

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.04.2018

PRONOUNCED ON:27.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.865 of 2004
and
C.M.P.No.4353 of 2018

Periyanna gounder Appellant/Defendant

Vs.

1.Ramasamy (Died)

2.R.Ganesan

3.R.Thangavelu

[RR2 and R3 brought on record as
L.Rs of the deceased sole respondent
vide order of Court dated 02.01.2013
made in C.M.P.No.955 of 2012
in S.A.No.865 of 2004]

... Respondents/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the order of remand in the judgment and decree dated
22.09.2003 made in A.S.No.127 of 1999 on the file of the Sub
Court, Sankari, partly reversing the judgment and decree dated
31.08.1999 made in O.S.No.78 of 1995 on the file of the District
Munsif Court, Sankari.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.M.S.Krishnan, SC
for M/s.Sarvabhauman Associates

J U D G M E N T

Challenge in this second appeal is directed against the
judgment and decree dated 22.09.2003 passed in A.S.No.127 of
1999 on the file of the Subordinate Court, Sankari, partly
reversing the judgment and decree dated 31.08.1999 passed in
O.S.No.78 of 1995 on the file of the District Munsif Court,
Sankari.

2.The second appeal has been admitted on the following substantial question of law.

"When a title to a property, the value of which exceeds Rs.100/- is not supported by any registered documentary evidence, but based only on an arrangement entered into with the Panchayat, which arrangement admittedly is not registered, has not the lower appellate court committed an error of law in giving a declaratory decree of title in respect of that property covered under an unregistered instrument, which is hit by section 17(b) of the Registration Act?"

3.After hearing the submissions put forth by the learned counsel for the appellant and the learned senior counsel for the respondent, in my considered opinion, I found that the abovesaid substantial question of law formulated in this matter does not arise for any consideration as such, and the issue involved in this matter has to be sorted out on other aspects as determined by the first appellate court. Suffice to state that the suit has come to be laid by the respondent against the appellant for declaration of his title to the plaint A schedule property and also for directing the appellant to put the respondent in possession of the B schedule property. Thus, according to the respondent, the B schedule property forms part of the A schedule property and it is stated that, while the respondent was away at Chennai, the appellant on 08.10.1994 during the closure of the Courts for Dhassera holidays, encroached and ploughed the B schedule property belonging to the respondent and annexed the same with his property and inasmuch as, he had refused to accede to the request of the respondent to deliver the possession of the B schedule property to the respondent, he has been necessitated to lay the suit for appropriate reliefs.

4.The case of the respondent that the appellant had encroached and annexed the B scheduled property on 08.10.1994, during his absence, has been stoutly resisted by the appellant and on the other hand, according to the respondent, the B schedule property does not form part of the A schedule property and further according to the appellant, when the A schedule property was entrusted to the respondent, by way of the sale deed dated 05.01.1984 marked as Ex.A1 coupled with the Panchath Muchalikka marked as Ex.A5 on measuring the said property, it is stated that the respondent had, on measurement, taken the said property in his possession and enjoying the same along with the other extent in the suit survey number owned by his wife Kaveriammal and it is further stated that accordingly, the respondent had fenced his property and enjoying the same, and therefore, there is no question of the appellant encroaching and annexing the B schedule property as put forth by the respondent and therefore, it is stated that the respondent has come forward with a false case, as if the B schedule property also forms part of the A schedule property. Though, it is admitted that the

respondent's wife had purchased the property comprised in Ex.A2 in the suit survey number, which document recites that the property involved therein measures 2.44 acres of land in survey No.50/1, according to the appellant, the extent covered in the said sale deed is not admitted and it is contended that the respondent has not come forward with any material that his wife had actually acquired an extent of 2.44 acres of land in suit survey No.50/1 as recited in Ex.A2 and when admittedly, the respondent had been measured and entrusted the A schedule property by way of Exs.A1 r/w A5 and accordingly, the respondent and his wife had been enjoying the properties owned by them as a single unit by fencing the same, the other extent comprised in the suit survey number belongs to the appellant and the same is in his possession and enjoyment, right from the beginning and therefore there is no question of the appellant encroaching into the B schedule property as put forth by the respondent.

