

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2018

PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1900 & 1901 of 2003

New Colony Welfare Association
Rep.by its Secretary,
No.2, 6th Street, New Colony,
Adambakkam, Tambaram Taluk,
Chennai – 88.

... Appellant in both the
Second appeals

Vs.

1. A.R.Sridharan

...

1st Respondent in S.A.No.1900
of 2003 and Respondent in
S.A.No.1901 of 2003.

2. Alandur Municipality

Rep.by its Commissioner
Having office at Alandur
Tambaram Taluk, Chennai – 16.

3. R.Kannan

...

2nd and 3rd Respondents in
S.A.No.1900 of 2003

Prayer :- Second Appeals have been filed under Section 100 of CPC against the Judgement and Decree dated 28.02.2003 passed in A.S.Nos.18 of 2002 & 28 of 2002 on the file of the Additional Subordinate Court, Chengalpattu, confirming the Judgment and Decree dated 31.03.1999 passed in O.S.Nos.59 of 1997 & 60 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Alandur.

For Appellant : Mr.V.Raghavachari
in both the Second
Appeals.

For Respondent No.1 : Mr.V.Bhiman
in S.A.No.1900 of 2003
and Respondent in
S.A.No.1901 of 2003.

Respondent Nos.2 & 3 : No appearance
in S.A.No.1900 of 2003

COMMON JUDGMENT

The second appeals are directed against the Judgement and Decree dated 28.02.2003 passed in A.S.Nos.18 of 2002 & 28 of 2002 on the file of the Additional Subordinate Court, Chengalpattu, confirming the Judgment and Decree dated 31.03.1999 passed in O.S.Nos.59 of 1997 & 60 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Alandur.

2. Parties are referred to as per their rankings in the trial Court.

3. O.S.No.59 of 1997 has been laid for the relief of Permanent Injunction.

4. The case of the plaintiffs, in brief, is that the suit property belonged to the plaintiffs' ancestors viz., one Chellakkanni Pillai, even prior to 1875 and subsequently, his sons Punniakkodi, Thepperumal and Thiruvengada Pillai were enjoying the same and the first and second, each were enjoying 6 cents and the third was enjoying 5 cents. Thiruvengada Pillai had only one son by name Vasudeva Pillai, who died without heirs and the share of Thiruvengada Pillai was left to the heirs of Ponniakkodi Pillai viz., Srinivasa Pillai, Parthasarathy Pillai and Ramanuja Pillai and even during 1933, Srinivasa Pillai, Parthasarathy Pillai and

Ramanuja Pillai had been given patta for 11 cents. Thepperumal Pillai had three sons viz., Rajamannar Pillai, Doraisamy Pillai and Sadagopa Pillai and of them, Doraisamy Pillai and Sadagopa Pillai died unmarried and Rajamannar Pillai has been given patta for the share of 6 cents, which was enjoyed by Thepperumal Pillai and even during 1948, Rajamannar Pillai has relinquished in his share in favour of Parthasarathy Pillai, the father of the deceased first plaintiff and Parthasarathy Pillai was enjoying the same by obtaining patta in his name and thus, the entire 17 cents i.e. the suit property was in the possession and enjoyment of the heirs of Punniakodi Pillai jointly and among the sons of Punniakodi, Ramanuja Pillai died unmarried and Parthasarathy Pillai and Srinivasa Pillai were sometime enjoying the suit property jointly and thereafter, Srinivasa Pillai also relinquished his interest in favour of Parthasarathy Pillai and thus, Parthasarathy Pillai had been in possession and enjoyment of the entire suit property right from 1940 onwards and Subsequent to him, his son the deceased first plaintiff viz., Rajagopal Pillai has been in possession and enjoyment of the suit property in Paimash No.289 and the Paimash number abovestated is given new Survey Nos.232/1, 232/2 (part) and 232/3 (part) of Adampakkam Village and the suit property is cultivable Punja land and enjoyed by the deceased first plaintiff's father personally as well as through tenants and recently, the area has been developed into a town and the lands were converted into the housing plots and the entire 17 cents is shown as A schedule of the plaint and shown as ABCG

