing of the suit Ex.B6 to Ex.B18 and Ex.B19 which is payment of urban land tax receipt for the continuous period of 31 years on 3.12.2012 which is after the filing of the suit?

(d).Whether the I Appellate Court is justify in misconstruing the provisions of law in respect of the Tamilnadu Estate (Abolition and Conversion into Ryotwari) Act 26 of 1948 (herein after referred to as 'the Act') in respect of Section 11 and Section 3 and thereby dismissing the suit on the irrelevant consideration of law and fact is sustainable in law?

12.The learned counsel for the appellants/plaintiffs contended that the plaintiffs have filed comprehensive suits for declaration and injunction. Pending suits, the respondents/defendants started to encroach into the suit properties and tried to alter the physical features. Plaintiffs filed applications in all the four suits for amendment to include the relief of mandatory injunction.

12(i) At the instigation of the defendants 1 to 10, third

parties filed Writ Petition to lay a road up to the suit properties. After their achievement, they withdrew the Writ Petition.

12(ii) None of the defendants entered into witness box to give evidence. Only their Power of Attorney gave evidence. The Power of Attorney can give evidence only with regard to facts personally known to him. On the other hand, he had deposed the matter relating to the year 1956. The defendants 1 to 10 and 13 to 17 have abandoned their claim in respect of the suit properties and handed over the property to the land grabbers in the guise of Power of Attorney.

12(iii) The plaintiffs have purchased the smaller extent of property in old S.No.9/3 and new S.No.9/1. Larger extent in the said survey number is 59 cents. Both the plaintiffs and defendants 1 to 10 and 13 to 17 are claiming title over the very same property. The defendants 1 to 10 and 13 to 17 are claiming title over the suit properties based on the settlement patta granted to their predecessor in title. The plaintiffs are claiming title by sale deeds. Vendor of the plaintiffs purchased the suit properties by Ex.A1, sale deed dated 07.09.1955. In the schedule of the property, S.No.9/3 measuring 59 cents has been mentioned. S.No.9/3 was converted into S.No.9/1. There is no dispute about this property purchased by the plaintiffs' vendor. In the sale deed, it is not mentioned as to how A.K.Sundaraja Mudaliar, vendor of the plaintiffs got the property. There is no mentioning about how he got other properties.

12(iv) The learned counsel for the appellants/plaintiffs contended that counsel who appeared for the plaintiffs culled out the details from the sale deed to trace the title of A.K.Sundaraja Mudaliar. The learned I Appellate Judge misdirected himself, stating that the plaintiffs have not produced title deeds of A.K.Sundaraja Mudaliar with regard to suit properties and allowed the First Appeals.

12(v) In the patta distribution list marked as Ex.B27, the name of A.K.Sundaraja Mudaliar is shown as owner. Subsequently, C.Velu and C.Rathinam names were fraudulently inserted. In the cross-examination, D.W.1 has deposed that suit property was Government Poramboke land. It was in possession of A.K.Sundaraja Mudaliar and after the Act, the possession was taken over by the Government and assigned to C.Velu and C.Rathinam. The defendants have not produced any assignment. The Government or Assistant Settlement Officer does not have any power to deal with Poramboke land or communal land under the Act 1948. The Trial Court has set out the admitted facts. The I Appellate Court has failed to consider the admitted facts as set out by the learned Trial Judge. The learned I Appellate Judge

misconstrued the documents as well as pleadings and erroneously reversed the findings of the Trial Court.

12(vi) The learned I Appellate Judge failed to properly consider the evidence of D.W.1 and various admission made by him during cross-examination and erroneously dismissed all the four suits.

12(vii) The authorities under Urban Land Ceiling Act in the proceedings considered the land of M/s.Tarapore and Co. Brick Works, including suit properties, holding that there is no excess land. Exs.A5, A15, A18 and A19 clearly established the possession and occupation of the suit properties and larger extent by predecessor in title of the plaintiffs. Non-mentioning of R.S.No.9/1 in the schedule to the sale deeds of plaintiffs is not fatal to their case.

12(viii) The defendants 1 to 10 only with a view to create confusion has alleged that boundaries in respect of suit schedule property of the defendants are different from the properties claimed by the plaintiffs. Documents produced by the defendants 1 to 10 does not create any right in respect of the suit schedule properties and documents are subsequent to purchase by the plaintiffs.

12(ix) Both the Courts below have not held that there is a dispute with plaintiffs and defendants 1 to 10 who are claiming right in respect of the property. The I Appellate Court failed to see that Settlement Officer has no jurisdiction to resolve the said dispute, but only the Civil Court has power to resolve the said issue. The I Appellate Court erred in holding that plaintiffs have failed to examine their vendor M/s.Tarapore and Co. Brick Works to prove Ex.A1. The I Appellate Court ought to have seen that Ex.A1, sale deed is more than 30 years old and there is no dispute with regard to conveyance of Ex.A1. The I Appellate Court erred in holding that plaintiffs cannot succeed on the weakness of the defendants. The plaintiffs have proved the title by marking the documents as well as by letting in oral evidence. The I Appellate Court failed to consider that various representations made on behalf of the defendants 1 to 10 to the Revenue Authority and settlement authority by third parties are self-serving documents devised for the purpose of knocking away the property. The I Appellate Court has misconstrued Sections 11 and 3 of Tamilnadu Estate (Abolition and Conversion into Ryotwari) Act 26 of 1948 and dismissed the suits on irrelevant consideration of law. In support of his contentions, the learned counsel for the appellants/plaintiffs relied on the following judgments:

(1) 2015-5-L.W.221 (Narendra Prasad & others Vs. Indian Express Newspapers (Bombay), Private Limited, Express Towers, Nariman Point, Bombay and others):

"14.1. Generally, the copy of the xerox copy

is inadmissible in evidence. But, so far as this case is concerned, it is the party, who is opposing the document himself, has relied upon the document, in the suit in the Bombay High Court. Therefore, it is not open to the defendants to object the document on the ground that it is a xerox copy. But, the nature of document, having not been proved, the partnership deed can be relied upon only for the limited extent of showing that the defendants themselves were in possession of such document and that it was sought to be filed in the Bombay suit, as a document."

