

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2018

PRONOUNCED ON : 21.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.Nos.1721 and 1858 of 2000

and

CMP.Nos.16220/2000 in SA.No.1721/2000

and

CMP.Nos.17521/2000 in SA.No.1858/2000

Kolandayammal ..Appellant in both the appeals
/Plaintiffs

.Vs.

1. K.Mani
2. Saroja
3. Santha
4. Selvi

.. Respondents in both the appeals
/Defendants

PRAYER in S.A.No.1721 of 2000 and 1858 of 2000 :- Second Appeals filed under Section 100 of C.P.C., against the Judgment and decree dated 20.12.1999 passed in A.S.No.11 of 1999 and 22 of 1999 on the file of the I Additional District Judge-Cum-Chief Judicial Magistrate, Erode in confirming the Judgment and decree dated 03.08.1998 passed in O.S.No.236 of 1995 and 354 of 1997 on the file of the Additional Sub Judge, Erode respectively.

For Appellant
(in both appeals) : Mr. T.Muruga Manickam,
Senior Counsel
for Mr.N.Srinivasan

For Respondents
(in both appeals) : Mr.P.Valliappan

COMMON JUDGMENT

S.A.No.1721 of 2000 has been filed by the defendant/appellant against the Judgment and Decree passed by the I Additional District Judge-Cum-Chief Judicial Magistrate, Erode in A.S.No.11 of 1999 dated 20.12.1999 confirming the Judgment and Decree passed by the Additional Sub Judge, Erode in O.S.No.236 of 1995 dated 03.08.1998.

2. S.A.No.1858 of 2000 has been filed by the

plaintiff/appellant against the Judgment and Decree passed by the I Additional District Judge-Cum-Chief Judicial Magistrate, Erode in A.S.No.22 of 1999 dated 20.12.1999 confirming the Judgment and Decree passed by the Additional Sub Judge, Erode in O.S.No.354 of 1997 dated 03.08.1998.

3. The appellant in both the second appeals viz., Kolandayammal had filed a suit in O.S.No.1107 of 1986 on the file of the Principal District Munisif, Erode against one Krishnan and K.Mani (1st respondent in both the second appeals) to restrain the defendants therein, their men and agents from in any manner interfering with her peaceful possession and enjoyment of the suit property by means of permanent injunction. Subsequently, the other respondents herein were impleaded as defendants 3 to 5 in that suit. Thereafter, the said suit was transferred to the Additional Sub-Judge, Erode and re-numbered as O.S.No.354 of 1997.

4. The respondents had filed a suit in O.S.No.236 of 1995 on the file of the Additional Sub-Judge, Erode, against the appellants herein for delivery of vacant possession of the suit property. The learned Additional Sub-Judge by the common judgment dated 03.08.1998 had decreed the suit in O.S.No.236 of 1995, directing the defendant therein to deliver vacant possession of the suit property to the plaintiffs therein within three months, however, he dismissed the suit in O.S.No.354 of 1997.

5. Aggrieved by the aforesaid judgments and decrees, the appellant herein had filed appeals in A.S.No.11 of 1999 and 22 of 1999 on the file of the I Additional District Judge-Cum-Chief Judicial Magistrate, Erode. The learned I Additional District Judge-Cum-Chief Judicial Magistrate, Erode, by the common Judgment dated 20.12.1999 had dismissed the said appeals and thereby confirmed the judgment and decree passed by the Trial Court.

6. Feeling aggrieved, the appellant herein has filed the present second appeals. For the sake of convenience, the parties are referred to as described in O.S.No.354 of 1997.

7. The averments made in the plaint in O.S.No.354 of 1997 on the file of the Additional Sub-Judge, Erode (O.S.No.1107 of 1986 on the file of the Principal District Munisif, Erode) are in brief as follows:

(a) The suit property is a house bearing Door No.204-A, situated in T.S.No.1054-A (Old Survey No.971), New Ward No.27 at Manalmedu, opposite to Railway Goodshed Road, Erode Town. The suit property is a Government Poramboke land. It was occupied by the poor people and a slum had grown up. The first defendant is a Tailor. The second defendant is the son and the defendants 3 to 5 are daughters of the first defendant. The defendants had

encroached the site of the suit property as well as the site situated on the west of it. They had put up a thatched shed in the suit property and a row of calicut tiled houses. The defendants incurred heavy debts and could not discharge the same. Therefore, they decided to give up their occupation and possession of the suit site and then the existing thatched shed with half share in the well in the north western corner. They had made a request to the plaintiff that she can occupy the suit site with the thatched superstructure and the half share in the draw well on payment of Rs.5,000/- to the defendants. Accordingly, the plaintiff had paid a sum of Rs.5,000/- to the defendants and to that effect, the defendants 1 and 2 had executed a document dated 27.01.1978 and from that date onwards, the plaintiff was in possession and enjoyment of suit property. The plaintiff had removed the west facing thatched shed and had put up tiled and thatched houses in the suit site by spending huge amount to the tune of Rs.15,000/-. She had also built a latrine, north of the draw well and a door way on the northern compound wall. In pursuance of the aforesaid document dated 27.01.1978, the Erode Municipality had given a separate Door Number to the suit property as Door No.204-A and the plaintiff is paying the House tax for the suit property.