in the plaint sketch and two years back, the first defendant association had trespassed into a part of the suit property measuring 13' 8" east-west and measuring 21' 4" north-south and constructed a temporary superstructure therein shown as DEFC in the plaint sketch, which is the B schedule property and however, the first defendant association has no manner of right, title or interest in respect of the said portion and the plaintiff reserves his right to file a separate suit with reference to the said property for appropriate reliefs. ABCDEF portion is the vacant site of A schedule property and it is only the plaintiff, who has got interest in respect of the same and while so, at the instigation of the first defendant, the second defendant endeavoured to put up temporary structures for public works in the C schedule of the suit property and with reference to the same, the plaintiff has objected and also preferred complaint to the appropriate authorities and despite the same, the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the C schedule property and hence, the suit for necessary reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts and the plaintiff is not in possession and enjoyment of the suit property on the date of the suit and even from the year 1964 and hence, the plaintiff, without maintaining possession and enjoyment of the suit property, is not entitled to obtain the relief of permanent injunction and the defendant has filed a

detailed written statement in the comprehensive suit laid by the plaintiff in O.S.No.60 of 1997 and the plaintiff is not entitled to the suit property and not in possession and enjoyment of the suit property and hence, the suit is liable to be dismissed.

6. The case of the second defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is false to state that the plaintiff is the owner of the suit property and the plaintiff is in possession and enjoyment of the suit property as claimed in the plaint. The suit property is comprised in old Paimash Nos.292, 293 of Adampakkam Village and the lands comprised in the abovesaid two Paimash numbers were divided into plots by the owner of the lands and the same had been approved by the Director of Town Planning and apart from the laying of 10 plots, the remaining extent on the northern side was set apart for public purpose and in the said place, in a portion, the first defendant constructed the reading room and also using the other portion as a Park and the remaining portion, which is situated in between the reading room and the Park on the northern side, is in the possession and enjoyment of the second defendant and the second defendant in order to implement the scheme of the Chief Minister's Noon Meal Programme put up a construction in the said portion and the construction had been completed and being used for the abovesaid purpose and thus, the said place is in the possession and enjoyment of the defendant and

the plaintiff has no manner of right or interest in respect of the suit property. The defendant is not aware of any complaint said to have been alleged by the plaintiff with the authorities concerned and the plaintiff is not in possession and enjoyment of the suit property as claimed on the date of the filing of the suit or even prior to the same and hence, not entitled to obtain the reliefs prayed for and the suit is liable to be dismissed.

7. The case of the first defendant in the additional written statement is that it is false to state that the defendant is in possession and enjoyment of the B schedule property with the measurements given therein. On the other hand, the defendant is in possession and enjoyment of the vacant site measuring 42' north-south on the eastern side and 76 1/2 east-west on the southern side, 45' north-south on the western side, 82' east-west on the northern side in Paimash No.289 of Adampakkam village bounded on the East, North and West by road and south by vacant plot in favour of the first defendant association and even in the year 1970 itself, the aforesaid property has been fenced by the defendant and suppressing the same, the plaintiff has stated that the defendant is in possession of lesser extent of the suit property. The plaintiff's father is in Ex-Karnam of the suit village and the plaintiff has not given the correct measurements and the description of the suit property and hence, the suit is liable to be dismissed.

8. O.S.No.60 of 1997 is laid for recovery of possession and damages.

9. The case of the plaintiff, in brief, is that after tracing the title of the suit property as detailed in O.S.No.59 of 1997 from Chellakanni Pillai, it is stated that the first defendant trespassed into a portion of A schedule property as described in the said plaint and constructed a temporary superstructure, which portion is shown as DEFG in the plaint sketch and the portion trespassed by the defendant is described as the B Schedule property and the vacant site is shown as C schedule property and in the year 1982, the first defendant association and Alandur Municipality attempted to trespass into the C schedule property and hence, the plaintiff's father laid the suit against them in O.S.No.59 of 1997 and the plaintiff's father Rajagopal Pillai died on 19.10.1987 leaving behind him his two sons viz. the plaintiff and one Kannan and during his life time, he executed a registered Will dated 27.07.1987 bequeathing the suit property and other properties owned by him and by virtue of the said Will, the northern portion of A schedule property had been bequeathed in favour of the plaintiff and thus, the plaintiff is entitled to the B schedule property and the adjacent area and the first defendant association is attempting to put up further construction in the B schedule property without any entitlement and hence, the suit for appropriate reliefs.

