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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A. (MD)No.183 of 2017

and

C.M.P.(MD)No.3315 of 2017

S.Ramjan Beevi

:Appellant/ Appellant/ Defendant

Vs.

K.Nallamohammed

:Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 13.06.2016 made in A.S.No.91 of 2013, on the file of Sub Court, Sivagangai, confirming the judgment and decree dated 02.04.2013 made in O.S.No.277 of 1995, on the file of District Munsif Court, Sivagangai.

For Appellant

: Mr.S.Natarajan

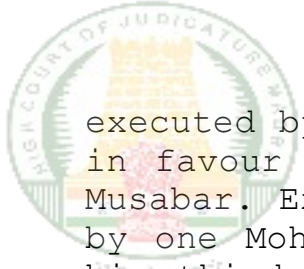
For Respondent

: Mr.J.Bharathan

JUDGMENT

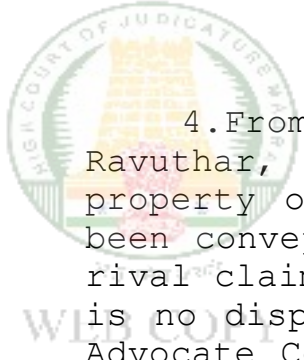
The Defendant in O.S.No.277 of 1995 on the file of the District Munsif Court, Sivagangai, is the appellant in this second appeal. The respondent in this appeal, as plaintiff, has filed a suit in O.S.No.277 of 1995 on the file of the District Munsif Court, Sivagangai for declaration declaring the plaintiff's title to the suit property and for consequential injunction restraining the defendant from putting up any construction in the suit property. Though the suit was originally filed for an extent of 45 feet East-West and 42 feet North-South, with reference to specific boundaries, the plaintiff realizing that he is only entitled to half of 42 feet North-South, filed a petition for amendment restricting his prayer from the declaration in respect of an extent of 45 feet East-West and 21 feet North-South. Since the defendant has admittedly put up a construction in respect of a portion of the property, which is claimed to be the property of the plaintiff, the plaintiff also amended the prayer in the suit to include the prayer for mandatory injunction to remove the construction put up by the defendant encroaching into the suit property.

2.It is not in dispute that the plaintiff claims title to the suit property, on the basis of three documents, namely, Ex-A1, Ex-A2 and Ex-A3. Ex.A1 is the sale deed dated 22.08.1941,



executed by one Mohamed Meera Ravuthar, S/o.Chinnathambi Ravuthar, in favour of his daughter one Mohammed Ayiesha, wife of Mohideen Musabar. Ex-A2, is the settlement deed, dated 16.06.1947, executed by one Mohideen Musabar, S/o. Syed Ibrahim Ravuthar in favour of his third wife one Katharpathammal, D/o.Musabar Ravuthar. Ex-A3 is the sale deed dated 10.12.1976, executed by the said Katharpathammal in favour of the plaintiff. In this case, it is not in dispute that the suit property and the property which is on the southern side, originally belonged to one Mohamed Meera Ravuthar. The sale deed, under Ex-A1 was executed by him. Total extent of land measuring 45 feet East-West and 42 feet North-South was referred to as the property owned by Mohamed Meera Ravuthar in Ex.A1. Out of this, the northern half measuring 45 feet East-West and 42 feet North-South was sold to his daughter Ayiesha Beevi. It appears that the said Ayiesha Beevi is also the second wife of Mohamed Musabar Ravuthar. The property purchased in the name of Ayiesha Beevi was conveyed in favour of one Katharpathammal, the third wife of Mohamed Musabar Ravuthar under the settlement deed Ex.A2 dated 16.06.1947. However, the said Katharpathammal, sold the property, measuring 45 feet East-West and 42 feet North-South. This property though refers to the whole property owned by Mohamed Meera Ravuthar, the sale deed is valid only to the extent of northern half which was sold by Mohamed Meera Ravuthar, in favour of his daughter Ayiesha Beevi under Ex-A1. This position was conceded by the plaintiff and therefore, the plaint was amended, restricting the plaintiff's claim to the extent of 45 feet East-West and 21 feet North-South.