(2) 88 LW 138 (A.Chinnaswamy Gounder Vs. Chinnaswami Gounder and others):

"2. In our opinion, the learned Judge's view cannot be sustained. The effect of the notification under Section 3 of the Abolition Act is to transfer the ownership of the entire estate, including communal land, to the Government, and the vesting is absolute and free from all encumbrances. It is now well settled that no title to any part of the land vests in any person except as provided under the Act and through the procedure envisaged under its provisions. That being so, ryotwari patta would issue either for ryoti land or for land shown to be private land either to the ryot or to the quondam landholder, as the case may be. As for communal lands, the Act does not contemplate conferment of ryotwari patta on any one. Be it noted that the ownership in the communal lands is with the Government, which can deal with it in any way it likes, subject of course, to the communal character of the land. That precisely is what the Board did in this case. Section 19-A deals with such communal lands. Sub-section (2) of the section is specific that in respect of such lands, Government may allow a person to remain in possession subject to payment of assessment and on such specific terms and conditions as may be specified. It is not merely communal land which is not likely to be used as such or would cease to be as such that is within the scope of Section 19-A. Even lands which are still communal lands and required for communal purposes would fall within the ambit of Section 19-A as its terms obviously indicate. The observations relied on by the learned Judge do not have the effect of taking out all such lands as are likely to be not used for communal purposes from the purview of Section 19-

A. On facts, the decision in the writ appeal went on an entirely different footing, which has no relevance to the present consideration."

(3) 87 LW 276 (T.M.Lakshminarayana Ayyar Vs. Nallachi Ammal and others):

"8. On a proper construction of the provisions of the Act it is clear to us that Section 56 (1) (c) is not to be linked with Section 11 of the Act. It is Under Section 11, provision is made for grant of ryotwari patta to a ryot. Under Sections 12 to 15, there is provision for the grant of ryotwari patta to the erstwhile landholder. Section 15 of the Act says that the Settlement Officer shall examine the claim of the landholder for a ryotwari patta Under Sections 12, 13 or 14 as the case may be and decide in respect of which land the claim should be allowed. There is provision in this section for an appeal to the Tribunal and the section says that the decision of the Tribunal on any such appeal shall be final and not liable to be questioned in any Court of law. A provision similar to Section 15 which deals with claims Under Sections 12, 13 and 14 of the Act is not found as far as Section 11 of the Act is concerned. Sections 11 to 17 are under the heading "Grant of Ryotwari Pattas". While the Legislature has enacted Section 15 providing that the decision of the Tribunal regarding claims Under Sections 12, 13 and 14 by the land-holder is final and not being liable to be questioned in any Court of law, it has not made a similar provision in respect of claims by ryots for ryotwari patta Under Section 11."

(4) 2011 (4) CTC 499 (M.Govindan Vs. The Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai 5 and others)

"14. It means, every ryot shall be entitled to a ryotwari patta with effect from the notified date in respect of all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in his holding, subject to the condition that such inclusion and possession of land should be prior to 1st day of July 1945.

15. In this case, though the claim of the petitioner is that he was in continuous possession of the land in question from 1952 and he derived title and continuous possession from his

predecessors-in-title and that the said land had been properly included in A-Register in the names of his predecessors-in-title prior to 01.07.1945, he could not produce any document prior to 01.07.1945 before the authorities to prove that the land was properly included in the holding of his predecessors-in-title. From this, it can be stated that the petitioner had not fulfilled the condition laid down under Section 11 (a) of the Act and that the claim of the petitioner was time barred."

(5) (2005) 2 SCC 217 (Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And others):

"12. In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

13. Per contra, the learned Senior counsel for the defendants 1 to 10 and 13 to 17 contended that plaintiffs failed to prove their case as they failed to prove by any of the documents of their title or predecessor's in title. The plaintiffs claim that suit property was purchased by Kandaswamy Mudaliar in the name of his wife, Visalakshi Ammal. The said document was not produced by the plaintiffs. According to the plaintiffs, Gunabushani Ammal, daughter of Visalakshi Ammal filed suit against her brother A.K.Sundaraja Mudaliar for partition and suit was dismissed. In appeal A.S.No.176 of 1949, a compromise decree was passed and subsequently, two daughters of Visalakshi Ammal and Gunabushani Ammal executed a release deed dated 18.04.1955 releasing their right in the suit property and other properties. The plaintiffs have not produced any of the above documents. The plaintiffs have given a go by to the pleadings in respect of the above documents and come up with new case that earlier counsel by mistake mentioned those documents for which the plaintiffs should not be blamed. Contrary to the said documents, the plaintiffs as P.Ws.1 to 4 deposed that they are tracing their title as per the document mentioned in the plaints. The plaintiffs have not taken any steps to amend the plaint to delete the said averments, if it is really a mistake. The plaintiffs have to prove their title. The plaintiffs have failed to identify the suit schedule property. The defendants 1 to 10 and 13 to 17 have denied that suit properties and properties mentioned in the sale deeds are same properties. The plaintiffs as P.Ws.1 to 4 admitted in cross-examination that they have purchased the property in S.No.9/3, but filed the suits for property in S.No.9/1. They also admitted that they had knowledge that S.No.9/3 was changed as S.No.9/1 in the year 1959 itself. But in the sale deeds, they have shown the survey number as 9/3. The plaintiffs also admitted that boundaries mentioned in the sale deeds annexed in sketch deal only with S.No.9/3 and not with S.No.9/1 in respect of field map of entire S.No.9 marked as Ex.B10.

13(i) The plaintiffs have not produced any document to prove the possession of their vendor since 1955. On the other hand, the defendants 1 to 10 have produced Ex.B2, descriptive memoir of Koyambedu Village ryotwari settlement made in favour of C.Velu and C.Rathinam, Ex.B3, Ryotwari settlement made in faovur of C.Velu and C.Rathinam, Exs.B4 to B7, extracts from TSLR in favour of C.Velu and C.Rathinam issued by Tahsildar and Exs.B12 to B19 to prove their possession and enjoyment of the suit properties. The plaintiffs have admitted the possession of defendants 1 to 10 and 13 to 17 and their ancestors even prior to their purchase of suit properties. Ex.A12, withdrawal notification of land acquisition by Government dated 19.11.1982 and Exs.A21 to A23 show that S.No.9/1 stands only in the name of

defendants 1 to 10 and 13 to 17 ancestors C.Velu and C.Rathinam. The recitals in the sale deeds by which the plaintiffs purchased the properties after verifying the documents go to show that plaintiffs have admitted the possession of defendants 1 to 10 even prior to their purchase. There is no fabrication or fraud played in respect of revenue record. Exs.B2 and B3 are of the year 1973 and plaintiffs are challenging the same in the year 2002 on the ground that they are fabricated documents. The plaintiffs have not produced any documents to substantiate their case. On the other hand, the documents were marked through P.W.2, who admitted the documents and also admitted that property in old S.No.9/3, new S.No.9/1 is in the names of C.Velu and C.Rathinam.