5.On the abovesaid main contentions, the parties went for trial and it is found that in support of the respondent's case, P.Ws.1 and 2 were examined. Exs.A1 to A11 were marked. On the side of the appellant, D.W.1 was examined. Exs.B1 to B4 were marked.

6.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court though had granted the relief of declaration in favour of the respondent in so far as the plaint A schedule property is concerned, however, holding that the respondent has failed to establish the alleged plea of encroachment of the B schedule property by the appellant and further holding that the respondent has not placed any material to conclude that the B schedule property forms part of the A schedule property, particularly by taking a Commission as regards the same and further holding that the respondent having failed to establish that the B schedule property is in the possession and enjoyment of the appellant, accordingly, declined the relief of possession sought for by the respondent in respect of the B schedule property and accordingly, disposed the suit laid by the respondent.

7.As against the judgment and decree passed by the trial court, granting the relief of declaration in respect of the A schedule property, it is found that the appellant has not preferred any first appeal. On the other hand, challenging the refusal of the relief of possession sought for by the respondent of the B schedule property by the trial court, it is seen that the respondent has preferred the first appeal and in the said first appeal, the appellant has not preferred any cross appeal or cross objection as the case may be, challenging the decree of declaration granted by the trial court in favour of the respondent as regards the A schedule property. It is found that

as rightly put forth by the respondent's counsel, particularly, considering the principles of law, surrounding the said subject as enunciated in the decision reported in 2003 (9) SCC 606 [Banarsi and Others Vs. Ram phal], it is found that the appellant cannot in this second appeal challenge the grant of the relief of declaration in favour of the respondent by the trial court as regards the plaint A schedule property. In such view of the matter, it is found that the door has been shut against the appellant in agitating the said point afresh in this second appeal as he had failed to avail the remedy available to him by way of regular first appeal or by way of cross objection or cross appeal in the first appeal preferred by the respondent.

8. Materials placed on record go to show that considering the refusal of the relief of possession of the B schedule property sought for by the respondent by the trial court on the footing that the respondent has not even taken steps to establish the alleged encroachment, by taking out a commission and also failed to establish whether the encroached land lies in the possession of the appellant, it is found that at the first appellate stage, the commission application has been taken and it is found that the warrant has been issued to the Advocate Commissioner to inspect the properties of the respondent and the appellant and file his report with plan as regards the extent of properties available in their respective possession in the suit survey number. Accordingly, it is found that the Advocate Commissioner along with the Surveyor has visited the properties concerned and measured the same and filed his report and plan which have come to be marked as Exs.C1 to C3.

9. On a perusal of the judgment of the first appellate court, it is found that the first appellate court has only considered the Advocate Commissioner's report and plan and thereby on the basis of the same vis a vis the objection put forth to the same by the respective parties, finally, held that the appellant is found to be in possession of more extent of land in the suit survey number than to which he is entitled to i.e., according to the first appellate court, the appellant is found in possession and enjoyment of the excess land measuring $38 \frac{3}{4}$ cents in the suit survey number and further, according to the first appellate court, the respondent though entitled to 3.84 ares of land in the suit survey number was found in possession and enjoyment of only $3.34 \frac{1}{2}$ acres of land and on that premise held that, though in reality, the respondent is in shortage of $49 \frac{1}{2}$ cents in the suit survey number, further holding that the respondent has failed to establish that other than the excess $38 \frac{3}{4}$ cents of land in the possession of the appellant, the appellant is in the possession of the remaining extent also, accordingly, based on the above determination, granted the relief of possession of an extent of $38 \frac{3}{4}$ cents in the B schedule property in favour of the

respondent and challenging the same, the present second appeal has been laid.