10. The case of the first defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The first defendant has disputed the claim of title to the suit property by the plaintiff as detailed in the plaint from his forefather Chellakanni Pillai and also disputed the claim of the plaintiff that his father had bequeathed the northern portion of A schedule property in his favour by the Will dated 27.07.1987 and the said Will is not a probated one and the plaintiff cannot claim any title, right or interest to the suit property by virtue of the said Will and according to the first defendant, the first defendant association was founded in the year 1964 and as per the gift deed executed by A.Rajabadhar Mudaliar, Izardar, dated 26.01.1968, the vacant site measuring 42' north-south on the eastern side, 76 1/2' east-west on the southern side, 45' north-south on the western side, 82' east-west on the northern side, situated in Paimash No.289 of Adampakkam Village bounded on the east, north and west by road and south by vacant site in favour of the defendant's association and thereby, the defendant association became entitled to the suit property and in the year 1970 itself, the same had been fenced by the defendant association and enjoyed by the association by putting up a brick-built, asbestos roofing sheet and the same was used by the association for its office purpose and also as a reading room and the defendant association has been maintaining records for the construction of the abovesaid structure and

further, the defendant association permitted the Tamil Nadu Electricity Board to have their cash collecting office in the suit property from the year 1978 and in the settlement proceedings in respect of the suit property between the plaintiff's father and others as well as the defendant, the claim of the defendant's father to grant patta in respect of the suit property had been negatived and neither the plaintiff nor his father had enjoyed the suit property at any point of time and only it is the defendant, who has been in possession and enjoyment of the suit property right from 1966 continuously and openly without any interruption and thereby, the defendant association has prescribed title to the suit property by adverse possession and hence, the suit laid by the plaintiff for recovery of possession of the suit property is not maintainable and the plaintiff should have laid the suit praying for declaration of his title to the suit property and hence, the frame of the suit is not maintainable and the suit property has not been properly valued and hence, the suit is liable to be dismissed.

11. The above two suits were jointly tried, inasmuch as the property involved in both the suits is one and the same as well as the parties in both the suits are also the same and the issues involved in the suit also being found to be same and accordingly, it is found that common evidence has been recorded in both the suits and accordingly, on behalf of the plaintiff, PW1 was examined and Exs.A1 to A18 were marked. On

the side of the defendants' DWs1 & 2 were examined and Exs.B1 to B9 were marked. Exs.C1 and C2 were also marked.

12. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the necessary reliefs in favour of the plaintiff. Challenging the same, the present second appeals have come to be laid.

13. At the time of the admission of the second appeals, the following common substantial question of law was formulated for consideration in the second appeals:

"Whether the courts below are right in recognizing title in the plaintiff in the absence of any document of title?"

14. O.S.No.59 of 1997 has been laid by the plaintiff's father A.R.Rajagopal, since deceased, for the relief of permanent injunction and O.S.No.60 of 1997 has been laid by the plaintiff A.R.Sridharan for recovery of possession and other reliefs.

15. A.R.Sridharan claims title to the suit property based on the Will

<http://www.judis.org> said to have been executed by his father dated 27.07.1987, which

document has come to be marked as Ex.A15 and it is thus found that by virtue of the said Will, A.R.Sridharan has laid the suit in O.S.No.60 of 1997 for the relief of recovery of possession and the other son of A.R.Rajagopal, viz., A.R.Kannan, who has been impleaded originally as the second plaintiff in O.S.No.59 of 1997 later got himself transposed as the third defendant in the said suit.

16. The plaintiff, as such in both the suits, viz., A.R.Sridharan, has sought for the reliefs claimed in the suits on the footing that he has title to the suit property. However, the said case of the plaintiff has been seriously contested by the defendants, particularly, the first defendant association i.e. the appellant and in such view of the matter, inasmuch as the suits have come to be laid by the plaintiff based upon his title to the same and when the same is being impugned, it is for the plaintiff to establish at the foremost that he has a valid title to the suit property and thereby, entitled to obtain the reliefs claimed in the suits. Now, according to the plaintiff, the suit property, in its entirety, measuring 17 cents belonged to his ancestor, one Chellakanni Pillai even prior to 1875 and it is stated that the suit property was originally comprised in Paimash No.289 of Adambakkam Village and as per the case of the plaintiff, the said Paimash number is later given new survey Nos.232/1, 232/2 (part) and 232/3 (part) of Adambakkam Village.