3.Even in the plaint, the plaintiff admitted that the total property available on ground is only 45 feet East-West and 31½ feet North-South. The defendant claims title in respect of southern side of an extent of 45 feet East-West and 21 feet North-South under Ex-B1 to Ex-B3. Ex.B1 is the sale deed, dated 20.02.1998, executed by one Saraswathi, W/o.Anguchamy Servai and her Minor children in favour of the defendant. This sale deed is in respect of South-East portion of the property measuring 23 feet East-West and 21 feet North-South. Ex.B2 is the sale deed dated 05.11.1984, executed by one Allapitchai, S/o Ibrahim Ravuthar and Ayiesha Beevi, W/o. one Mohemed Ibrahim, in favour of the defendant. The property, conveyed under Ex.B2, is the South-West portion of the property measuring 23 feet East-West and 21 feet North-South. Ex-B3 is the document dated 13.01.1972, executed by one Iburaamusha Ravuthar in favour of Saraswathi in respect of the same property, which was conveyed by Saraswathi along with others in favour of the defendant. In short Ex-B3 is the parent document for Ex.B1. It is also to be noted that the vendor under Ex-B1 is none else than the son of Mohamed Meera Ravuthar. The original owner sold the northern half of the property owned by him to the defendant under Ex.A1. Both parties, therefore, claim title under the original owner, Mohamed Meeran Ravuthar.



4. From the documents, it can be seen that Mohamed Meera Ravuthar, during his life time sold the northern half of the property owned by him and the southern half of the property has been conveyed by his two sons under Ex-B2 and Ex-B3. There is no rival claim as to the possession or title to this extent and there is no dispute. The defendant filed written statement, after the Advocate Commissioner has filed a report on the petition filed by the plaintiff. His whole case is on the basis of the measurement given in the sale deed relied upon by him under Ex-B1 to Ex-B3. However, he also claimed right by adverse possession. Stating that the plaintiff is not in possession and enjoyment of the property, the defendant contended that the suit for declaration and consequential injunction is not maintainable.

5. The Advocate Commissioner, who was appointed in this case by the trial Court, filed a report and plan under Ex-C1 and Ex-C2, pointing out that the Southern and Northern boundary of the property, which was referred to in the document under Ex-A1 to Ex-A3 and Ex-B1 to Ex-B3, is intact and that only an extent of 45 feet East-West and 31 feet 6 inches North-South is available on ground. After the first inspection by the Advocate Commissioner, the defendant has put up a compound wall encroaching into the portion claimed by the plaintiff. Hence, amendment petition was filed even in the year 1995, to include the prayer for mandatory injunction to remove the compound wall put up by the defendant. On the basis of the Advocate Commissioner's plan and report, the trial Court, on 12.12.1996, partly decreed the suit by holding that the plaintiff is entitled to the property measuring 45 feet East-West and half of 31 feet 6 inches North-South. Aggrieved by the same, the defendant preferred an appeal and the appeal was also dismissed, confirming the judgement and decree of the trial Court granting the prayer for declaration of title and also for mandatory injunction. The defendant, thereafter, filed an appeal before this Court in S.A.No.965 of 1998. In the second appeal, the defendant raised an issue that the judgment and decree declaring the right of 15 feet 8 inches North-South and 45 feet East-West is bad inasmuch as the Advocate Commissioner has not measured the whole property, with reference to the documents of title relied upon by the plaintiff and the defendant. Hence, this Court allowed the second appeal and remanded the matter and the order of this Court in paragraph No.13 of the judgment is relevant and hence extracted hereunder:

"....13. In fine, this second appeal is allowed without cost. The judgment and decree passed in Original Suit No.277 of 1995, by the Principal District Munsif Court, Sivagangai, upheld in Appeal Suit No.46 of 1997 by the Principal District Court, Sivagangai, are set aside and the suit filed in Original Suit No.277 of 1995 is remanded to the file of the Principal District Munsif Court, Sivagangai. The Principal District Munsif Court, Sivagangai is directed to re-issue the commissioner's



warrant to the same Commissioner at the instance of the respondent / plaintiff and also directed to give specific direction to measure the suit property and the property of the defendant with reference to their documents of title and also with the assistance of a Taluk Surveyor along with relevant revenue records. The trial Court is directed to dispose the Original Suit No.277 of 1995 before the end of February, 2013. the Court fee paid on the Appeal Memorandum is ordered to be refunded to the appellant / defendant forthwith. The Registry is directed to send all the records immediately. Consequently, connected Miscellaneous Petition is closed."

6. After remand, the Advocate Commissioner once again inspected the suit property and filed a detailed report under Ex-C3 and Ex-C6 and plan under Ex-C4 and Ex-C7 along with photo and CD. It is to be noted that the Advocate Commissioner has found that the property on the northern side of plaintiff's property is subdivided as Survey No.336/8 and that the shops located therein belonged to Mohideen Andavar Pallivasal. Similarly, the property which lies on the Southern side of the property, which was claimed by the defendant, was found to be altered by the owner of the said property by putting up a new construction. Even the tiled house, which was put up by the defendant, was changed as RCC building. Hence, it was found that the North-South measurement is reduced to 30 feet 9 inches as against 31 feet 6 inches, recorded by him, earlier in his first inspection report submitted in the year 1995. Since a doubt was raised by the defendant and the total extent owned by the predecessor in interest of the plaintiff and the defendant were required to be ascertained, the Advocate Commissioner has taken the assistance of Firka Surveyor and the Village Administrative Officer and measurements were taken with reference to the survey manual and Natham settlement records produced by the Village Administrative Officer. The Commissioner's report and plan were filed along with the certified copy of the revenue records. The Advocate Commissioner's report is filed with specific reference to the North and South boundaries of the entire property which is now available for the parties. The Advocate Commissioner has also found that the North and South boundaries are intact. After referring to the Advocate Commissioner's report and all other documents, the trial Court held that the property originally belonged to Mohamed Meera Ravuthar within the four boundaries mentioned in the documents Ex.A1 is intact and that the extent available is only 30 feet 6 inches North-South and 45 feet East-West. Though earlier in Ex-A1 Northern boundary is shown as a shop belonged to one Sheiku Mohammed Ravuthar and another shop owned by Kasim Ravuthar, the shops on the northern side belonged to the Pallivassal now was

<https://hcservices.madras.gov.in/hcservices/> Northern boundary of the property owned by Mohamed Meera Ravuthar. The fact that the shop located on the Northern side of the property was in existence for more than 40 years is

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by the defendant within the said portion that was held in favour of the plaintiff. The plaintiff was also granted relief of recovery of possession in respect of portion for which the declaratory relief was granted and granted further relief of permanent injunction, restraining the defendant from carrying out any further construction in the property concerned. Aggrieved by the judgment and the decree of the trial Court, the defendant has preferred an appeal in A.S.No.91 of 2013, on the file of the Subordinate Court, Sivagangai.

8.The lower Appellate Court also confirmed the finding of the trial Court and dismissed the appeal. The Lower Appellate Court also confirmed the finding of the trial Court with regard to the existence of old building on the Northern side of the property for a long time and that there was no encroachment on the Northern side of the property owned by Mohamed Meera Ravuthar. The lower Appellate Court justified the decree in favour of the plaintiff declaring his right to an extent of 15 feet 8 inches North-South.

9.Aggrieved by the judgment and decree of the lower Appellate Court, the defendant has once again preferred this Second Appeal. The appellant has raised the following substantial question of law:

"1.When the suit is for declaration and consequential relief, whether the view taken by Courts below that both the plaintiff and defendant should be entitled to half share each from the available land and the decree passed on that view is sustainable under law?