(b) When the Government of Tamil Nadu, through Slum Clearance Board made attempts to dispossess the plaintiff and other neighbouring occupants, they filed a writ petition in W.P.No.11468 of 1984 before this Court. In W.M.P.No.18390 of 1984, this Court was pleased to grant injunction restraining the State of Tamil Nadu Slum Clearance Board, Erode, from disturbing or taking possession of the property situated in New T.S.No.8 Ward No.27 Manalmedu in Erode Municipality. The plaintiff is the present occupier of the suit property and she is in lawful possession of the same. The defendants are the occupants of Door.No.204 which is situated west of the plaintiff's Door No.204A and they got electricity connection for their house. Likewise, the plaintiffs had also applied for grant of electricity service connection to her house, the defendants are unnecessarily objecting to grant the electricity service connection to the plaintiff. Further, the defendants attempted to trespass into the suit property. Hence, the plaintiff was constrained to file the suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the same.

8. The averments made in the written statement filed by the second defendant and adopted by the other defendants are in brief as follows:

The plaintiff is none other than the sister of the first defendant's wife. It is false to state that the first defendant incurred heavy debts in order to build calicut tiled house in

the suit property and hence he made requests to the plaintiff to give a sum of Rs.5,000/- and occupied the suit property and also executed a document dated 27.01.1978. The defendants denied the execution of the document dated 27.01.1978. Even if it is true, it is not a legally valid, enforceable document and the said document will not bind on the defendants. The said document is a forged and fabricated one. The defendants understand that the plaintiff, taking advantage of the mental disorder of the first defendant in the year 1975, the plaintiff should have conspired with the enemies of the defendants and would have fabricated the said document in favour of her. Ever since, 1967, the first defendant is paying the house tax to the suit property. It was the first defendant who had built up tiled house in the suit property even in the year 1954 and occupying the same. The allegation that the defendants tried to dispossess the plaintiff from the suit property is false. Even in the year 1954 itself, the first defendant occupied the suit property and he is in possession of the same till this date. The plaintiff has made false representation to the municipal authorities and made them to believe that there is a separate house as Door No.204-A. The plaintiff has not come to the court with clean hands. Hence, the defendants prayed to dismiss the above suit.

9. The averments made in the plaint filed in O.S.No.236 of 1995 on the file of the Additional Sub-Judge, Erode, are in brief as follows:

(a) The first plaintiff is the son and the plaintiffs 2 to 4 are the daughters of one Krishnan. The suit property along with the adjacent western portion were originally belonged to the Government as Poramboke lands. The plaintiffs' father Krishnan was occupying the same from the year 1954. He had put up constructions and he was living there with his family and leasing some portions to tenants. He enclosed the area occupied by him by fence. Under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the Special Tahsildar, Erode took action by way of proceedings in S.R.15/71 dated 11.05.1971 and later issued patta to the plaintiffs' father in respect of the entire portion which was in his occupation. He was in peaceful possession and enjoyment of the same by paying taxes to the municipality, Erode and he has also obtained electricity connection.

(b) The defendant is none other than the sister of the plaintiffs' mother. The defendant and her family were working in agricultural lands as coolies and they did not get sufficient income. Hence, the defendant sought help of her sister and her husband namely Krishnan in or about 1974. They wanted to come to Erode and try their fortune. Then out of sympathy and on account of the close relationship, Krishnan asked them to come to Erode for their livelihood. They did not have any house to

reside. Hence, the defendant requested the said Krishnan to allow her to reside in a portion of the shed. He allowed the defendant to occupy the shed put up by him on the eastern half of the portion on a condition that the defendant should pay tax due to the municipalities and other charges due to the Government for the portion that she was going to occupy. Accordingly, the defendant had occupied the suit property with her family members. So, the possession of the defendant is only a permissive one. While so, all of a sudden, the defendant filed a suit against the father of the plaintiffs and the first plaintiff in O.S.No.1107 of 1986 on the file of the Principal District Munisif, Erode (subsequently transferred to the Additional Sub Judge, Erode and renumbered as O.S.No.354 of 1997) for permanent injunction. In that suit, she had claimed transfer of an occupancy right over the suit property from Krishnan and the 1st plaintiff under a document dated 27.01.1978. The first plaintiff and his father Krishnan contested the said suit. During pendency of the said suit, the father of the plaintiff died and hence, the plaintiffs 2 to 4 were impleaded as defendants 3 to 5.