10. The trial court while granting the relief of declaration did not place acceptance upon Ex.A5 Muchallika and held that the said document is inadmissible in evidence for want of registration. However, on the admission of the appellant that the respondent had been measured and entrusted the A schedule property measuring 1.40 acres of land, accordingly, on that premise, proceed to uphold the relief of declaration of title sought for by the respondent as regards the A schedule property. As against the finding of the trial court, holding that Ex.A5 is an inadmissible document and cannot be relied upon for want of registration, it is found that the respondent also has not challenged the said finding in the first appeal preferred by him. On a perusal of the memorandum of grounds of the first appeal preferred by the respondent, it is seen that in specific, no challenge has been made by the respondent, as regards the determination of the trial court rejecting Ex.A5 document as inadmissible in evidence for want of registration. It is thus found that the said finding of the trial court as regards Ex.A5 document has attained finality and as above seen, the appellant has not thrown any challenge as regards the relief of declaration of title granted by the trial court in respect of the A schedule property in favour of the respondent. In such view of the matter, the substantial question of law formulated in this second appeal touching upon the said document Ex.A5 is found to be redundant and the same need not be thrashed out afresh as a finality has been arrived at in respect of the said document by the trial court which has not been impugned by either of the parties as above stated and further, when it is seen that the appellant as such not disputed the entrustment of the plaintiff A schedule property to the respondent by way of Ex.A1 r/w Ex.A5, it is seen that the question whether the said Panchayat Muchalikka marked as Ex.A5 is an admissible or inadmissible document need not be gone into, as the same, in my considered opinion is not germane for determining the real controversy involved in the present appeal, particularly, in the light of the determination of the controversy between the parties by the first appellate court.

11. As above seen, the first appellate court has mainly dealt only with the commissioner's report and plan and accordingly, based on the same, finding that the appellant is in possession of an excess land than to which he is entitled to in the suit survey number and noting that the respondent is in possession of lesser extent of land than to which he is entitled to in the suit survey number and on that premise granted the relief of possession in favour of the respondent of an extent of 38 $\frac{3}{4}$ cents in the suit survey number i.e., the B schedule property and accordingly, disposed of the first appeal. It is thus found that the point or the substantial question of law that really

arises for consideration in this second appeal is, whether the determination of the first appellate court in granting the relief of possession of an extent of 38 $\frac{3}{4}$ cents of land in the B schedule property in favour of the respondent based on the Commissioner's report and plans, stands scrutiny in the eyes of law and requires approbation, particularly, when the respondent has failed to establish that the B schedule property forms part of the A schedule property and further when the respondent has failed to establish the alleged plea of encroachment made into the B schedule property by the appellant as put forth in the plaint.

12. On a perusal of the Commissioner's report marked as Ex.C1, it is found that, even as per his understanding of the warrant issued by the court to the Advocate Commissioner, as seen in para 5 of the report Ex.C1, it is seen that the Commissioner had been directed to measure the properties belonging to the respective parties, as per the judgment passed by the court dated 24.10.2002, with the assistance of a surveyor and accordingly, determine whether the shortage of 44 cents of land alleged by the respondent in his property lies in the property acquired by the respondent's wife in an extent of 2.44 acres of land or whether the appellant has been in possession of excess extent of land than to which he is entitled to, so as to determine whether the shortage alleged by the respondent is in the custody of the appellant. Despite the abovesaid understanding of the warrant by the Advocate Commissioner, it is found that the Advocate Commissioner has not chosen to measure the property acquired by the respondent's wife, by way of Ex.A2 separately and on the other hand, he has chosen to measure the property acquired by the respondent's wife, by way of Ex.A2 and also the property acquired by the respondent, by way of Exs.A2 r/w Ex.A5 to which the relief of declaration had been granted and on that basis, it is seen that the Advocate Commissioner has measured both the properties belonging to the respondent as well as his wife as a single unit and on measurement, according to the Advocate Commissioner, the said property measured 3.34 $\frac{1}{2}$ acres of land, whereas the said property as per the claims of the respondent and his wife should be in an extent of 3.84 acres of land. Thus, it is stated that there is a shortage of 0.49 $\frac{1}{2}$ acres of land in the abovesaid properties belonging to the respondent and his wife. At this juncture, it is to be noted that in the written statement as well as during the course of evidence, though the appellant has admitted the document Ex.A2 as such, but, has not admitted the extent of the properties comprised therein and on the other hand, it has been his specific case that it is for the respondent to establish that his wife had actually purchased an extent of 2.44 acres of land by way of the said document. However, though the same has been pointed out by the appellant to the Commissioner, by way of his memo, still the Commissioner had not endeavored to measure the