2.When this Honourable Court has set aside the earlier judgments and decrees of the Courts below, whether similar view of the Courts below that the relief could be moulded under Order VII Rule 7 and in applying the same to the present case, is sustainable under law?

3.When the earlier direction issued by this Honourable Court dated 08.11.2012, when remanding the matter, has not been adhered to strictly to ascertain the disputed property, whether the judgments and decrees of the Courts below are sustainable?

4.When admittedly, the Southern boundary of the suit property is defendant property measuring 9'-9' are the Courts below right in treating that also as part of suit property and allotting $\frac{1}{2}$ share each to plaintiff and defendant?

5.When the defendant documents Ex.B1 and B2 prove her title for 21' North South from 'B' point in Courts below which have ignored the same, are sustainable under law?



6. When it is found by the Courts that the plaintiffs documents do not prove the plaintiffs case as prayed, whether the Courts below are right in granting the decree?

7. Whether the principle that boundaries prevail over extent has been misapplied by the Courts below in this case?

8. Whether the Courts below are right in not following the principle that the plaintiff has to succeed or fail on his own pleadings and proof?

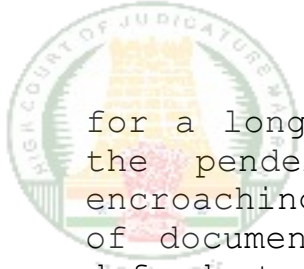
9. Whether the principle that the attester to document is estopped from pleading contrary to the document has been properly appreciated by the Courts below?"

10. After hearing the arguments elaborately, this Court also insisted the Counsel for the appellant to file his written arguments. Before considering the questions of law raised by the appellant in the written arguments submitted by the learned counsel for the appellant, this Court would like to discuss the legality of the findings of the Courts below, on the additional issues as well as the admitted facts and circumstances in this case.

10.1. As it has been pointed out by this Court, in the course of discussion, the entire property which is the subject matter of litigation, belonged to one Mohamed Meera Ravuthar. The Northern half of the property was sold by him in favour of his daughter under Ex-A1 and the Southern half of the property was dealt with by his two sons subsequently, under Ex-B2 and Ex-B3. It is admitted by the defendant herself that the Western half of Southern portion was sold to the defendant under Ex.B2 by the legal heirs of one of the sons of Mohamed Meera Ravuthar and the Eastern half of Southern half was sold by another son of Mohamed Meera Ravuthar in favour of the defendant's vendor one Saraswathi.

10.2. In all the documents, the North-South measurement was referred to as 42 feet and the document Ex-A1 executed by Mohamed Meera Ravuthar in the year 1947 would show that the purchaser is entitled to 21 feet North-South on the Northern side and that the Southern half is retained by the original owner, namely, Mohamed Meera Ravuthar.

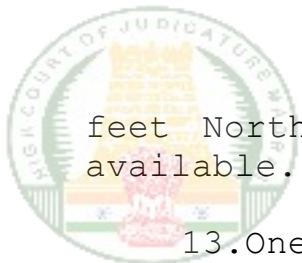
10.3. There is no pleadings in this case about the alleged encroachment suggested by the defendant on the Northern side. As a matter of fact, both the Courts have concurrently ruled out the possibility of any encroachment on the Northern side by anyone. The Commissioner's report and plan would indicate that the property on the Northern side falls in different sub-divisions and the constructions put up on the Northern side was in existence