13(ii) The plaintiffs contend that Exs.B26, B27 and B29 are fabricated ones, but on the other hand, they are relying on Exs.B27 and B28 to show that properties were standing in the name of A.K.Sundaraja Mudaliar, vendor of the plaintiffs. If Exs.B27 and B28 are accepted, then A.K.Sundaraja Mudaliar is only a lessee under the Government for one crop only. If the same is rejected, the plaintiffs cannot rely on the same. Exs.B8, B11 and B29, communication made by the settlement officer, Special Commissioner of Land Administration and Tahsildar relating to rectification of error committed by the Revenue Tahsildar show that Revenue Tahsildar has no power or jurisdiction to make changes in Ryotwari settlement record. Based on the representation Ex.B26, changes haven been effected by appropriate revenue authority and the same has become final as no Writ Petition has been filed challenging the changes made by the revenue authority. The appellants are not entitled to challenge the said document. On the other hand, P.Ws.1 and 2 in cross-examination admitted that they have not filed any petition challenging the cancellation of patta issued to them and has not taken any steps contending that Ryotwari patta issued is wrong. P.W.1 also admitted that he has not filed any appeal to the Government as per Patta Pass Book Act. The suit is barred by law. Ex.A12, withdrawal notification dated 19.11.1982 reveals that vendor of the plaintiffs does not have any right and title in S.No.9. C.Velu and C.Rathinam who were the ancestors of the defendants 1 to 10 and 13 to 17 are shown as having right in the land in S.No.9/1. The plaintiffs have mentioned Ex.A12 in their sale deeds of the year 1987 and ought to have filed suits with regard to Ex.A12, within three years from the date of receipt of the sale deeds. P.W.1 has admitted that in Ex.A12, names of C.Velu and C.Rathinam have been mentioned in the land S.No.9/1B and the plaintiffs' vendor name was mentioned in S.No.10/1. He also admitted that after purchase and after obtaining patta in the year 1988, he has not constructed any super structure and he also admitted that he knew that patta was in the name of different person even before he purchased the suit property.

13(iii) P.W.4 admitted that in Ex.A12, the name of his vendor or his name is shown as owner in respect of land in S.No.9/1. The plaintiffs have not properly valued the suits and have not paid correct Court fee. They have valued the suits based on the value as mentioned in the sale deeds and P.Ws.2 to 4 admitted that suit property will be Rs.10,00,000/- per ground in the year 2003 and one ground will be Rs.2,00,00,000/- and Rs.1,00,00,000/- respectively. For the above reasons, the learned Senior Counsel prayed for dismissal of all the Second Appeals. In support of his contentions, the learned Senior Counsel for the defendants/respondents relied on the following judgments:

(1) (1956) 2 MLJ 578 (T.S.Govindaraj Vs. A.B.Kandaswami Goundar and another):

"13.The other point raised by learned Counsel for the appellant does not merit any serious consideration. The entire case of the plaintiff was rested on the existence of a partnership relationship between himself and the defendants. No doubt the existence of that relationship was denied by the defendants and they had also stated that they were the agents of the plaintiff to carry out his orders. It is clear law that the plaintiff cannot be allowed to abandon his own case adopt that of the defendants and claim relief on that footing. If the plaintiff had put forward the case of agency, it is possible that there might be other defences open to the defendants. It is sufficient in this connection to refer to the decision in Ramdoyal v. Junmenjoy Coondoo (1887) I.L.R. 14 Cal. 791 (F.B.), where their Lordships have held:

It would certainly be an unusual thing to allow a plaintiff, who has alleged one state of facts as against the defendant who has denied that case and alleged another state of facts, to turn round and ask to be allowed to carry on the suit and claim relief on the ground that the defendant's statement of facts was true and his own false."

(2) (1960) 2 MLJ 477 (Subramania Mudaliar Vs. Ammapet Co-operative Weavers Production and Sales Society Ltd. By its President S.Gopalaswami Mudaliar):

"7.According to the plaintiffs evidence, the

entire terms were not communicated. He was only informed of the acceptance and not about completing the transaction before a particular date. He cannot be allowed to turn round and abandon his case and rely upon the defendant's case that the entire resolution was communicated to him. As pointed out by Rajagopala Aiyangar J. in Govindaraj v. Kandaswami Gounder, AIR 1957 Mad 186, "the plaintiff cannot be allowed to abandon his own case, adopt that of the defendant's and claim relief on that footing", On the facts, therefore, I hold that there has been no communication of the resolution to the plaintiff and therefore there has been no completed contract in this case, and in this view the plaintiff's case must fail."

(3) AIR 2004 SCC 4365 (Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jamayath Palli Dharas Committee and others):

"7. ... No doubt, it was brought to our notice that the trial court in its judgment has stated that the plaintiff-committee was actually acting as a mutawalli but the first appellate court has clearly pointed out that the definite case pleaded by the plaintiff was based on the title to the plaint schedule property by virtue of Exbt. A-2 and that it was not a specific case in the pleading of the plaintiff that by virtue of definition of mutawalli under 1954 Wakf Act the plaintiff-committee actually acting as a mutawalli was entitled for relief. In this case, the first appellate court in para 26 of its judgment has observed thus:-

"26. It would appear from a reading of the judgment of the lower court that the lower court proceeded on the footing that once it is found that the title on the plaint schedule property set up by the appellant is not established the first respondent who filed the suit for declaration of title and recovery of possession on the strength of title on the plaint schedule property is entitled to succeed in the suit. It appears that the lower court forgot the cardinal principle in a suit for declaration of title and recovery of possession on the

strength of title, the plaintiff can succeed only on establishing his title to the plaint schedule property and he cannot succeed on the weakness of the case put forward by the defendant. My foregoing discussions clearly establish that the first respondent has not succeeded in establishing its title to the plaint schedule property to obtain the declaration of title and recovery of possession of the plaint schedule property though rival title to the plaint schedule property set up by the appellant is also found against by him. Therefore, it is clear that the first respondent is not entitled to the declaration of title to the plaint schedule property and recovery of possession of the plaint schedule property along with the building situated therein on the strength of the plaintiff's title and for the permanent prohibitory injunction restraining the appellant from demolishing or altering the existing building tomb situated in the plaint schedule property."

(4) (2014) 2 SCC 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others):

"15. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff."

(5) AIR 1968 SCC 1413 (Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others):

"Headnote: A part in possession of best evidence which would throw light on the issue in controversy withholding it - Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him - party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it."

(6) 2007 (2) CTC 553 (Govindarasami Naidu Vs. Shanmuga Nattar and another):

"16. It is evident from the Section 114 of the

said act that the court is bound in every instance to presume against that party on whom the burden of proof is directed to lie. The said section also declares that the court may, in all cases whatever, draw from the facts before it, whatever inferences it thinks just. Nine of the most important of them are given by way of illustrations to the Sections. Illustration (g) deals with the presumption arising from withholding evidence. The conduct of the person withholding the evidence may be attributed to a supposed consciousness that the evidence, if produced, would operate against him."