17. The plaintiff traces his title from Chellankanni Pillai and accordingly, it is found that as per the trace of title from Chellakanni Pillai, who had three sons as projected by the plaintiff, it is found that by way of two or three relinquishments, it is the case of the plaintiff that his father had obtained title to the entire suit property as such. It is stated by the plaintiff that of the three sons of Chellankanni Pillai viz., Punniakodi Pillai, Thepperumal Pillai and Thiruvengada Pillai, the only son of Thiruvengada Pillai viz., Vasudeva Pillai died issueless and it is thereby stated that Thiruvengada Pillai's share in the suit property was left to the heirs of Punniakodi Pillai. However, in what mode, the share of Thiruvengada Pillai had been left to the heirs of Punniakodi Pillai, the same is not forthcoming in the plaint or even during the course of evidence by the plaintiff. Very vaguely, it has been stated that Thiruvengada Pillai's share in the suit property was left to the issues of Punniakodi Pillai. Further, according to the plaintiff, the other son of Chellakanni Pillai viz., Thepperumal Pillai had three sons viz., Rajamannar Pillai, Doraisamy Pillai and Sadagopa Pillai and of them, Doraisamy Pillai and Sadagopa Pillai died unmarried and further, according to the plaintiff, in the year 1948, Rajamannar Pillai had relinquished his share in favour of Parthasarathy Pillai, the plaintiff's grandfather. However, the plaintiff has not averred as to whether in what mode the abovesaid relinquishment had come to be effected in favour of Parthasarathy Pillai.

If any such relinquishment had been made, it could have been by a

document and if so, the document would have been registered in the manner known to law. It is not the case of the plaintiff that the said relinquishment has been done orally and also not the case of the plaintiff that the same has been effected by a written instrument. Be that as it may, when the defendant is challenging the claim of title to the suit property, it is for the plaintiff to come out with a clear case as to how his forefathers had derived title to the suit property as put forth in the plaint. Despite the challenge thrown, very vaguely, it is stated that Rajamannar Pillai, during the year 1948, had relinquished his share in favour of the plaintiff's grandfather, but, with reference to the same, there is no material worth acceptance placed by the plaintiff. Further, according to the plaintiff's case, Ramanujam Pillai, who is one of the sons of Punniakodi Pillai, died unmarried and thus, it is stated that the suit property had been enjoyed by the other two sons of Punniakodi Pillai viz., Srinivasa Pillai and Parthasarathy Pillai. Further, according to the plaintiff's case, Srinivasa Pillai later relinquished his interest in favour of Parthasarathy Pillai and thereby, it is stated that Parthasarathy Pillai viz., the plaintiff's grandfather had become entitled to the suit property. With reference to the relinquishment of Srinivasa Pillai in favour of Parthasarathy Pillai, it has not been averred whether it had been effected orally or by a written instrument and with reference to the same, no material is forthcoming. Thus, it is found that in a vague manner, without giving clear details and also without placing any materials to establish the

same, the plaintiff has proceeded to trace his title to the suit property right from the days of Chellakanni Pillai. The documents projected by the plaintiff also do not support the plaintiff's case with reference to the above claim of title to the suit property. As rightly contended, it is found that the plaintiff has not placed any valid title document to evidence that the suit property originally stood in the name of Chellakanni Pillai. The plaintiff has not filed any title document to establish that Chellakanni Pillai had title to the suit property as put forth in the plaint. The mortgage deed dated 28.07.1875 marked as Ex.A2 not being a document of title as rightly putforth cannot be the basis for upholding the plaintiff's claim of title to the suit property from the days of his ancestors. The patta documents marked as Exs.A3 & A4 are not in the name of the plaintiff's forefather as depicting the trace of title from Chellakanni Pillai. Similarly, Ex.A5 is also another mortgage deed and thereby, it cannot be construed as a title deed, Exs.A6 & A7 are also agreement and Kuthagai Muchalika, which documents would not be useful to hold that the plaintiff's forefathers had title to the suit property as claimed in the plaint. As above seen, according to the plaintiff's case, the suit property is comprised in Paimash No.289 and the said Paimash Number is given new survey Nos.232/1, 232/2 (part) and 232/3 (part) of the suit village. The SLR extract marked as Ex.A8 by the plaintiff does not stand in the name of the plaintiff's forefathers, but, it is in the name of Rajamannar Pillai.