for a long number of years. The conduct of the defendant during the pendency of the suit in putting up the constructions encroaching into the portion claimed by the plaintiff on the basis of documents under Ex-A1 to Ex-A3, would clearly show that the defendant has made an attempt to grab the property, on the basis of the documents of title deed under Ex-B1 to Ex-B3, which are in later in point of time, compared to documents under Ex-A1 to Ex.A3. After the execution of Ex-A1 the original owner or his successors in interest are estopped from denying title to the property purchased by the plaintiff under Ex.A1 to Ex-A3. The document under Ex-A1, clearly show that the vendor has conveyed half of 45 feet East-West and 42 feet North-South (on the Northern side). The seller under Ex-A1, who promised the purchaser to take 21 feet North South cannot turn around and say that what is available for the purchaser is the property less the 22 feet North-South on the Southern side retained by him. Even if there is a reduction of extent, inasmuch as the property has been conveyed with reference to specific extent, it is the seller, who has to make good the title. Contrary to this and surprisingly, the defendant, who claimed to have purchased the property, which was remaining unsold, is claiming 22 feet North-South by interpreting document Ex.A1 in the manner convenient to him but contrary to the well established principles on interpretation of documents and equity.

11. In earlier round, the plaintiff has succeeded before Courts below and this Court on the issue raised by the defendant suggesting encroachment on the Northern side, set aside the judgment of the Courts below and remitted back the matter once again to the trial Court with a direction for re-inspection of property and for measuring the property with reference to the documents of title relied upon by both. Even after remand, the defendant has not made an attempt to prove that there could have been some encroachment on the Northern side. After failing in the attempt to establish her right by suggesting encroachment on the Northern side without any basis, the appellant/defendant has once again questioned the Advocate Commissioner's report as if the judgment of the trial Court on the basis of the Advocate Commissioner's report and plan after remand is not strictly in adherence to the order of remand.

12. It is true that the principle 'boundary prevails over the extent' has got certain limitation to its application. This principle can be applied only when the extent given in the document is approximate. However, on the question of interpretation of documents, the Court has to explore the truth as much as possible so that the finding can be arrived at on the preponderance of probabilities. The plaintiff who claimed right an extent of 21 feet North-South is entitled to claim either 21 feet North-South or Northern half of what is available in equity. Though the plaintiff is entitled to claim 21

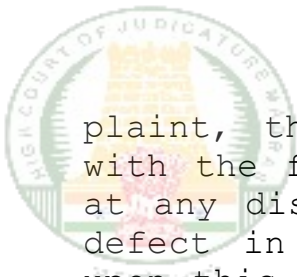


feet North-South, he is fare enough to accept half of what is available.

13. One of the arguments that was advanced by the appellant/defendant is that the plaintiff has attested one of the documents relied upon by the defendant and hence, he is bound by the document and that the plaintiff is estopped from disputing the right claimed by the defendant under the said document. The legal position is made clear in several judgment of this Court and it has been repeatedly held that the attestor of document without knowing the contents of the document is not bound by the terms of the deed. The defendant has not made any attempt to establish that the plaintiff put his signature knowing the contents of the document, particularly, with reference to the measurements of the property. Even assuming that the plaintiff knows the contents of the document, having purchased the property earlier, the plaintiff's right to one half of what is available cannot be denied to him. Having regard to the admitted facts and the materials on record, this Court find that no substantial question of law is involved in this case to entertain this second appeal. The questions of law raised by the appellant in this case are inappropriate.

14. The Counsel for the appellant in the written arguments has elaborately narrated the facts suitable to his submissions. It is the specific case of the learned counsel for the appellant that even after remand, the Advocate Commissioner has not taken the measurements with reference to the title deeds. The Counsel for the appellant is too narrow in his approach and wants the measurement to be taken from the Southern boundary to ensure that his client gets 21 feet North-South from the Southern boundary. It is only in this context, the learned Counsel for the appellant has made further arguments. The next submission of the learned Counsel for the appellant is that the plaintiff has to prove his case and that the plaintiff who claimed 21 feet North South and admits that the defendant owned the property on the Southern half of the plaintiff's property cannot be given any right, much less half of what is available, if he fails to establish his title to 21 feet North-South. This argument is misconceived and shows the perverted approach. Since the plaintiff's original claim was to the extent of 42 feet North-South, it is contented that it is upto the plaintiff to prove his entitlement to 42 feet North-South and that the Courts below cannot grant the relief in favour of the plaintiff for half of what is available by wrongly applying Order VII, Rule 7 C.P.C.