.. ..

18. With regard to another argument advanced by the learned counsel for the appellant that neither the respondents let in oral evidence nor marked any documents i.e. the second substantial question of law, it is well settled that the Plaintiff must establish his case and he will not succeed automatically on the weakness of the Defendant as held in the case of Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jamayath Palli Dharas Committee and others (AIR-2004-SC-4365), by the Apex Court as under:-

"8..... The Plaintiff could only succeed on the strength of its case and not on the weakness found in the case of the Defendant, if any..."

In view of the above said discussions, this court is of the view that the appellant as the Plaintiff has to prove his own case and that he will not succeed automatically on the ground that the respondents herein neither let in any oral evidence nor marked any documents, besides, this court confirms the adverse inference drawn by the lower appellate court. Accordingly, the second substantial question of law is answered against the appellant herein."

(7) 2018 - 1 - L.W.62 (Manickammal (Deceased) and others Vs. R. Jayaraman (Deceased) and others):

"11. From the rival contentions put forth by the respective parties, it is found that the dispute between the parties lies only with respect to the western boundary of the suit property. Therefore, it has to be seen as to what is the

actual property purchased by the plaintiffs under Ex.A2. At the foremost, it is found that the plaintiffs have not described the suit property properly for claiming the reliefs sought for in the plaint. According to the plaint, the suit property is stated to be situated in Thiruvannamalai Registration District, Vettavelam Village, in Survey No. 398/6A 0.68 cents and the plaintiffs claim the reliefs of declaration and permanent injunction as regards the above property as described in the plaint. Conveniently, the plaintiffs have suppressed the four boundaries, within which, the above said 0.68 cents is located in survey No. 398/6. Even as per the documents produced and relied upon by the plaintiffs and marked as Exs.A10 to 18 Adangal extracts, and the testimony of P.W.1, it could be seen that the plaintiffs are very well aware that survey No. 398/6 had been sub-divided as 398/6A and 398/6B, much prior to the institution of the suit and accordingly, it is found that all along for a long period the sub-divisions brought into effect in survey No.398/6 has been recognised by the revenue authorities and accordingly, they had been issuing necessary revenue records pertaining to the subdivisions effected in the above said survey number. If that be so, when the plaintiffs have full knowledge that the survey No.398/6 had already been subdivided as stated above, it is for them to mention as to in which subdivision of survey No.398/6 they are claiming the reliefs sought for in the plaint. When the suit has been laid for necessary reliefs in respect of the immovable property i.e. where the subject matter of the suit is the immovable property, as per Order 7 Rule 3 CPC, the plaint shall contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. When the description of the property given in the plaint is read in the light of the provisions contained under Order 7 Rule 3 CPC, it could be seen that the plaintiffs have not clearly described the property, so as to identify it with correct boundaries and also with correct survey numbers as had been demarcated in the record of settlement or the revenue survey by the revenue authorities. When to the knowledge of the plaintiffs the suit survey No. 398/6 had been

already subdivided, it is for the plaintiffs to give the clear description of the suit property as to in which subdivision of the survey No.398/6 they are claiming the reliefs sought for in the plaint. If according to the plaintiffs, they are claiming the reliefs in respect of the particular subdivision effected in Survey No.398/6, accordingly, they should have given the description of the subdivisions effected in survey No.398/6 and furnished the subdivision number and also the boundaries, within which, the said subdivision is actually located. However, it is found that the plaintiffs have neither given the subdivision number effected in respect of the survey No.398/6 and also failed to furnish the boundaries, within which, according to them, the suit property is located, for which, they are claiming the reliefs in the suit. Therefore, it is seen that the plaintiffs claim to the suit property by giving a vague description of the suit property without giving correct subdivision number, boundaries etc., would only go to raise a high suspicion in the plaintiffs' case with reference to their claim of entitlement to the suit property as described in the plaint."

14.The learned Additional Advocate General-I appearing for the defendants 11 and 12 contended that patta proceedings initiated by 12th defendant is without taking into consideration Ryotwari proceedings and without notice to the registered holders and interested persons i.e., C.Velu and C.Rathinam. When it was brought to the notice of the 11th defendant about the Ryotwari proceedings, after considering the fact, he directed the 12th defendant to make necessary changes in consonance with the proceedings under Madras Estate Abolition, Act 26 of 1948 and recorded C.Velu and C.Rathinam as interested persons. The direction issued by the 11th defendant is as per law and same is valid and legal. The changes made by the 12th defendant as per the direction of 11th defendant is valid. The plaintiffs have not challenged the modification in patta as per Section 12 of the Tamil Nadu Patta Pass Book Act. Having failed to do so, the plaintiffs are not entitled to a direction to the defendants 11 and 12 as prayed for in the suit.

15.Heard the learned counsel for the appellants/plaintiffs as well as the learned Senior Counsel for the respondents 1 to 14, learned Additional Advocate General-I assisted by the learned Additional Government Pleader (CS) for respondents 15 & 16 and perused the materials available on record.

Substantial Question of Law (a):

16(a).The plaintiffs filed respective suits against the defendants 1 to 12. The 4th defendant died pending suit. The legal heirs of the 4th defendant were brought on record as defendants 13 to 17.

16(b).The plaintiffs have filed suits for declaration of title, permanent injunctions and mandatory injunctions. The defendants 1 to 10 and 13 to 17 while contesting the suit, did not appear before the Court during trial and did not give any evidence. Their Power of Attorney, one Veeraraghavan was examined as D.W.1 and gave evidence on behalf of the defendants 1 to 10 and 13 to 17. The Power of Attorney deposed with regard to the facts which were not in his personal knowledge. He also admitted the said fact in his cross examination. The Courts below did not accept the evidence of said Power of Attorney. The learned I Appellate Judge has extracted the evidence of D.W.1 in the cross examination, wherein he admitted that he is giving evidence based on the information received from the defendants 1 to 10 and 13 to 17. The learned I Appellate Judge in view of the same, has held that the evidence of D.W.1 is not acceptable and the learned I Appellate Judge did not rely on the evidence of D.W.1 while allowing the appeals. On the other hand, the learned I Appellate Judge has specifically stated that Power of Attorney can depose only with regard the facts known to him and the evidence given by him is not acceptable.