property acquired by the respondent's wife, by way of Ex.A2, separately and on the other hand, measured the properties belonging to both the respondent and his wife as a single unit and accordingly, proceeded to hold that there is a shortage of 0.49 ½ acres of land in the said single unit.

13. Accordingly, measuring the remaining extent in the suit survey number leaving the extent of 3.34 ½ acres shown as "HLMN" in the plan, according to the Advocate Commissioner, excluding the Odai portion on the northern side as available on the land, it is his finding that on measurement, the same was found to be of an extent of 3.22 ¾ acres of land. Accordingly, based on the same, the first appellate court determining that the appellant as per his title deeds being entitled to only 2.84 acres of land in the suit survey number, held that he is in possession of an excess of 38 ¾ cents of land as per the abovesaid report of the Advocate Commissioner.

14. It is found that at the time of the inspection of the properties by the Advocate Commissioner, he was assisted by the surveyor and accordingly, as per the report of the Advocate Commissioner, it is found that the properties of the parties had been measured only after determining the physical features obtaining in the locality particularly, noting the ridges, fence, etc., and accordingly, the properties had come to be measured. Accordingly, it is seen that even as per the report of the Advocate Commissioner, Ex.C1 admittedly to the north of the properties belonging to the respective parties there is a Odai and as per the report of the Advocate Commissioner, in para 5, the Odai is not available on ground, as per the FMB sketch and accordingly, the Advocate Commissioner in his plan Ex.C2, shown the Odai portion in green colour as available on ground and it is found that the Odai portion shown in green colour in Ex.C2 plan does not correspond with the actual Odai portion as available in the Government plan i.e., FMB and further as seen from para 7 of the Advocate Commissioner's report, the Odai portion as per the FMB is found to be measuring a width of 10.2 meters on the western side but on ground measured only 6 meters and further as per the report of the Advocate Commissioner, the Odai portion available on ground on the eastern side measured 5.6 meters. It is thus found that on ground in reality, the Odai portion is not available as depicted in the Government records i.e., FMBs maintained by the Government and in such view of the matter, as rightly put forth by the appellant's counsel, the measurement of the appellant's property as had been undertaken by the Advocate Commissioner, from the available Odai portion is found to be erroneous, as the Advocate Commissioner should have actually demarcated the Odai portion, as per the Government records and the FMBs and accordingly, after demarcating the actual Odai portion as per the Government records and after excluding the said Odai portion, should have

proceeded to measure the appellant's property and thereby determine the extent of land available with the appellant in the suit survey number.

15. It is found that, as per the appellant's case, there is a boundary stone on the eastern side and the same has been represented by the appellant to the Advocate Commissioner that the portion adjoining the boundary stone all along with the lines of the boundary stone forms part of the Odai portion and accordingly, requested the Advocate Commissioner to measure the property of the appellant excluding the Odai portion corresponding with the boundary stone and it is found that the Advocate Commissioner had accordingly, taking the Odai portion on the basis of the boundary stone available and shown as "X" in the plan, which measured 0.45 acres of land and excluding the same, held that the land available in the possession of the appellant measures only 2.77 $\frac{3}{4}$ acres of land and accordingly, it is found that, when the appellant is entitled to 2.84 acres of land, it is found that if the lands in the possession of the appellant excluding the actual Odai portion is determined, it is seen that the appellant is in possession of a lesser extent of land than to which he is legally entitled to. In this regard, the Advocate Commissioner has also prepared the plan showing the measurements of the properties belonging to the parties by taking the "X" boundary stone as the Odai portion and filed his plan marked as Ex.C3.