15. A Division Bench of this Court in the case of **S. Rm. M. Rm. Ramanathan Chettiar and another v. H. H. Maharana Shri Dowlat Singhji Thakore Sahib, Limbdi and others** reported in **AIR 1938 Madras 865** has held that even if it is not prayed for in the



plaint, the Court can grant a relief which is not inconsistent with the facts of the case, provided the defendant is not placed at any disadvantage in the course of the trial by reason of the defect in pleadings. Learned counsel for the appellant relied upon this judgement. But, this judgment is more in favour of the plaintiff than to support the case of the defendant. The contention of appellant's counsel is against the well accepted principle that though the plaintiff seeks a larger relief, the Court can always grant a lesser relief if the Court find that the plaintiff is entitled to.

16. The learned counsel further submitted that the plaintiff has attested the document Ex.B1 under which the defendant purchased the eastern half of southern half of the property owned by the original owner. The learned counsel relied upon a judgment rendered by a Division Bench of this Court in the case of **K.A.Selvanachi and another v. Dr.S.R.Sekar and another** reported in **(2003) 1 M.L.J. 769** wherein it has been held as follows:

"11. ... Further, on principle it is not possible to hold that attestation of a signature is to be deemed as acceptance of the contents of the document which has been executed by the signatory whose signature is attested by the attestor. There should be something more than mere attestation to impute such knowledge of the contents so as to bind the attestors."

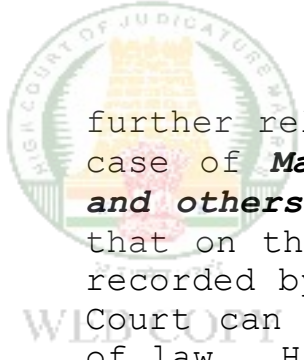
He then relied upon a judgment of the learned Single Judge of this Court in the case of **Ramasamy Gounder and another v. Anantapadmanabha Iyer** reported in **1971 1 M.L.J. 392** for the proposition that where a person having a tangible interest in the property affected by a deed, attests that deed, his attestation should be taken as proof of his consent to and knowledge of the correctness of the recitals in the deed. The judgment cited by the learned counsel for the appellant refers to some of the previous judgment where it was presumed that a man signs as a witness to show that he is acknowledging the instrument to be correct presuming that it frequently occurs in native documents. However, the position is not the same now in view of subsequent binding precedents. The well accepted position now is that attestation proves no more than that the signature of an executing party has been attached to a document in the presence of a witness and that it does not involve the witness in any knowledge of the contents in any deed. However, by independent evidence, if it is shown that the attestor had full knowledge of the contents and nature of transaction it can be inferred that he is a consenting party. Only when a person signs a document as an attestor with the full knowledge of the contents and nature of transaction, he is estopped from questioning the effectiveness of the transaction attested by him. The interpretation of the word 'attested' as per Section 3 of the Transfer of Property Act gives a clear indication



that by attestation the attesor signs the instrument in the presence of the executant to vouch the fact that the executant sign or affix his mark to the instrument in his presence. Therefore, by mere attestation, it cannot be held that the attesor is bound by the recitals of the document. The question whether the attesor is a consenting party is one of fact and the person who pleads estoppel should prove by independent evidence. In this case, the appellant defendant has not proved that the plaintiff had attested the document Ex.B1 with the full knowledge of its contents and nature of transaction. Hence, the argument of the learned counsel for the appellant is not convincing.