Further, it is only in respect of one Survey No.232/1, the plaintiff has not

placed any other document to co-relate that the Paimash No.289 has been given the new survey Nos.232/2 (part) and 232/3 (part), and the only document marked as Ex.A8 not standing in the name of the plaintiff's forefathers and it is only in respect of one survey number co-relating the paimash No.289/1 (part), accordingly, it is seen that Ex.A8 would not serve any purpose to uphold the plaintiff's claim of title to the suit property. Ex.A9 is also not a title deed but only adangal extract and on that basis, it cannot be held that the plaintiff's forefathers had title to the suit property and enjoying the same as the full owners thereof. Ex.A10 is only the FMB sketch and Exs.A11 & A12 are not shown to be validly issued by the signatories to the name and also competent to issue the same and not shown to be relating to the suit property, accordingly, it is found that the abovesaid documents projected by the plaintiff do not lend credence to safely hold that the plaintiff's forefathers had title to the suit property and been in their possession and enjoyment as claimed in the plaint.

18. The Courts below seem to have placed reliance only upon the proceedings of the revenue authority dated 11.11.1996 marked as Ex.A17, whereunder, the plaintiff's case has been upheld. However, as rightly putforth, Ex.A17 proceedings has come to be issued after the institution of the suit. That apart, the proceedings of the revenue authority marked as Ex.A17 would not by itself bar the jurisdiction of the

Civil Court to determine the title in respect of the suit property. As put forth by the contesting parties, the Civil Court has got the powers to determine the question of title, de hors the determination of the same by the revenue authority as has been done vide Ex.A17. On a perusal of Ex.A17, it is found that the revenue authority, by way of the said proceedings, has upheld the case of the plaintiff on the footing that the defendants have not placed any document to establish their claim of title to the suit property as such, but, when the plaintiff's claim of had title to the suit property is being challenged tooth and nail and accordingly, when the onus is heavy upon the plaintiff to establish his alleged claim of title to the suit property as put forth by him and in the light of the above discussions as pointed supra, the documents projected by the plaintiff do not support his case for tracing title to the suit property from the days of his ancestors as projected in the plaint, it is found that merely on the basis of Ex.A17 proceedings, we cannot safely conclude that the plaintiff has title to the suit property as put forth by him. If really, the plaintiff has a valid title to the suit property as claimed, the plaintiff would have placed necessary documents in support of his case and on the other hand, as seen from the documents projected by the plaintiff, there is no valid material even to co-relate Paimash No.289 with the new survey numbers as claimed in the plaint. The only document, with reference to the same, marked as Ex.A8 stands in the name of Rajamannar Pillai and the same is only in respect of one new survey number as co-relating to

the old Paimash No.289/1 (part) and such being the position, it is found that even as regards the description of the suit property as corresponding to old Paimash No.289, there is no valid document placed by the plaintiff as standing in the name of the his forefathers. No explanation is offered by the plaintiff as to how come Ex.A8 stands in the name of Rajamannar Pillai and how, he had traced title to the property comprised therein from Rajamannar Pillai. The documents of mortgage, lease etc., not being title documents as such on the basis of the same, as rightly putforth, the plaintiff's title to the suit property as such cannot be upheld. As above seen, when by way of two or three relinquishment transactions, the plaintiff has claimed title to the suit property, but, the said transactions having not been established by the plaintiff, particularly, not even pleaded whether the same had been effected orally or by way of written instruments and in connection with the same, there is no proof whatsoever placed by the plaintiff, the position being above, it does not stand to reason as to how the Courts below had chosen to accept the plaintiff's case, despite the absence of any material pointing to the title of the plaintiff to the suit property. As above seen, the Courts below seem to have placed reliance only upon Ex.A17 proceedings, which had come into effect after the institution of the suit and when as rightly putforth, the proceedings of the settlement officer under the Inam Abolition Act would not bar the jurisdiction of the Civil Court to determine the question of title of the property in dispute and accordingly, when on a perusal of

Ex.A17 proceedings, it is found that even therein also, the plaintiff has not placed any materials to derive and establish his title to the suit property, on the other hand, the said proceedings has come to be held in favour of the plaintiff on account of the failure of the contesting parties to putforth their claim of title to the suit property, however, when the party, who pleas title, should establish the case and on that basis, if the plaintiff's case is viewed, it is found that absolutely there is no material forthcoming on the part of the plaintiff worth acceptance to conclude that the plaintiff has a valid title to the suit property.