16. However, the first appellate court, on the footing that the respondent has not admitted the boundary stone "X" and further as there are no features in distinct, by way of ridge or other features dividing the boundary stone "X" and the remaining lands of the appellant, refused to accept Ex.C3 plan and proceeded to determine the matter based upon Ex.C2 plan and accordingly, granted the relief of possession in favour of the respondent, as above pointed out. The same is seriously challenged by the appellant's counsel. In para 5 of the report, the Advocate Commissioner while noting that the Odai portion available on ground is not in consonance with the Odai portion as depicted in the FMB, however, proceeded to determine the Odai portion as available on ground on the date of inspection and accordingly measured the properties of the parties. As per the Advocate Commissioner's report, it is found that even as per the Odai portion available on ground on the date of inspection, there is no features available such as ridge or other features dividing the said Odai portion with the rest of the lands in the possession of the appellant. In such view of the matter, when there is no dividing ridge or other features separating or demarcating the actual Odai portion available on the ground and the appellant's lands as noted by the Advocate Commissioner in para 5 of the report and when, even as per the Advocate Commissioner, the Odai portion available on ground is not in

conformity with the Odai portion of the Government records, particularly, as noted that there is a boundary stone "X" in the land on the eastern side and according to the appellant, the boundary stone has been fixed corresponding to the Odai portion, which was in existence, accordingly, when as per the Advocate Commissioner's report, the Odai is found to be not running continuously on ground and only seen running intermittently and accordingly, the Odai running towards east and joining the Government Odai in survey number 49, it is found that the Advocate Commissioner should have excluded the Odai portion as available in the Government records and accordingly, it is found that as put forth by the appellant's counsel, the Odai portion, if had been measured as available in the Government records and as determined by the Advocate Commissioner's in Ex.C3 plan by fixing the boundary stone "X" shown in the said plan, it is found that the land in the custody of the appellant is found to be a lesser extent i.e., 2.77 acres of land than to which he is legally entitled to i.e., 2.84 acres of land.

17. With reference to the abovesaid point, the first appellate court has brushed aside the contention of the appellant on the footing that there is no features available dividing the boundary stone "X" with that of the land of the respondent. Similar is the position with reference to the actual Odai portion available on ground and as above seen, the Advocate Commissioner has also not noted any distinct dividing features between the available Odai portion and the rest of the lands belonging to the appellant such as ridge, stone etc.,

18. Further, the first appellate court has also not accepted the appellant's case for not taking the actual Odai portion into consideration on the footing that, the respondent has not pleaded that he has encroached into the Odai portion. The abovesaid reasonings of the first appellate court seem unacceptable. It is immaterial, whether the appellant had encroached into the Odai portion or not. The question to be determined is whether the property to which the appellant is actually entitled to as per the title deeds excluding the actual Odai portion available as per the Government records. Only for that purpose, the Advocate Commissioner has been directed to measure the properties of the parties concerned with the help of the surveyor, who would be having the custody of the Government records. Accordingly, it is found that the Advocate Commissioner has found the Odai portion on ground, not in consonance with the Government records such as FMB and also no separate features demarcating the Odai portion on ground with the lands of the appellant and in such view of the matter, it is found that the determination of the first appellate court that the plan marked as Ex.C2 will have precedence to the plan marked as Ex.C3, in my considered opinion, would not reflect the actual enjoyment of the respective parties of the properties to which