17.The learned counsel for the appellant relied upon a judgment of the Hon'ble Supreme Court in the case of **P.S.Radhakrishna Reddy v. M.K.Bhagyalakshmi and another** reported in **(2007) 10 SCC 231** wherein the Hon'ble Supreme Court has held that a document must be read in its entirety and that the intention of the parties must be gathered from the document itself and all parts of the deed must be read in their entirety so as to ascertain the nature thereof. There is no quarrel about the proposition. But the question before this Court is whether the reading of document Ex.A1 can be interpreted as it is suggested by counsel for appellant. This Court has already held that the document Ex.A1 conveys an indefeasible right in favour of the plaintiff to an extent of 21 feet north-south on the northern side of the property belonged to the original owner. The subsequent clause in the document Ex.A1 indicating that the original owner retains the southern half measuring 21 feet north-south cannot deprive the plaintiff's right. Hence, if the recitals of the document Ex.A1 is properly construed, it is to be held that the plaintiff is entitled to 21 feet north-south and not half of what is available on ground.

18.The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar v. Yusuf Ali** reported in **2010-4-L.W. 783** for the proposition that if the High Court comes to the conclusion that the findings of fact recorded by the Courts below are perverse being based on no evidence or based on irrelevant material, the Second Appeal can be entertained and that it is permissible for the High Court to re-appreciate the evidence. This Court has already held that the findings of the Courts below are well founded and based on relevant materials and evidence apart from the admitted facts and circumstances of the case. The learned counsel for the appellant further relied upon a judgment of the Hon'ble Supreme Court in the case of **Easwari v. Parvathi and others** reported in **2014 (4) CTC 583** for the proposition that the High Court can set aside the findings of the Courts below when there is perversity in decision due to mis-appreciation of the evidence and that there is no absolute bar for the High Court in Second Appeal to interfere with the findings of facts. The learned counsel for the appellant



further relied upon a judgment of the Hon'ble Supreme Court in the case of **Maria Colaco and another v. Alba Flora Herminda D'Souza and others** reported in **(2008) 5 SCC 268** wherein it has been held that on the scrutiny of evidence if it is found that the findings recorded by the First Appellate Court is totally perverse the High Court can interfere with the matter as it constitutes a question of law. Having regard to the findings of the Courts below and the elaborate reasonings given by this Court, the above two judgments have no application to the facts of this case.

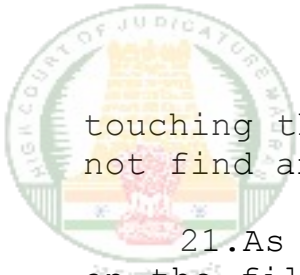
19. The legislative intention, ambit and scope of Section 100 C.P.C. has been dealt with elaborately in several judgments and it is well accepted that the legislation never wanted Second Appeal to become a third trial on facts. In the case of **Gurdev Kaur and others v. Kaki and others** reported in **2007 (1) CTC 334**, after referring to several judgments of the Hon'ble Supreme Court, the Hon'ble Supreme Court has held as follows:

"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 C.P.C. have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

72. When Section 100 C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial questions of law.

73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable the error may seem to be and they added a note of warning that no Court in India has power to add to, or enlarge, the grounds specified in Section 100."

20. Again the Hon'ble Supreme Court in the case of **State of Kerala and another v. Mohd. Kunhi (Dead) by LRs. And another** reported in **(2005) 10 SCC 139** has observed that on the question of law touching the appreciation of evidence cannot be treated as substantial question of law. In the present case, the appellate Court has neither ignored any material evidence having bearing on the decision of the case nor considered any evidence it is otherwise not admissible. Hence, this Court is of the view that the questions of law raised by the appellant in this case are



touching the findings of Courts below on facts and this Court does not find any question of law to be answered.

21.As a result, the judgment and decreed in A.S.No.91 of 2013 on the file of the Sub Court, Sivagangai, confirming the judgment and decree of the trial Court in O.S.No.277 of 1995 on the file of the District Munsif Court, Sivagangai, is affirmed and the Second Appeal is dismissed with costs throughout. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Court, Sivagangai.
2. The District Munsif Court, Sivagangai.
3. The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.48965

SRM

VB/SKN/RSK/SAR1/07/05/2018/13P/6C

S.A.(MD)No.183 of 2017
15.02.2018