c) It is false to say that the plaintiffs' father Krishnan and the first plaintiff had transferred the right of occupancy to the defendant under the transfer deed dated 27.01.1978. The said document was not supported by consideration. Assuming that there is any such document, the said document is a false document and cannot be enforced under law. The said document should be a forged and fabricated one and not binding on the plaintiffs. The plaintiffs suspect that the defendant might have obtained the said document, when the said Krishnan was suffering from mental disorder in the year 1975 and hence even if there is any such document, the same was not binding on the said Krishnan or the plaintiffs. After receipt of summons in O.S.No.1107 of 1986, the first plaintiff and Krishnan came to know that they have been cheated by the defendant with a view to grab the property. After knowing the evil designs of the defendant, the first plaintiff and his father Krishnan had revoked the licence granted to the defendant and demanded the possession of the suit property but the defendants refused to deliver vacant possession. Hence, the plaintiffs were forced to file the above suit for delivery of vacant possession of the suit property.

10. The averments made in the written statement filed in O.S.No.236 of 1995 on the file of the Additional Sub Judge, Erode are in brief as follows:

a) The relationship between the parties is admitted as true. It is true that the suit properties and its adjoining portion on the western side originally belonged to the Government as Poromboke lands. It is also admitted that the

plaintiffs' father Krishnan was occupying the same from the year 1954, but, it is false to say that he had put up construction at his own risk and living with his family members and leasing some portions to the tenants. The defendant is not aware of the fact that under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the Special Tahsildar, Erode has issued patta in favour of the said Krishnan in respect of the entire portion that was in his occupation. It is false to state that the defendant sought help of her sister and the said Krishnan and considering her requests, the said Krishnan permitted the defendant and her family members to reside in the portion of the property which was in his occupation and that is the suit property. It is also false to state that the first plaintiff and his father Krishnan never transferred any right to the defendant under the deed of transfer dated 27.01.1978.

b) The plaintiffs and their father had encroached the site of the suit property as well as the site which is situated on its west and they had put up a thatched shed in the suit site and a row of calicut tiled houses. While putting calicut tiled row of houses, they incurred heavy debts and hence they made requests to the defendant to pay a sum of Rs.5,000/- and occupy the suit property. Accordingly, the defendant paid a sum of Rs.5,000/- and occupied the suit property and to that effect, the first plaintiff and his father had executed a document dated 27.01.1978 and from that date onwards, she is in possession and enjoyment of the suit property. Subsequently, she had removed the west facing thatched shed and had put up a tiled and thatched houses in the suit site by spending huge amount to the tune of Rs.15,000/- and also got separate Door Number and she is paying the house tax for the same. When the Government of Tamil Nadu attempted to dispossess the defendant and others, they filed a writ petition in W.P.No.11468 of 1984 before the High Court of Madras and got injunction. The plaintiffs were unnecessarily disturbing the possession of the defendant and hence she filed a suit in O.S.No.1107 of 1986 for the relief of permanent injunction. Since the plaintiffs' father had received valid consideration for giving up the occupancy right over the suit property to the defendant, the plaintiffs are estopped from claiming any right over the suit property. The present suit has been filed as a counter blast to the suit filed by the defendant in O.S.No.1107 of 1986 and therefore the defendant prayed to dismiss the suit.

11. Based on the aforesaid pleadings, the learned Additional Sub-Judge, Erode had framed necessary issues and tried the suits jointly. He had recorded the evidence in O.S.No.354 of 1997 and treated the same as evidence in O.S.No.236 of 1995. During trial, the plaintiff in O.S.No.354 of 1997 and the defendant in O.S.No.236 of 1995 namely

Kolandayammal examined herself as P.W.1 and also examined one Dhandapani as P.W.2. She had marked exhibits A1 to A65 as exhibits. The second defendant in O.S.No.354 of 1997 and the first plaintiff in O.S.No.236 of 1995 namely K.Mani examined himself as D.W.1 and marked Exhibits D1 to D21 as exhibits.

12. The learned Additional Sub Judge, Erode, after considering the materials placed before him found that the plaintiff in O.S.No.354 of 1997 and the defendant in O.S.No.236 of 1995 namely Kolandayaammal had failed to prove that she is in possession and enjoyment of the suit property only in pursuance of the transfer deed dated 27.01.1978. He further found that the possession of the said Kolandayammal is only a permissive one and therefore she is bound to deliver vacant possession of the suit property. Accordingly, he dismissed the suit in O.S.No.354 of 1997 which was filed by the said Kolandayammal and decreed the suit in O.S.No.236 of 1995 which was filed by the respondents herein and directed the said Kolandayammal to deliver vacant possession of the suit property within three months.