they are entitled to legally and only if the Odai portion as found in the Government records is demarcated and the rest of the land in the suit survey number is measured, we could determine as to the actual extent of the lands which is in the possession and enjoyment of the respective parties. Basically, it is thus found that the Commissioner's plan marked as Ex.C2, would not portray the actual measurement of the properties, particularly, the actual extent of land owned by the appellant excluding the Odai portion as available in the Government records. It is thus found that if the Odai portion as depicted in the Government records had been taken into consideration vis-a-vis the boundary stone "X" as shown in Ex.C3, the Odai portion is found to be occupying an extent of 0.45 acres of land and excluding that portion, it is seen that the appellant is in possession of only an extent of 2.77 $\frac{3}{4}$ acres of land. Merely because the respondent has not accepted the boundary stone that by itself would not lead to the conclusion the boundary stone, could not be taken into consideration. Even otherwise, the Advocate Commissioner should have endeavoured to determine the actual Odai portion as corresponding to the Government records and after demarcating the said Odai portion, he should have proceeded to measure the lands of the respective parties and if that exercise had been undertaken, as noted by the Advocate Commissioner in Ex.C3 plan, the same would have reflected that the appellant is in possession of a lesser extent of land, than to which he is actually entitled to.

19. Not only that, as above seen, when according to the respondent, along with the property to which his wife is entitled to by way of Ex.A2 he has acquired title to an extent of 3.84 acres of land, when there is no material to hold that the respondent's wife had actually purchased an extent of 2.44 acres of land, by way of Ex.A2 and when there is no material to hold that the respondent's wife had taken the sale of her property by way of Ex.A2 on measurement, particularly when the same cannot be countenanced based on the interested testimony of P.W.2 and when as per the understanding of the Advocate Commissioner as regards the task assigned to him, the measurement of the respondent's wife's property should also to be separately undertaken for determining the actual extent of the property in the custody of the respondent, strangely and purposefully, the Advocate Commissioner having failed to do the same and in addition to that having endeavored to measure the properties of the parties concerned based on the Odai portion available on ground without taking into consideration, the actual Odai portion as per the Government records, it is found that the plan marked as Ex.C2 does not reflect the true picture and in such view of the matter, it is seen that the first appellate court has erred in holding that the appellant is in possession of an excess land of 38 $\frac{3}{4}$ cents of land, whereas if, Ex.C3 plan is taken into consideration, it is found that the appellant is

only holding a lesser extent of land than to which he is legally entitled to and therefore, it is seen that, on a whole, the first appellate court has erred in disposing of the appeal based upon Ex.C2 plan.

20.As rightly put forth by the appellant's counsel, the respondent has not filed any objection to the report of the Advocate Commissioner, specifically denying the availability of boundary stone in the locality marked as "X". On the other hand, as the boundary stone had been in existence at the place noted as "X" in Ex.C3 plan, the Commissioner had also measured the property excluding the Odai portion determined on the basis of the said boundary stone and accordingly held that the appellant is in possession of only a lesser extent of land i.e., 2.77 $\frac{3}{4}$ acres of land. Despite the fact that there is no demarcating features available between the actual Odai portion on ground and the rest of the land of the appellant, and secondly as well as there is no demarcating features available separating the boundary stone "X" from the land of the appellant, on the basis of the abovesaid second reasoning the appellate court has erred in preferring Ex.C2 plan, and thus it is seen that the reasoning given by the first appellate court for upholding Ex.C2 plan does not stand scrutiny in the eyes of law. Equally the reasoning given by the first appellate court that the appellant has not pleaded about any encroachment into the Odai portion is found to be no relevance to the issues involved in the matter and it is immaterial whether the appellant had encroached into the Odai portion or not. The issue in controversy should have been determined by the Advocate Commissioner only after excluding the Odai portion as depicted in the Government records and without doing the same, the Advocate Commissioner is found to have totally erred in taking the measurements of the properties concerned based upon the Odai portion available on ground and this, as rightly put forth, has resulted in a serious miscarriage of justice and the determination of the issues involved in the matter by the first appellate court on the abovesaid erroneous report and plan of the Advocate Commissioner is found to be based on perverse and illogical reasonings and conclusions, which cannot be sustained any further.