16(c).The learned I Appellate Judge has considered the pleadings, oral and documentary evidence let in by the plaintiffs and the documents produced and marked by the defendants 1 to 10 and 13 to 17 and held that plaintiffs have not proved their case that they are owners of the suit properties. The learned counsel for the appellants/plaintiffs in Second Appeals repeatedly vehemently contended that defendants 1 to 10 and 13 to 17 have not got into witness box to give evidence and evidence of D.W.1, their Power of Attorney is not acceptable and learned I Appellate Judge erred in relying on the evidence of D.W.1 and erroneously allowed the First Appeals filed by the defendants 1 to 10 and 13 to 17. The said contention is contrary to the reasoning of the learned I Appellate Judge in paragraph No.81 of the judgment in the first appeals, wherein he has categorically held that Power of Attorney can represent the defendants 1 to 10 and 13 to 17, but he has no right to depose on behalf of the defendants 1 to 10 and 13 to 17 with regard to any oral evidence about the facts not personally known to him. After holding so, the learned I Appellate Judge has held in the said paragraph that plaintiffs can succeed or fail on the strength of their own case and not on the weakness of the defendant's case. In view of the above facts, the Substantial Question of Law A is answered against the

appellants.

Substantial Questions of law (b), (c) and (d):

17(a).The plaintiffs have filed suits, claiming absolute right over the respective suit properties based on sale deeds by which they have purchased the properties. The plaintiffs have marked Exs.A2 and A17, both dated 30.04.1987 and Exs.A50 and A52, both dated 10.12.1988. According to the plaintiffs, their vendor purchased 59 cents in Survey No.9/3 along with other properties by sale deed dated 07.09.1955 from one A.K.Sundaraja Mudaliar. The said sale deed was marked as Ex.A1. According to the plaintiffs, originally, the suit properties and other properties belonged to one Kandaswamy Mudaliar, who purchased the said properties in the name of his wife, Visalakshi Ammal. The said Visalakshi Ammal had one son, A.K.Sundaraja Mudaliar and two daughters, Kuppammal, Gunabushani Ammal. The second daughter Gunabushani Ammal filed O.S.No.34 of 1945 against her brother A.K.Sundaraja Mudaliar, in respect of properties in Survey Nos.21/6, 21/7 and 17/2 on the file of District Munsif Court, Poonamallee. The said suit was dismissed. The said Gunabushani Ammal filed first appeal and compromise decree was passed in the first appeal, whereby the properties in Survey Nos.21/6, 21/7 and 17/2 and other properties including the properties in Survey No.9/3 was allotted to A.K.Sundaraja Mudaliar.

17(b).Their further contention is that Kuppammal and Gunabushani Ammal by the deed of release dated 18.04.1955, released their right in the above properties and properties in Survey No.9/3. The plaintiffs' vendor purchased the property in Survey No.9/3 along with other properties by the sale deed dated 07.09.1955, marked as Ex.A1 from A.K.Sundaraja Mudaliar. Except Ex.A1, sale deed, the appellants have not produced any other document with regard to title of their vendor's vendor i.e., plaint in O.S.No.34 of 1945, decree dismissing the said suit, compromise decree in the first appeal as well as release deed dated 18.04.1955 executed by two sisters of A.K.Sundaraja Mudaliar. On the other hand, the defendants have marked Ex.B1, the certified copy of release deed executed by two sisters of A.K.Sundaraja Mudaliar. The learned I Appellate Judge considering Ex.B1, release deed dated 18.04.1955, found that the said release deed does not relate to the properties in Survey No.9/3. On the failure of the plaintiffs to produce documents relied on by them to substantiate their contention that their vendor's vendor was absolute owner of land in Survey No.9/3 and that Ex.B1 does not relate to the property in Survey No.9/3, held that plaintiffs have failed to prove the title of their vendor's vendor.

17(c).Further in Ex.A1 also, it is not mentioned as to how

A.K.Sundaraja Mudaliar acquired the title to the suit properties. The learned counsel for the appellants/plaintiffs contended that the earlier counsel made a mistake in referring to the documents mentioned in sale deed dated 07.09.1955 Ex.A1 and traced the title of the vendor of the plaintiffs' vendor. But the plaintiffs have even now failed to furnish any details about the title of their vendor's vendor in respect of the property in Survey No.9/3. The plaintiffs relied on Exs.B27 and B28, produced by the defendants 1 to 10 and 13 to 17, marked through witness of plaintiffs to contend that their vendor's vendor was shown as owner in the said document. The name of their vendor's vendor was deleted and names of C.Velu and C.Rathinam were incorporated as owners. The said two documents are patta distribution list and Settlement Adangal. Both these documents are xerox copies. Even though these documents were marked by the defendants 1 to 10 and 13 to 17 through plaintiffs' witness without any objection from plaintiffs and both are relying on same documents, the learned I Appellate Judge rejected the same on the ground that xerox copies of the documents are inadmissible in evidence as per Section 65 of the Indian Evidence Act. The learned I Appellate Judge has elaborately considered the scope of the Indian Evidence Act and for valid reasons rejected these documents. From the materials on record, it is seen that both the plaintiffs and defendants have not laid down foundation and has not complied with the grounds based on which xerox copies can be marked as secondary evidence. As rightly held by the learned I Appellate Judge, Exs.B27 and B28 are inadmissible in evidence and both the plaintiffs and defendants cannot rely on the same to substantiate their contention that plaintiffs' vendor was owner or C.Velu and C.Rathinam, predecessor of respondents 1 to 14 are Ryotwari patta holders. The plaintiffs have failed to prove the title of their vendor's vendor, A.K.Sundaraja Mudaliar and therefore, their vendor M/S.Tarapore and Co. Brick Works has not acquired any valid title. The plaintiffs who have purchased from M/S.Tarapore and Co. Brick Works have not acquired any valid title.

