

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2017

PRONOUNCED ON : 11.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.Nos.720 of 2000, 654 of 2004 & Tr.C.S.No.16 of 2011

C.S.No.720 of 2000

1. P.R.Govindaraj (deceased)
2. P.Saraswathy
3. P.Venkatesh
4. P.Kamesh Balaji
5. A.G.Vatsala (deceased)
6. P.R.Anusuya
7. A.E.Govindan
8. A.G.Thiruveni
9. G.Jaishree
10. A.G.Sarala
11. A.G.Sethumadhavan

(Plaintiffs 7 to 11 were brought on record as
LRs of the deceased 5th plaintiff as per order the
the orders of this Court dated 29.03.2007 in
A.No.2266 of 2007 and dated 18.04.2007
in A.No.2264 to 2267 of 2007) ..Plaintiffs

Vs.

1. P.Jayashankar alias Ramani
2. P.J.Jayaprakash alias Raju
3. P.J.Ravishankar
4. P.Jayanthi

..Defendants

PRAYER in C.S.No.720 of 2000: Civil Suit filed under Order IV Rule 1 of the O.S.Rules read with Order VII Rule 1 of C.P.C. praying for the following reliefs:-

(a) to direct the defendants to vacate and deliver vacant possession of the plaint scheduled "B" mentioned property;

(b) to direct the defendants to pay to the plaintiffs a sum of Rs.7,56,000/- towards past damages for use and occupation together with interest at the rate of 21% per annum from the date of plaint till date of payment;

(c) to direct the defendants to pay a sum of Rs.21,000/- or such amount that may be fixed by this Court, every month towards damages for use and occupation of the premises from the date of plaint till date of delivery of vacant possession of the plaintiffs.

(d) to direct the defendants to pay to the plaintiffs the cost of the suit; and

(e) such or further orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Plaintiffs : Mr.R.Thiagarajan

For Defendant 2 : Mr.K.Ramachandran

C.S.No.654 of 2004

P.J.Jaya Prakash alias P.J.Raju

..Plaintiff

Vs.

1. P.R.Govindaraj

2. P.Saraswathy

3. P.Venkatesh

4. P.Kamesh Balaji

5. A.G.Vatsala

6. P.R.Anusuya

7. P.S.Jaya Shanker @ Ramani

8. P.J.Ravi Shanker

9. P.J.Jaya Shree

..Defendants

PRAYER in C.S.No.654 of 2004: Civil Suit filed under Order IV Rule 1 of the O.S.Rules read with Order VII Rule 1 of C.P.C. praying for the following reliefs:-

(a) for declaration that plaintiff is the true, legal, absolute and sole owner of the suit suit property by adverse possession;

(b) consequential injunction against the defendants from in any manner interfering with the peaceful possession and enjoyment of the property by him and

(c) such other relief(s) as may be deemed fit and proper including as to cost to be paid by the defendants.

For Plaintiff : Mr.K.Ramachandran

For Defendants : Mr.R.Thiagarajan

Tr.C.S.No.16 of 2011

(Originally filed in City Civil Court, Chennai as O.S.No.3206 of 2010, now transferred as Tr.C.S.No.16 of 2011.)

1. M/s.Sivanthi Estates,
Rep. by its Managing Partner,
Mr.Jagannatha Pandian,
4-D, Door No.1, Subramanian Street,
Abhiramapuram, Chennai - 600 018.

2. N.Latha

..Plaintiffs

Vs.

1. J.Jayaprakash
2. P.Saraswathy
3. P.Venkatesh
4. P.Kamesh Balaji
5. P.R.Anusuya
6. A.E.Govindan
7. A.G.Triveni

8. G.Jaishree
9. A.G.Sarala
10. A.G.Sethumadhavan

(defendants 7 to 10 brought on record as
LRs of the deceased 6th defendant
as per order dated 11.01.2012 and
18.01.2012 on memo presented on 11.01.2012.

..Defendants

PRAYER in Tr.C.S.No.16 of 2011: Civil Suit filed under Order VII Rule 1
of C.P.C. praying for the following reliefs:-

(a) for a permanent injunction restraining the defendants, their men, agents or servants or anybody claiming either under or through them in any way and in any manner from interfering with the peaceful possession and development of the suit property by plaintiffs and consequent alienation to third parties either by obstructing the demolition work erecting superstructure or in any other work incidental thereon, and on such development alienation to third parties, either by obstructing the demolition work or in any other work incidental thereon;

(b) for costs of the suit; and

(c) such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiffs : Ms.A.Sumathy

For Defendant 1 : Mr.K.Ramachandran

For Defendants : Mr.R.Thiagarajan
2 to 5 & 7 to 10

COMMON JUDGEMENT

Claiming right / interest over the property situated at Door No.13, (Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004, measuring about 3 Grounds, three suits viz., C.S.No.720 of 2000, C.S.No.654 of 2004 and Tr.C.S.No.16 of 2011 were filed.

2. Since the above suits have been preferred on similar set of facts, submissions being common, common trial was conducted and all the three suits are disposed of by means of this Common Judgment. For the sake of convenience, parties to the litigation have been referred to hereinbelow as arrayed in C.S.No.720/2000.

3. The prayer made in the above said three suits are as follows:

(a) C.S.No.720 of 2000 has been filed seeking a direction against the defendants therein (i) to vacate and deliver vacant possession of First Floor, Terrace and Garage in the Ground Floor and open space in the premises bearing Door No.13, (Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004 (more fully described

in the suit schedule); (ii) to pay a sum of Rs.7,56,000/-towards past damages for use and occupation together with interest at the rate of 21% p.a. from the date of plaint till date of payment; (iii) to pay a sum of Rs.21,000 or such amount that may be fixed by this Court, every month towards damages for use and occupation of the premises from the date of plaint till the date of delivery of vacant possession; and (iv) to pay the cost of the suit.