13. Aggrieved by the same, the said Kolandayammal had filed appeals in A.S.No.11 of 1999 and 22 of 1999 on the file of the I Additional District Judge-Cum-Chief Judicial Magistrate, Erode. The learned I Additional District Judge-Cum-Chief Judicial Magistrate, Erode by the common Judgment dated 20.12.1999 had dismissed the said appeals, confirming the Judgment and decree passed by the Trial Court. Aggrieved by the same, the said Kolandayammal had filed the present second appeals.

14. This Court, at the time of admitting the above second appeals, had formulated the following substantial questions of law:

" 1. Whether the sale deed dated 27.01.1978 executed by Krishnan in favour of the appellant had become final by virtue of Order dated 23.01.1996 passed in C.R.P.No.3366 of 1994 and whether the Trial Court should have placed reliance upon the said document limited for the collateral purpose to ascertain the character and nature of possession of the suit property by the appellant?

2. Whether the unregistered sale deed dated 27.01.1978 could be looked into for the collateral purpose under Section 49 of the Registration Act?

3. Whether there was revocation of licence by the deceased Krishnan as alleged by them in the written statement and plaintiff to maintain the suit for recovery of possession in the absence of notice of

revocation?"

15. Heard Mr. T.Muruga Manickam, the learned Senior Counsel for the appellant assisted by Mr.N.Srinivasan, and Mr.P.Valliappan, learned counsel for the respondents. The learned counsel for the respondents has also filed written arguments.

16. Substantial Questions of Law 1 to 3 in both the second appeals:

The learned Senior counsel for the appellant has submitted that the Courts below erred in holding that the appellant failed to take steps for mutation in the revenue records, in pursuance to the sale deed dated 27.01.1978, when admittedly, the suit property was classified as Poramboke Land and that the mutation could not be effected in her name. He further submitted that the Courts below ought to have seen that though the unregistered sale deed was inadmissible in evidence, the same would have been relied upon and looked into for ascertaining the character and nature of possession of the suit property under Section 49 of the Registration Act. He further submitted that the Trial Court had erred in rejecting the requests of the appellant to mark the unregistered sale deed dated 27.01.1978. He further submitted that as per Section 105 (1) of C.P.C, the appellant is entitled to challenge the said interlocutory order passed by the Trial Court in rejecting the requests made by the appellant to mark the said document as exhibit. He further submitted that the Courts below failed to consider that the respondents herein failed to prove the pleading that the patta was granted in favour of Krishnan under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. He further submitted that Exhibits A1 to A65 would prove the ownership of the superstructure and supports the case of the appellant that the sale deed dated 27.01.1978 was in her favour. He further submitted that the Courts below erred in holding that the appellant had admitted the ownership of the site in the name of the first respondent's father by relying upon the pleadings made in the plaint in O.S.No.1107 of 1986 on the file of the Principal District Munisif, Erode (renumbered as O.S.No.354 of 1997 on the file of the Additional Sub Judge, Erode). He further submitted that the Courts below failed to consider that the Exhibits B.1 to B.4 were issued subsequent to the suit and especially Ex.B.4 was issued in respect of the property situated on the west of the suit property. He further submitted that the Courts below failed to consider that the respondents have not revoked the alleged licence by issuing any notice and therefore he prayed to allow the second appeals and set aside the judgments and decrees passed by the Courts below and decree the suit in O.S.No.354 of 1997 which was filed by the appellant and dismiss the suit in O.S.No.236 of 1995 which was filed by the respondents herein.

17. The learned Senior Counsel for the appellant, in support of his contentions, relied upon the following decisions:

- i) Kandaswami Mudaliar Vs. Ponnuswami Mudaliar- AIR 1929 (MAD) 16 : CDJ 1928 MHC 418
- ii) Thailammal and others Vs. Janardhan Raju and others - 1995 Supp (4) SCC 455
- iii) Bondar Singh and others Vs. Nihal Singh and Others-(2003) 4 SCC 161
- iv) Rame Gowda (D) by Lrs Vs. M.Varadappa Naidu (D) by Lrs and Another - 2004 -3 L.W. 143
- v) Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and Others (2008) 4 SCC 594
- vi) K.B.Saha and Sons Private Ltd., Vs., Development Consultant Limited- (2008) 8 SCC 564
- vii) Periyannayagasamy Vs. Jesudoss and others - (2012) 2 MLJ 81
- viii) R. Munusamy Vs. G. Krishttappillai and others 2014-5-L.W.59