17(d). The learned counsel for the appellants contended that both the plaintiffs and defendants rely on Exs.B27 and B28. Both the documents are xerox copies. The defendants produced the same and were marked through the witnesses of the plaintiffs. In such case, the parties cannot object to the said documents. It is seen that the learned I Appellate Judge did not reject those documents on objection by either the plaintiffs or defendants. The learned I Appellate Judge rejected the documents as per provision of Section 65 of Evidence Act. The learned counsel for the appellants relied on the judgment reported in 2015-5-L.W.221 (Narendra Prasad and others vs. Indian Express Newspapers

(Bombay) Private Limited, Express Towers, Nariman point, Bombay and others) and contended that though both the parties are accepting these documents, the learned I Appellate Judge erred in rejecting the same. The learned counsel for the appellants contended that in Ex.B27, the plaintiffs vendors' vendor name was wrongly deleted and names of C.Velu and C.Rathinam were inserted without any basis. In these documents, the suit property is shown as Government poramboke land and C.Velu and C.Rathinam cannot be shown as ryotwari owners and interested persons. Both the above contentions are not acceptable. The plaintiffs knowing fully well that the defendants' predecessors were shown as interested persons even before filing of the suits did not take any steps to set aside the entries and subsequent issue of patta to the defendants either as per provisions of Estate Abolition Act or Patta Pass Book Act. As per Section 3(b) of Madras Abolition Act, Government poramboke land was also included in the provisions of the Act and Assistant Settlement Officer and Settlement Officer have power to deal with such properties. In the said documents, the suit properties with larger extent was shown as Government poramboke land. The plaintiffs admit those documents and have not taken any steps to prove that the property in dispute is not a Government poramboke land. Once the land is shown as Government poramboke, the plaintiffs' vendors' vendor did not have any right, interest or title to the said property and did not convey any valid tittle to the plaintiffs' vendor. The above facts clearly show that the plaintiffs have failed to prove their title to their respective suit properties.

17(e).The properties purchased by the plaintiffs' vendor, M/S.Tarapore and Co. Brick Works is in Survey No.9/3, Koyambedu Village. Subsequently in the year 1959, the Survey Number was changed to Survey No.9/1. Inspite of the same, the plaintiffs who have purchased the suit properties on 30.04.1987 and 10.12.1988 have mentioned in schedule to the sale deeds, survey number of the properties purchased by them as 9/3 and the same was subdivided as Survey Nos.9/17, 9/16 and 9/31. Apart from relying on the sale deeds, the plaintiffs relied on the proceedings of Assistant Commissioner, Urban Land Ceiling and Urban Land Tax paid by them. The plaintiffs also are relying on the patta proceedings.

17(f).On the other hand, the defendants 1 to 10 and 13 to 17 are denying the title of the plaintiffs on the ground that the suit property is different from the property purchased from the plaintiffs and during settlement proceedings, after abolition of Estate/Inam, Ryotwari patta was issued in favour of their ancestors, C.Velu and C.Rathinam. Before considering the claim of the title of the plaintiffs, based on the Urban Land

documents and patta proceedings, the contention of the defendants with regard to settlement proceedings has to be considered. The defendants produced Exs.B2 to B8, the settlement proceedings. Exs.B2 and B3 are Descriptive Memoir of 106, Koyambedu Village Ryotwari settlement made in favour of C.Velu and C.Rathinam and Ryotwari settlement in favour of their vendor. Ex.B4 is TSLR which is equivalent to patta in favour of C.Velu and C.Rathinam for Survey No.9/1. Similarly, Ex.B5 is the Settlement Adangal, issued by the Collector and Ex.B6 is the TSLR for Survey Nos.9/28, 9/16, 9/15, 9/14 and 9/17 in favour of C.Velu and C.Rathinam issued by the Tahsildar, whereas Ex.B7 is the TSLR in respect of Survey Nos.9/28, 9/17, 9/16, 9/15 and 9/14 in the names of legal heirs of C.Velu. As far as Ex.B2 is concerned, it is dated 31.10.1962, whereby the entire Koyambedu Village was classified as inam estate. As per Section 2 of Tamilnadu Estate (Abolition and Conversion into Ryotwari) Act 26 of 1948, once a property is declared as inam estate, the same rest with the Government free of all encumbrances. As per Section 3B of the Act, even a Government Poramboke land is governed under Act 26 of 1948.

17(g).In the present case, the defendants have produced documents to show that as per Ryotwari settlement, the defendants' predecessor C.Velu and C.Rathinam were shown as persons in possession of the suit properties and Ryotwari settlement is made in their favour. These proceedings are made under Section 11 of the Act. The Government has notified the said settlement by publication as per Section 22 of the Act. Once a notification is made under the Act, aggrieved person has power to challenge the same by filing appeal to the authority prescribed in the Act as per Section 22 (4) of the Act. The plaintiffs have admitted that they were aware of Ryotwari proceedings even before filing of the suit. They also admitted that they have not taken any steps to set aside the settlement proceedings. In view of the same, the said proceedings have become final and Ryotwari settlement of C.Velu and C.Rathinam also has become final. The defendants who are legal heirs of C.Velu and C.Rathinam have become owners of the suit properties based on Riowari settlement.

17(h).Ryotwari patta is not a document of title, but that is only the document issued by the Government after abolition of estate as well as inam to the eligible persons who fulfills the conditions contemplated under the Act. Further, once the Act comes into force, land in question rests with the Government free from all encumbrances and all the earlier transaction and erstwhile ownership lapses. In view of provision of the Act, a person is entitled to put forth Ryotwari settlement and Ryotwari patta to claim title to the properties in question.

17(i).As far as second ground put forth by the defendants that suit properties is entirely different from the properties purchased by the plaintiffs is concerned, the plaintiffs themselves have admitted in their cross examination that there are discrepancies with regard to description of the property scheduled to the plaints and sale deeds and also differences in the boundaries. The plaintiffs originally described their property in the plaint to the suits as property situate in Survey No.9/3 and they have given sub-division as Survey Nos.9/17, 9/16 and 9/31. Subsequently, they amended the plaint to include Survey No.9/1. Even then, they have not amended the description of the property in the plaint put in consonance with the properties mentioned in the sale deed. The learned I Appellate Judge has considered the boundaries mentioned in the sale deeds, plaint schedule as well as Settlement Adangal. A reading of all the above three documents in entirety reveal that plaintiffs have not claimed declaration with regard to properties purchased by them and properties described in the schedule to the plaint are different.

17(j).As far as Urban Land Ceiling are concerned, the plaintiffs have relied on Ex.A6, the report of the Assistant Commissioner, Urban Land Ceiling dated 29.08.1990, wherein it has been held that the lands in possession of the plaintiffs' vendor is within the ceiling limit. Ex.A14 is the notice dated 10.03.1990 issued by Assistant Commissioner, Urban Land Ceiling to the vendor of the plaintiffs. It is the case of the plaintiffs that even before the proceedings under Urban Land Ceiling Act initiated, they have purchased the properties in the years 1987 and 1988. Earlier to the same, the Ryotwari settlement has taken place and C.Velu and C.Rathinam were the Ryotwari holders. The Assistant Commissioner, Urban Land Ceiling has not issued any notice to the plaintiffs who according to the plaintiffs have become owner of the suit properties or defendants 1 to 10 and 13 to 17 who are the legal heirs of C.Velu and C.Rathinam. Ex.A7 mentions 4 huts situate in the property under consideration by the authorities under Urban Land Ceiling Act. There is no mention about the names of persons who were in occupation at that time. As far as plaintiffs are concerned, they have purchased the vacant land. There is no pleadings or evidence to show that after removal of said huts only, the plaintiffs purchased the suit properties or the properties purchased by them is in different portion owned by their vendor in the same survey number.