21.For the reasons aforesaid, the first appellate court has erred in holding that the respondent is entitled to obtain the possession of an extent of 38 $\frac{3}{4}$ cents of land of the B schedule property from the appellant based on the erroneous and unreasonable appreciation of the Commissioner's report and Ex.C2 plan failing to take into consideration that the Commissioner had failed to take into account the actual Odai portion as per the Government records and the FMB's and accordingly, the first appellate court should have taken into consideration only Ex.C3 plan submitted by the Advocate Commissioner as regards the

measurement of the properties of the parties concerned excluding the Odai portion by fixing the "X" boundary stone. In such view of the matter, the first appellate court without finding fault with the Advocate Commissioner's report and plan Exs.C1 and C2, which had been submitted without separately measuring the property of the respondent's wife's property covered under Ex.A2 and further despite the absence of the establishment of the case of the respondent that the appellant had encroached into the portion of the respondent as put forth in the plaint, failing to note the strange and unbelievable case of the respondent that he had put up the boundary and later a live fence with the portion of 1.40 acres of land leaving some portions of his land beyond the fence, which is alleged to be encroached by the respondent, the first appellate court is found to have totally erred in granting the relief of possession of an extent of 38 $\frac{3}{4}$ cents of land of the B schedule property in favour of the respondent and resultantly the judgment and decree of the first appellate court as regards the relief of possession granted in favour of the respondent are liable to be set aside.

22.The counsel for the appellant in support of his contentions placed reliance upon the decisions reported in

1. 2003 (8) SCC 752 [R.Ve.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple and Another]
2. 2008 (4) SCC 530 [Thiruvendadam Pillai Vs. Navneethammal and Another]
3. 2014(2) SCC 269 [Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others]

Similarly the counsel for the respondent, in support of his contentions placed reliance upon the decisions reported in

1. 1998 (1) Supreme Court Cases 614 [Indira Vs. Arumugam and Another]
2. 2000 (II) CTC 574 [Duraipandian Vs. Tamiljothi and 3 others]
3. 2003 (9) Supreme Court Cases 606 [Banarsi and Others Vs. Ramphal]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case at hand.

23. C.M.P.No.4353 of 2018

C.M.P.4353 of 2018 has been preferred by the petitioners for bringing on record the proposed respondents as parties in the second appeal on the footing that the proposed parties sought to be impleaded had acquired interest in the suit properties, by way of the settlement deed dated 07.10.2011 during the pendency of the second appeal. However, inasmuch as, the proposed parties are said to have claimed right Pendente lite, their purchase or their claim right in the properties involved would depend upon the result of the lis and in such view of the matter, the proposed parties, in my considered opinion are not

required to be impleaded as parties for the adjudication of the issues involved in the matter and further, they are also not shown to be proper and necessary parties. In the light of the above position, the petition in C.M.P.4353 of 2018 deserves rejection.

24.At the end, the judgment and decree dated 22.09.2003 passed in A.S.No.127 of 1999 on the file of the Subordinate Court, Sankari granting the relief of possession of an extent of 38 $\frac{3}{4}$ cents of the land of the B schedule property in favour of the respondent are set aside and in other aspects, the judgment and decree of the first appellate court confirming the judgment and decree of the trial court dated 31.08.1999 passed in O.S.No.78 of 1995 on the file of the District Munsif Court, Sankari are confirmed. Accordingly, the second appeal is allowed with costs. C.M.P.No.4353 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Sub Court,
Sankari,

2.The District Munsif, सत्यमेव जयते
Sankari.

+lcc to M/s.Sarvabhauman Associates, Advocate sr.no.31603

+lcc to Mr.N.Manokaran, Advocate sr.no.31913

S.A.No.865 of 2004
and
C.M.P.No.4353 of 2018

kk(co)
nr 17/07/2018