18. Per contra, Mr. P. Valliappan, the learned counsel for the respondents has submitted that it is an admitted fact that the suit property and the property situated on the west of the suit property were originally Poramboke lands and they were occupied by one Krishnan, who is the father of the respondents, in the year 1954 and put up a thatched shed in the suit property and a row of tiled houses in the property which was situated on the western side of the suit property. He further submitted that it is also an admitted fact that the appellant and the wife of the said Krishnan are sisters. He further submitted that according to the appellant, she came into possession of the suit property by virtue of an unregistered sale deed dated 27.01.1978 which was said to have been executed by the said Krishnan and his son, the first respondent herein, but, the appellant filed an application seeking permission of the Court to mark the unregistered sale deed and the same was dismissed by the Trial Court and the said order was confirmed by this Court in CR.P.No.3366 of 1994 and therefore, the appellant cannot take shelter under Section 105(1) CPC. He further submitted that the Order passed by the Trial Court rejecting the requests of the appellant to mark the unregistered sale deed as exhibit and confirmed by this Court CR.P.No.3366 of 1994 can operate as res-judicata. He further submitted that Exs.B.1 to B4 would show that the patta has been granted in favour of the said Krishnan in respect of the suit property and adjoining property.

19. The learned counsel for the respondents further submitted that the appellant based her claim only as a purchaser under the unregistered sale deed dated 27.01.1978 and when the said document itself not marked as exhibit before the Court, her claim must fail. He further submitted that if really the appellant came to the possession of the suit property in pursuance of the said unregistered sale deed dated 27.01.1978, she should have taken steps for obtaining patta in her name, but the very fact that she has not applied for a patta itself would show that her claim is false. He further submitted that the appellant is the own sister of the said Krishnan's wife and on her requests, she was permitted to reside in the suit property and taking advantage of the same she is making claim over the suit property. He further submitted that the entire facts and circumstances of the case would probabilise the case of the respondents and taking into consideration of all the aforesaid facts, the Trial Court has rightly dismissed the suit which was filed by the appellant and decreed the suit which was filed by the respondents and the same was confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and hence he requests to dismiss the second appeals. He also filed written arguments.

20. The learned counsel for the respondents, in support of his contentions, relied upon the following decisions:

- i) Laxminarayan Vs. Sultan Jehan Begu- AIR 1951 Hyderabad 132
- ii) Ramsarup Dass and others Vs Pyare Das and another- AIR 1974 Patna 153
- iii) Gurubachan Singh Obeal Vs. Arya Dharma Sewa Sang -AIR 1981 Patna 318
- iv) Mahaboob Bibiammal and 8 Others Vs. Angammal- 2010 (4) CTC 473
- v) Municipality Indore Vs. Gopalpuri-AIR 1956 Madhya Bharat- 70
- vi) Heisnam Nilakantha Singh and Others Vs. Helsnam Ningoi Thokchom Ongbi Thambai Devi and other - AIR 1970 Manipur 50
- vii) Sailendra Nath Ghosal Vs. Smt. Enna Dutt AIR 1973 Calcutta 128
- viii) Thirulakshmi Ammal Vs. The Special Tahsildar and others AIR 1974 Madras 182

21. This Court considered the rival submissions and perused the records.

22. It is an admitted fact that the suit property and

the adjoining portion were originally Government Poramboke and the same were occupied by one Krishnan, who is the father of the respondents, in the year 1954 and put up thatched sheds therein. It is also an admitted fact that the wife of the said Krishnan and the appellant namely Kolayandayammal are sisters. It is also an admitted fact that the appellant is in possession of the suit property.

23. According to the appellant, the said Krishnan and his son (first respondent herein) made a request to her to pay a sum of Rs.5,000/- and occupy the suit property and accordingly, she paid a sum of Rs.5,000/- and occupied and to evidence the same, Krishnan and the first respondent herein had executed an unregistered sale deed dated 27.01.1978. The respondents denied the allegation that the said Krishnan and the first respondent herein had received Rs.5,000/- from the appellant and executed the alleged sale deed dated 27.01.1978. According to them, the appellant and her family members were residing in their native village and they were not getting sufficient income and hence they came to Erode and made requests to permit them to reside in the suit property and considering the said requests, they had permitted the appellant to reside in the suit property, without receiving any consideration and taking advantage that she is in possession of the suit property, she claimed right over the suit property.

24. A perusal of the records would show that the appellant, during trial, before the Trial Court filed an application seeking permission of the Court to mark the unregistered sale deed dated 27.01.1978 as exhibit, but the Trial Court has dismissed the said application in I.A.No.484 of 1994. As against the same, the appellant herein has filed a Civil Revision Petition in CR.P.No.3366 of 1994 before this Court. This Court has dismissed the said civil revision petition by the order dated 23.01.1996. Challenging the said order, it appears that the appellant herein has not filed any S.L.P. before the Hon'ble Supreme Court. So, the order passed by the Trial Court in I.A.No.489 of 1994 rejecting the request made by the appellant herein to mark the unregistered sale deed dated 27.01.1978 as exhibit has become final.