17(k).The plaintiffs also relied on Urban Land tax paid by them. Exs.A6, A14 and Urban Land tax receipts, Exs.A5, A18 and A19 will not substantiate the case of the plaintiffs with regard to their title, as C.Velu and C.Rathinam have become Ryotwari holders and no notice was served on them. Further, in the Urban

Land tax receipts, Exs.A5, A18 and A19, no survey numbers have been mentioned. In view of the same, the learned I Appellate Judge has rejected the contention of the plaintiffs. The reasoning of the learned I Appellate Judge is valid and there is no reason to interfere with the said reasoning and finding in the Second Appeals.

17(l).The defendants have produced Ex.B21, G.O.Ms.No.37A dated 06.10.1971, Labour Department issued under Section 4(1) of the Land Acquisition Act, 1984. They also produced Ex.B22, G.O.Ms.No.38c Labour Employment and Housing Department dated 25.09.1974 issued under Sections 3 and 7 of the Land Acquisition Act, 1984. In Ex.B21, C.Velu and C.Rathinam are shown as registered owners of Survey No.9/1 part and in Ex.B22, they are shown as registered owners and interested persons in Survey No.9/1B. In Ex.B22, the boundaries were also given. The plaintiffs produced Ex.A12, G.O.Ms.No.433 dated 19.11.1982, Housing and Urban Development Department, whereby acquisition proceedings were withdrawn under Land Acquisition Act. The said Government order was also marked by the respondents as Ex.B3. In the said G.O.Ms.No.433 dated 19.11.1982 also C.Velu and C.Rathinam were mentioned as registered holders and interested persons in Survey No.9/1B with specific boundaries. The learned I Appellate Judge considering Exs.B2, B3, B5, B21 to B23 held that patta has been issued in the names of C.Velu and C.Rathinam for 34 cents in Survey No.9/1, Koyambedu Village in Ryotwari proceedings initiated by Government. In addition to the above documents, Exs.B21, B22, A12 and B3 also reveal that C.Velu and C.Rathinam were shown as registered holders and interested persons. The defendants as legal heirs of C.Velu and C.Rathinam are entitled to be the owner of said land in Survey No.9/1, Koyambedu Village.

17(m).The contention of the learned counsel for the plaintiffs is that patta was issued to the plaintiffs after they purchased the properties. They marked Ex.A3 dated 01.03.1988, the proceedings of Tahsildar, Egmore, Nungambakkam Taluk. It is seen by the said proceedings that based on the documents produced by M/S.Tarapore and Co. Brick Works, Tmt.Sheela, P.Rajasekar, minor J.R.Asesh Kumar (appellant in S.A.No.789 of 2017) and R.Chandragupta (appellant in S.A.No.788 of 2017), the Tahsildar has issued patta by sub-dividing Survey No.9/3 to M/S.Tarapore and Co. Brick Works for 49 cents in Survey No.9/3A, 29 cents in Survey No.9/3B to P.J.Lawyer and K.E.Arunachalam, 6 cents in Survey No.9/6 to Tmt.Sheela, 6 cents in Survey No.9/7 to P.Rajasekar, 6 cents in Survey No.9/8 to J.R.Asesh Kumar and 6 cents in Survey No.9/9 to R.Chandragupta. Subsequently, the same has been changed in view of the fact that Survey No.9/3 was given new Survey No.9/1. In view of the same, patta has been issued as follows:

- (i) S.No.9/1 measuring to an extent of 33 cents in the name of M/S.Tarapore and Co. Brick Works;
- (ii) S.No.9/14 measuring to an extent of 6 cents in the name of Tmt.Sheela;
- (iii) S.No.9/15 measuring to an extent of 6 cents in the name of P.Rajasekar;
- (iv) S.No.9/16 measuring to an extent of 6 cents in the name of J.R.Asesh Kumar;
- (v) S.No.9/17 measuring to an extent of 6 cents in the name of R.Chandragupta;

17(n). These changes were made without any notice to C.Velu and C.Rathinam. One E.V.Gopalakrisnan issued a notice dated 11.03.1995 marked as Ex.B26 with regard to changes made by Tahsildar, Egmore, Nungambakkam Taluk in Survey No.9/1, Koyambedu Village as per Ex.A3 dated 01.03.1988. The said letter was acted upon by Assistant Settlement Officer, Thiruvannamalai, who forwarded the same by Ex.B8 dated 28.02.2000 to Special Commissioner, Chepauk, Chennai. The Special Commissioner forwarded the said communication to District Collector, Chennai by his letter dated 10.05.2000, which was marked as Ex.B29. Based on the said proceedings, the Tahsildar, Egmore, Nungambakkam Taluk, by Ex.B11 dated 27.12.2000, made changes in Revenue record, showing C.Velu and C.Rathinam as owners of lands and intimated the same to both the plaintiffs and defendants. Only after receipt of said communication, the plaintiffs issued notice to the Tahsildar, Egmore, Nungambakkam Taluk and to District Collector, Chennai in the year 2002, marked as Exs.A15, A16, A21, A49 and A53. Even after coming to know about Ryotwari proceedings, the plaintiffs have not taken any steps to get the same cancelled by competent authorities. Further, as per Patta Pass Book Act, if a person is aggrieved by issue of patta or cancellation of patta, he has right of appeal as per Section 12 of the Tamil Nadu Patta Pass Book Act, 1983. The plaintiffs have not taken any steps to get the modification under the patta cancelled as per provision of Patta Pass Book Act.

17(o). The learned I Appellate Judge has considered the pleadings and oral evidence of plaintiffs and documents produced by the plaintiffs and defendants and held that plaintiffs have failed to prove the title of their vendor's vendor as well as their vendor. The learned I Appellate Judge has rejected Exs.B27 and B28, produced by the respondents even though the appellants did not object to the xerox copies being marked and also relying on the same on the ground that xerox copies are inadmissible in evidence as per Section 65 of the Indian Evidence Act.