19. The plaintiff claims title to the suit property on the basis of the Will dated 27.07.1987 said to have been executed by his father A.R.Rajagopal Pillai and the said Will is seriously challenged by the defendants. Despite the same, the plaintiff has not chosen to establish the genuineness of the said Will in the manner known to law. None of the attestors to the said Will has been examined, no reason has been adduced by the plaintiff with reference to the same. Further, on a perusal of Ex.A15 Will, it does not clearly portray as to whether the plaintiff had been conveyed the suit property as such for his entitlement to obtain the reliefs prayed for. Very vaguely, it is found that the northern portion of the suit property has been bequeathed in favour of the plaintiff. The plaintiff has not placed any materials to show that the reliefs, he seeks for, in the suits in respect of the portion of the suit property in the

occupation of the defendants lies within the northern portion and the extent and measurements of the northern portion bequeathed in favour of the first defendant having not been described in the said Will, thus, it is found that from a very vague description of the suit property contained therein, it cannot be safely concluded that the plaintiff has been bequeathed the right in respect of the property in dispute under the said Will. Be that as it may, when the plaintiff has not established the authenticity of Ex.A15 Will in the manner known to law and that apart, when the said Will does not give the clear description of the property to enable the plaintiff to seek the reliefs sought for in the present suits, as rightly argued, in view of the unproved Ex.A15 Will, we cannot grant the reliefs sought for by the plaintiff in both the suits.

20. In O.S.No.59 of 1997, the plaintiff claims of relief of permanent injunction. In O.S.No.60 of 1997, the plaintiff claims the recovery of possession and other reliefs. However, the plaintiff has failed to establish that the reliefs sought for in both the suits in respect of the property as described therein and shown to be in the possession of the plaintiff for claiming the relief of permanent injunction and equally, the plaintiff having also not given the correct description of the property, which is in the occupation of the defendant association in respect of the suit property, as rightly argued, from the documents placed, it is found that way back in 1979, the plaintiff has admitted that the defendant

association is in possession and enjoyment of a larger extent than what has been admitted by him in the plaint. Thus, it is found that when even according to the plaintiff, the defendant is found to be in possession and enjoyment of 13 cents of the suit property, resultantly, it is seen that the plaintiff is not in possession and enjoyment of the C schedule property as claimed in O.S.No.59 of 1997 and similarly, the plaintiff has also not given the clear description and extent of the property in the possession of the defendant in O.S.No.60/1997. On the other hand, from Ex.B3, it is found that the defendant has been in possession and enjoyment of the suit property and accordingly, made attempts to obtain permission from the Municipality to put up a construction in the same, which could be evidenced from the letters comprised in Ex.B3. Thus, it is found that way back from 1970 onwards, it is only the defendant association, who has been in possession and enjoyment of the suit property and accordingly, during 1979 vide Ex.B7, the plaintiff has admitted that the defendant association is in possession and enjoyment of 13 cents of the suit property. No doubt, the defendant association has not established its claim of title to the suit property as projected in the written statement. But, when it is found that it is only the defendant, who has been in possession and enjoyment of the suit property and not the plaintiff and when the plaintiff himself is not sure as to the extent of the property in the possession and enjoyment of the defendant association and been giving various contradictory descriptions of the property in the possession