25. The learned Senior counsel for the appellant has submitted that eventhough, the Civil Revision Petition filed by the appellant in C.R.P.No.3366/94 has been dismissed by this Court, under Section 105(1) CPC, the appellant is entitled to question the order passed by the Trial Court in I.A.No.484 of 1994.

26. Section 105(1) of CPC reads thus :-

" Save as otherwise expressly provided, no

appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal ".

27. A plain reading of the aforesaid provision would show that when no appeal shall lie from any order made by the Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. The appellant herein has filed an application in I.A.No.484 of 1994 before the Trial Court seeking leave of the Court to mark the unregistered sale deed dated 27.01.1978 as exhibit, but the Trial Court has rejected the said application, against which, the appellant herein has filed CRP.No.3366/1994 before this Court and the said CRP was dismissed by this Court on 23.01.1996. Therefore, the order passed by the Trial Court rejecting the request made by the appellant for marking the said unregistered sale deed as exhibit has become final. If the appellant has not challenged the said order by filing CRP, the appellant can challenge the said order in these second appeals, but, since she has filed CRP and the same was dismissed by this Court, she cannot challenge the Trial Court's Order in these second appeals.

28. In the similar situation, in Laxminarayan V. Sultan Jehan Begu (supra), the Hon'ble Division Bench of the Hyderabad High Court has held that the Section 105 C.P.C does not authorize the Appellate Court to reconsider or interfere with the Order of a Court whose orders are not liable to be treated in an appeal as orders of a Subordinate Court provided these orders are within the competence of that Court and have the character of being final and conclusive as between the parties. It was further held that a final decision by a Division Bench of the High Court against an interlocutory order of the lower court passed in a revision cannot be agitated in an appeal against the decree in the same suit to another Division Bench of the High Court.

29. In Ramsarup Dass and others Vs Pyare Das and another (supra) also the Patna High Court has held that once the interlocutory order passed by the First Appellate Court is confirmed in revision by the High Court, subsequently, the said interlocutory order cannot be attackked under Section 105 C.P.C in regular appeal. It was further held that the interlocutory order passed by the First Appellate Court and confirmed by the High Court in revision operates as res-judicata in subsequent

regular appeal.

30. In Gurubachan Singh Obeal V. Arya Dharma Sewa Sang (supra) the Patna High Court has held that an order heard on merits and decided in revision has become final and the applicant was estopped to raise the same matter on a second occasion on the same ground in the appeal under Section 105(1) of C.P.C.

31. In Mahaboob Bibiammal and 8 others Vs. Angammal (supra) this Court has held that in the second appeal, a new defence cannot be raised without raising the same before the Court below, based on mixed question of law and facts, when there is concurrent finding of the factual

aspect, based on evidence. It was further held that similarly, if there is any amendment made as per the order passed in an interlocutory application, without challenging the order at the appropriate stage, the same cannot be challenged in the second appeal.

32. From the aforesaid decisions, it is clear that if any revision is filed challenging the interlocutory order and in the said revision, the interlocutory order is confirmed, it is not open to the appellant to challenge the said interlocutory Order in the appeal filed against the decree. It is also clear that the interlocutory order which is confirmed by the High Court in revision will operate as res judicata.

33. In Kandaswami Mudaliar Vs Ponnuswami Mudaliar (supra), the plaintiff filed a suit to redeem an usufructuoury mortgage which was executed on 29th July 1903 under Ex.1 in favour of the defendant. The defendant while admitting the mortgage pleaded that he became the absolute owner of the property by purchase on 29th October 1906 through an unregistered sale deed. The said unregistered sale deed has been marked as Ex.2. It was contended that since the said sale deed is not a registered document, it cannot be admitted in evidence. The Hon'ble Division Bench had observed in Paragraph Nos.6 and 7 as follows:

" (6) In his commentary on the Registration Act Mr.Mulla remarks as follows:

" The decision of the Privy council in Jeeva Rathnammal's case, is an authority for the proposition that a document which requires registration under the Transfer of Property Act, but is not registered is nevertheless admissible to prove the character of the transferees possession.

Though Section 49 was cited in argument in that case, there is no reference to it in the judgment of their Lordships.

(7) On the first question I feel pressed by these decisions and I think therefore that I am bound to hold that the unregistered sale-deed, Ex.2 is admissible to prove the nature of the subsequent possession of the defendant. This is what the Privy council say in Varada Pillai v. Jeevarathnammal at p.251 (of 43 Mad.)" .