17(p). The learned I Appellate Judge also took note of the contention of defendants 11 and 12 with regard to issue of patta

to the plaintiffs for Survey No.9/3 and subsequently, modifying the same to Survey No.9/1. The defendants have contended that Tahsildar, Egmore, Nungambakkam Taluk has no authority to modify the entries made by Assistant Settlement Officer during Ryotwari proceedings. As per Settlement proceedings, C.Velu and C.Rathinam were shown as registered holders and interested persons. Once such entry is made, Tahsildar has no authority to modify the same entering the names of other persons, like plaintiffs. If a person is aggrieved by said entry, the remedy available to him is mentioned in the act itself. The plaintiffs knowing fully well, even before filing of suit that predecessor of defendants 1 to 10 and 13 to 17, were shown as registered holders and interested persons, failed to take any steps to get the same cancelled. The learned Trial Judge failed to consider the proceedings under Estate Abolition Act and documents produced by the defendants with regard to Ryotwari proceedings and decreed the suit without proper appreciation of the evidence let in by the parties. On the other hand, the learned I Appellate Judge has considered all the materials on record, especially the evidence of plaintiffs and allowed the appeals, holding that plaintiffs have failed to prove their title to the suit properties. The learned I Appellate Judge has categorically held referring to well settled judicial pronouncements that appellants who are plaintiffs must prove their case on their own and cannot succeed on the weakness of the respondents/defendants.

17(q).The learned counsel for the appellants/plaintiffs have vehemently contended that plaintiffs have proved their title and learned I Appellate Judge erroneously held that plaintiffs failed to prove their title. The said contention is without merits. As held above, the plaintiffs have failed to prove their title by acceptable oral and documentary evidence. Even though the defendants have not appeared before the Trial Court and let in evidence, they have produced documents to disprove the contention of the plaintiffs with regard to title and proved their contention that their predecessor C.Velu and C.Rathinam were the registered holders and interested persons in the suit properties. For the above reasons, the Substantial Questions of law B, C and D are answered against the appellants/plaintiffs.

18.As far as claim of the defendants in Cross Objections are concerned, the said claim are without merits. The first contention of the defendants that two suits is not maintainable in view of bar under Section 22 (4), 64 C and 65 of Tamilnadu Estate (Abolition and Conversion into Ryotwari) Act 26 of 1948 is concerned, it is held in number of earlier cases that even after Ryotwari patta has been given to a person, the aggrieved person can maintain a suit to establish his title. The Courts

below have held that Assistant Settlement Officer or Settlement Officer does not act as Civil Court and power of Civil Court with regard to declaration of title is not ousted.

19. Further the claim of the defendants that the declaratory relief sought for by the defendants is framed in such a way to nullify the Ryotwari patta granted to C.Velu and C.Rathinam is concerned, the learned I Appellate Judge has rejected the declaratory relief and dismissed the suit.

20. The defendants have not made out any counter claim in the suit with regard to grant of Ryotwari patta. In view of the same, the present claim in Cross Objections is without merits.

21. As far as Court fee is concerned, the plaintiffs have valued the suit as per the value mentioned in the sale deed which were 15 years prior to filing of the suit. The defendants claim that value of the property as on date of filing of the suit is more than the value mentioned in the plaint. The witness of plaintiffs have admitted that it will be more than Rs.10,00,000/-. No document has been produced by the defendants, atleast guideline value of the properties as on the date of filing of the suit property. In the absence of any acceptable evidence, the Court cannot on presumption and assumption fix the value of the property.

22. The next contention of the learned counsel for the defendants is that the suit is barred by limitation. The Courts below have considered the date of cause of action and date of filing of the suit and held that suits are not barred by limitation. There is no error in the said finding.

23. In the result, all the Second Appeals are dismissed as devoid of merits. In view of the dismissal of Second Appeals, the defendants are not entitled to any relief as claimed in the Cross Objections. Accordingly, Cross objections are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa/kj

To

1.The XII Assistant Judge,
City Civil Court, Chennai.

2.The XV Additional Judge,
City Civil Court, Chennai.

3.The District Collector
Chennai District.

4.The Thasildar,
Egmore-Nungambakkam Taluk
Chennai-600 031.

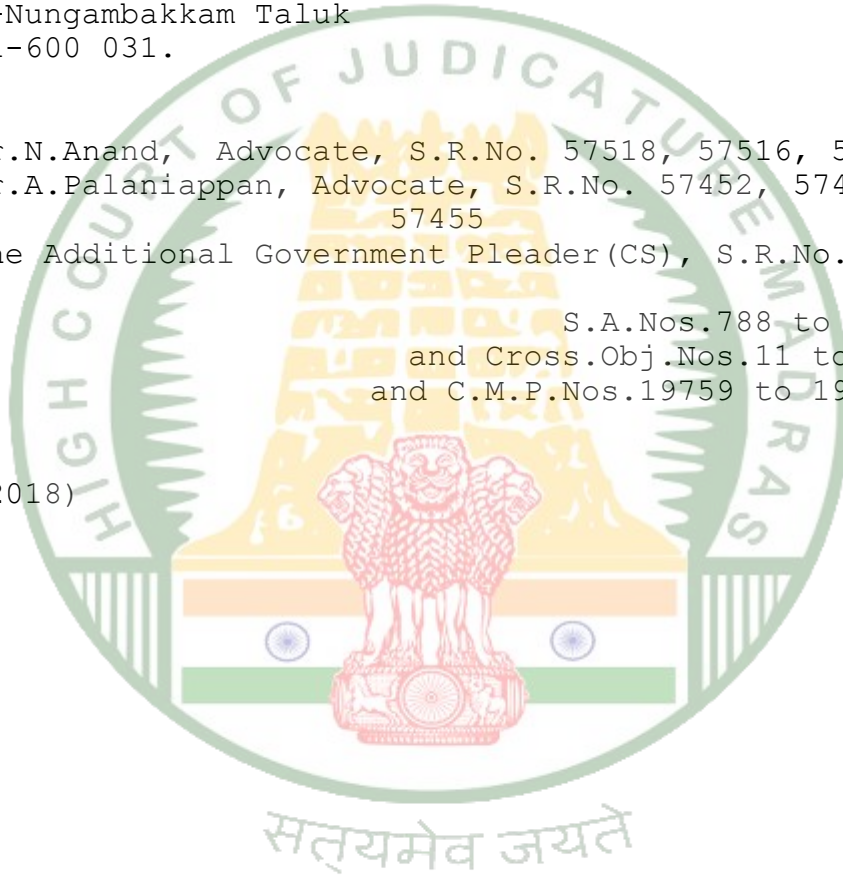
+4cc to Mr.N.Anand, Advocate, S.R.No. 57518, 57516, 57515

+4cc to Mr.A.Palaniappan, Advocate, S.R.No. 57452, 57453, 57454,
57455

+1cc to the Additional Government Pleader(CS), S.R.No. 57411

S.A.Nos.788 to 791 of 2017
and Cross.Obj.Nos.11 to 14 of 2018
and C.M.P.Nos.19759 to 19766 of 2017

AD(CO)
GN(01/10/2018)



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