and enjoyment of the defendant as above seen and the plaintiff having laid the suit based upon title and when as above discussed, the plaintiff has miserably failed to establish his claim of title to the suit property, it is found that the weakness of the defendants' case cannot be the basis for accepting the plaintiff's case without any material pointing to the valid claim of title to the suit property by the plaintiff. Accordingly, it is seen that the plaintiff at the foremost having failed to establish his claim of title to the suit property and further, when the plaintiff has failed to establish the validity of the Will on the basis of which, he now seeks to continue the suits and when the Will projected by the plaintiff does not show clearly that the property in dispute had been bequeathed in favour of the plaintiff, as rightly contended, that the Courts below are not justified in upholding the plaintiff's claim of title to the suit property in the absence of any valid document of title pointing to the same. As above discussed, the documents projected by the plaintiff are not shown to be pointing to the claim of title to the suit property as putforth by the plaintiff and accordingly, it is found that the Courts below deliberately erred in upholding the plaintiff's title to the suit property on the basis of the documents placed without appreciating the nature of the documents placed in the right perspective as to whether at all they relate to the suit property or as to whether they are document of title as such and in such view of the matter, it is found that the reasonings and conclusions of the Courts below for upholding the plaintiff's claim of title to the suit property

by way of the projected documents are found to be perverse, illogical and unacceptable and therefore, cannot be allowed to sustain any further. The common substantial question of law formulated in the second appeals is accordingly answered against the plaintiff and in favour of the defendant association.

In conclusion, the Judgement and Decree dated 28.02.2003 passed in A.S.Nos.18 of 2002 & 28 of 2002 on the file of the Additional Subordinate Court, Chengalpattu, confirming the Judgment and Decree dated 31.03.1999 passed in O.S.Nos.59 of 1997 & 60 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Alandur, are set aside and resultantly, the suits laid by the plaintiff in O.S.Nos.59 of 1997 & 60 of 1997 are dismissed with costs. Accordingly, the second appeals are allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No
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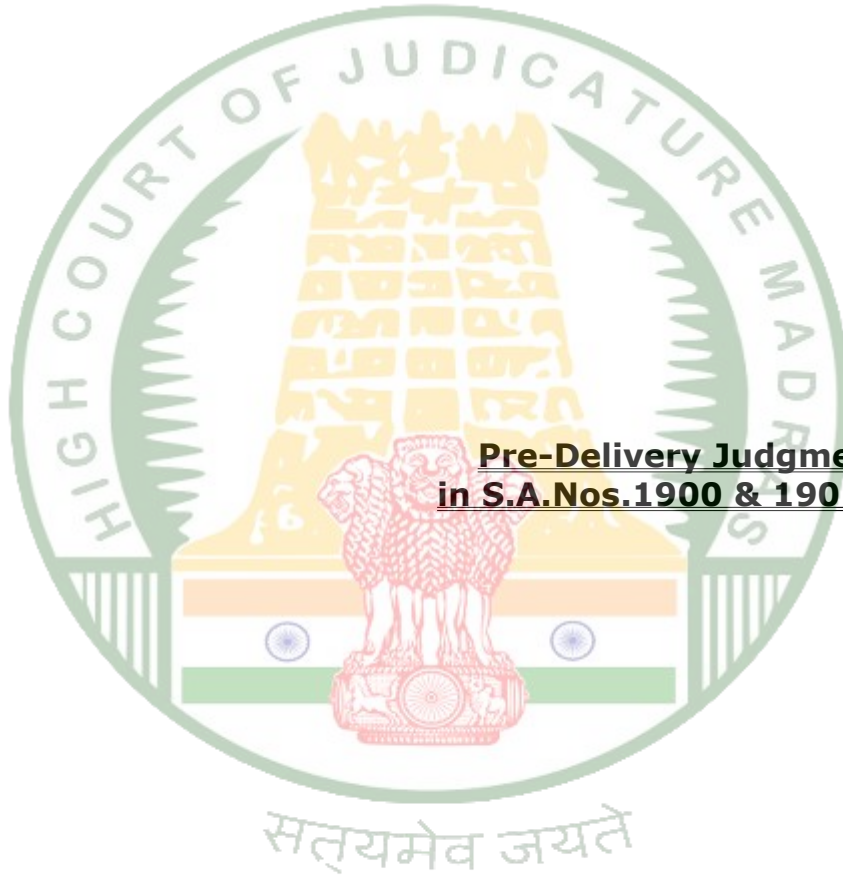
04.06.2018

To

- 1.The Additional Subordinate Court, Chengalpattu.
- 2.The District Munsif cum Judicial Magistrate Court, Alandur.
- 3.The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.Nos.1900 & 1901 of 2003**

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04.06.2018