34. From the aforesaid decision, it is clear that the unregistered sale deed is admissible in evidence to prove the nature and character of the possession. But, in this case, the said unregistered sale deed dated 27.01.1978 was not at all marked as exhibit. The attempt made by the appellant to mark the said document has been rejected by the Trial Court and the same has been confirmed by this Court in CRP. If the said document had been marked before the Trial Court atleast subject to the objection, this Court can look into the said document to decide the nature of possession, but unfortunately, the said document was not marked. Therefore, the said document cannot be looked into by this Court.

35. In Thailammal and others Vs Janardhan Raju and others (supra), the landlord filed an ejectment suit and in that suit, the defendant/tenant had filed an application under Section 9 of the Madras City Tenants Protection Act, 1922. The said application was dismissed. The Trial Court has decreed the suit. The defendant/tenant has filed an appeal against the decree passed in the suit but he has not filed any appeal or revision against the dismissal of the application which was filed Section 9 of Madras Tenants Protection Act. The first Appellate Court has allowed the appeal and set aside the Judgment and decree passed by the Trial Court and dismissed the suit. As against the Judgment and decree of the first appellate court, the plaintiff filed second appeal before this Court and the same was allowed. Aggrieved by the same, the defendant/tenant had filed further appeal before the Hon'ble Supreme Court. It was contended that no appeal was preferred by the defendant/tenant against the order of the Trial Court dismissing the application filed under Section 9 of the Madras City Tenants Protection Act and therefore, the Order passed by the Trial Court has become final. The Hon'ble Supreme Court has rejected the said contention and held that the defendant/tenant is entitled to challenge the correctness of any interlocutory order passed in the suit, in such appeal, by virtue of Section 105 of C.P.C. and also held that it is not necessary in such a case that he should prefer an independent appeal against the order dismissing an

interlocutory application, even if it is appealable. But in this case, the interlocutory order passed by the Trial Court rejecting the requests made by the appellant to mark the unregistered sale deed dated 27.01.1978 has been confirmed by this Court in Civil Revision Petition and under the said circumstances, it is not open to the appellant to challenge the said Order under Section 105(1) C.P.C in these second appeals. Therefore, the aforesaid decision also will not help the appellant.

36. In Periyannayagasamy Vs Jesudoss and others (supra), this Court has held that the interim order could be challenged in the appeal filed as against the order of remand. But in this case as already pointed out that the interim order passed by the Trial Court was confirmed by this Court in Civil Revision Petition and therefore the aforesaid decision also will not help the appellant.

37. In Bondar Singh and Others Vs Nihar Singh and others (supra), a land was owned by one Fakir Chand, predecessor in interest of the defendants. Fakir Chand sold the land to Tola Singh, predecessor-in-interest of the plaintiffs by an unstamped and unregistered sale deed dated 09.05.1931. The plaintiffs had filed a suit for declaration of the title on the basis of the plea that they had become owners by adverse possession. The execution of the said unregistered sale deed was not in dispute. The only defence set up against the said document was that it was unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the said circumstances, the Hon'ble Supreme Court has held that the legal position is clear that a document like the sale deed, even though not admissible in evidence, can be looked into for collateral purposes.

38. In this case, the respondents have denied the execution of the unregistered sale deed dated 27.01.1978. Further, as already pointed out that the said document was not marked as exhibit. The request made by the appellant to mark the said document was rejected by the Trial Court and the same was confirmed by this Court in Civil Revision Petition. Further, in this case, the appellant has not taken a plea of adverse possession. Therefore, the aforesaid decision will not help the appellant.

39. In Rame Gowda (D) by LRS Vs M.Varadappa Naidu (D) by LRS and Another (supra) the Hon'ble Supreme Court has held that the person in peaceful possession is entitled to retain his possession and in order to do so, he may even use reasonable force to keep out the trespasser. It was also held that the rightful owner who has been wrongfully dispossessed of land may

retake possession if he can do so peacefully and without the use of unreasonable force. It was also held that if the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse of law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession .

40. In this case, the respondents herein have not taken the law on their hands and tried to evict the appellant from the suit property. On the other hand, they had filed a suit in O.S.No.236 of 1995 on the file of the Additional Sub Judge. Erode, for delivery of possession. So, it appears that the respondents herein have followed the procedure laid down by the Hon'ble Supreme Court in the aforesaid decision. Therefore the aforesaid decision will not help the appellant.

41. In Anathula Sudhakar Vs. Buchi Reddy (Dead) by LRS and Others (supra) the Hon'ble Supreme Court in Paragraph No.21 has held as follows:

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under: "

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar V. Alagammal, (2005) 6 SCC 202). Where the

averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declarator suit, depending upon the facts of the case".

42. Admittedly, in this case, it is only the appellant who has filed the suit for Prohibitory injunction claiming title over the suit property on the basis of an unregistered sale deed dated 27.01.1978. The defendants contested the said suit alleging that the appellant is in possession of the suit property only as per the permission granted by them and not as owner of the suit property. In view of the aforesaid decision of the Hon'ble Supreme Court, the appellant should have filed a suit to declare her title over the suit property. She should have filed a suit atleast to declare her possessory title but she has not asked for the relief of declaration. On the contrary, she has filed only a bare injunction suit.

43. The respondents herein have not filed any suit for injunction. They have filed the suit for recovery of possession of the suit property. As already pointed out that their case is that their father namely Krishnan had occupied the suit property in the year 1954 and since the appellant being the sister of the said Krishnan's wife, she made a request to permit her to reside in the suit property with her family members and he had

permitted her to reside in the suit property. The appellant has not disputed the fact that originally the said Krishnan had occupied the said property. Her case is that she purchased the suit property from the said Krishnan and the first plaintiff under the unregistered sale deed dated 27.01.1978. When the said sale deed itself was not marked as exhibit before the Court, the plea of the appellant that she has purchased the suit property will not be sustained. Since, the appellant having admitted that previously the suit property was in possession of the said Krishnan and she failed to prove that she had purchased the suit property, then she had to surrender the possession of the suit property when the original owner asked her to surrender the possession. Therefore, the aforesaid decision also will not help the appellant.

44. In K.B.Saha and Sons Private Ltd., Vs.Development Consultant Ltd (Supra) the Hon'ble Supreme Court in Paragraph No. 34 has held as follows:

" 34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to herein above, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose".

45. As already pointed out that in this case, the unregistered sale deed dated 27.01.1978 which is relied upon by the appellant has not been marked as exhibit before the Trial

Court. The request made by the appellant to mark the said document was rejected by the Trial Court and the same was confirmed by this Court in CRP. If already the said document has been marked as exhibit, then this Court can look in to the said document for the limited purpose to prove the possession. In this case, the possession of the appellant is admitted by the respondents. Admitting the appellant's possession, the respondents have filed a suit for recovery of possession. Under the said circumstances, if the appellant has taken a plea of adverse possession, certainly, the court will have to consider the said plea. But the appellant has not taken the plea of adverse possession. Therefore, even if the said document is marked as an exhibit that will not improve the case of the appellant. Further in view of the aforesaid decision of Hon'ble Supreme Court, that if a document is inadmissible in evidence for want of registration none of its terms can be admitted in evidence. Therefore, the aforesaid document cannot be relied upon even for proving the fact that the appellant had paid a sum of Rs.5,000/-.

46. The learned Senior Counsel for the appellant has submitted that it is the case of the respondents that the appellant's possession is only a permissive possession and she has to surrender vacant possession when she is asked to surrender possession, but they have not sent any notice revoking the alleged permission (license) and hence the suit filed by the respondents is not maintainable. It is pertinent to note that the notice for termination of lease is contained under Chapter V of the Transfer of Property Act pertaining to lease of immovable property. It is, thus, clear that Section 106 of the Transfer of Property Act is applicable in cases of lease and not license. The learned Senior Counsel for the appellant has not pointed out any such provisions either in the Transfer of Property Act or in the Indian Easements Act, 1882 prescribing a notice for termination of a license. Therefore, the contention of the learned Senior Counsel for the appellant that since the respondents have not sent a notice revoking the license, the suit is not maintainable, cannot be accepted.

47. It is seen from Exhibits B1 to B3, patta has been granted in favour of the plaintiff's father namely Krishnan in respect of the suit property and the adjoining property. Eventhough, the appellant has taken a plea that she came into possession of the suit property, in pursuance of the unregistered sale deed dated 27.01.1978, she has not obtained patta for the suit property. Further, she has not taken a plea of adverse possession. As already pointed out that the previous possession of the said Krishnan admitted by the appellant, but she failed to prove that she had purchased the suit property from the said Krishnan. Taking into consideration of all the

aforesaid facts, the Trial Court has dismissed the suit which was filed by the appellant for permanent injunction and decreed the suit which was filed by the respondents for delivery of possession and the same has been confirmed by the First Appellate. In the said concurrent factual findings, this Court cannot interfere. Accordingly, substantial questions of law are answered against the appellant.

48. In the result, these second appeals viz., S.A.Nos.1721 and 1858 of 2000 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.
Vv

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District
Judge-Cum-Chief Judicial Magistrate,
Erode

2.The Additional Sub Judge,
Erode.

3.The Section Officer,
VR Section,
High Court, Madras.

S.A.Nos.1721 and 1858 of 2000

Kak(19/08/2019)

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