(b) C.S.No.654 of 2004 has been filed seeking a declaration that the plaintiff therein is the true, legal, absolute and sole owner of the land and building consisting of Ground Floor, First Floor, terrace, garage and open space of the premises bearing Door No.13, (Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004 (more fully described in the suit schedule) by adverse possession and the consequential injunction against the defendants therein from in any manner interfering with the peaceful possession and enjoyment of the said property by him.

(c) Tr.C.S.No.16 of 2011 has been filed seeking a permanent injunction restraining the defendants therein from interfering with the peaceful possession and development of the the property at Door No.13,

(Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004 (more fully described in the suit schedule) by plaintiffs therein and consequent alienation to third parties; either by obstructing the demolition work, erecting superstructure or in any other work incidental thereon and on such development alienation to third parties, either by obstructing the demolition work or in any other work incidental thereon.

4. Initially, C.S.No.720 of 2000 was tried separately and issues were framed on 12.03.2010 and posted for trial on 18.03.2010. Subsequently, the learned counsel appearing for the defendants in C.S.No.720 of 2000, filed a memo, seeking for a common trial of the said suit along with C.S.No.654 of 2004, in which, they are the plaintiffs. The learned counsel for the plaintiffs in C.S.No.720 of 2000 has made an endorsement stating 'no objections'. Therefore, on 01.04.2010, common issues were framed in both the suits in C.S.No.720 of 2000 and C.S.No.654 of 2004.

5. The plaintiffs in C.S.No.720 of 2000 filed a transfer application in Tr.A.No.2554 of 2010 in C.S.No.720 of 2000 to withdraw O.S.No.3206 of 2010 filed by M/s.Sivanthi Estate and another against the plaintiffs and

defendants in C.S.No.720 of 2000, pending on the file of the learned I Assistant Judge, City Civil Court, Chennai and to transfer the same to the file of this Court and to be tried along with C.S.No.720 of 2000 and C.S.No.654 of 2004. This Court by an order dated 13.07.2010, allowed the said application and directed that the suit in O.S.No.3206 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai be transferred to this Court and tried simultaneously along with the suits in C.S.No.654 of 2004 and C.S.No.720 of 2000. On being transferred to this Court, O.S.No.3206 of 2010 was re-numbered as Tr.C.S.No.16 of 2011.

6. Thus, all the three suits were listed before this Court for adjudication. For the sake of convenience, C.S.No.720 of 2000 and C.S.No.654 of 2004 are taken up first for disposal. As the outcome in the above said two suits will have a direct bearing on the suit in Tr.C.S.No.16 of 2011, the same will be disposed of based on the outcome in the above said two suits in the later part of this common judgment.

C.S.Nos.720 of 2000 & C.S.No.654 of 2004:

7. The gist of the plaint filed by the plaintiffs in C.S.No.720 of 2000 is as follows :-

(i) According to the plaintiffs, the property situated at Door No.13, (Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004 (more fully described in the suit 'A' schedule) originally belonged to one Mr.C.V.Gopinath and he died intestate on 07.09.1981, without any issues and leaving behind him his wife Mrs.Sarada Gopinath, as his sole surviving legal heir to succeed to his estate.

(ii) Thereafter, since Mrs.Sarada Gopinath was alone, she permitted her sisters Mrs.Sakuntalammal and Ms.Manickammal to stay along with her. Mrs.Sakuntalammal along with her son (the first defendant herein) and his children (defendants 2 to 4 herein) were living there and Ms.Manickammal was living alone. Mrs.Sarada Gopinath was living in the first floor of the said premises along with Mrs.Sakuntalammal and her family. The ground floor was let out to a tenant.

(iii) Subsequently, Mrs.Sakuntalammal and Ms.Manickammal died and on 27.01.1984, Mrs.Sarada Gopinath also died intestate leaving behind Ms.Tara Bai her sister-in-law to inherit all her properties, including the suit properties. Though Mr.C.V.Gopinath had two sisters viz., Mrs.Padmavathi and Mrs.Thara Bai, Mrs.Padmavathi predeceased her brother

Mr.C.V.Gopinath leaving behind her two sons Mrs.Devarajan and Palanivelrajan.

(iv) Even after the demise of Mrs.Sakuntalammal and Mrs.Sarada Gopinath the defendants were still living in the first floor of the suit premises and they were also occupying the garage.

(v) Mrs.Thara Bai filed a petition in O.P.No.360 of 1984, before this Court for grant of Letters of Administration in respect of the Estate left behind Mrs.Sarada Gopinath under Section 218 of the Indian Succession Act. This Court by an order dated 26.07.1985, granted letter of administration to Mrs.Thara Bai.

(vi) When Mrs.Thara Bai attempted to get possession, the defendants herein contended that Mrs.Sarada Gopinath has not died intestate but left behind a Will bequeathing her property to the second defendant herein and that an application was also filed to revoke the letter of administration granted by this Court on 26.07.1985 in O.P.No.360 of 1984 to Mrs.Thara Bai.

(vii) Mrs.Thara Bai died on 22.05.1987, leaving behind her husband the first plaintiff herein, her son Mr.P.G.Parthasarathy and two daughters the plaintiffs 5 and 6 herein as her LRs. Her son Mr.P.G.Parthasarathy died on 31.07.1999, leaving behind him his wife the second plaintiff herein and his two sons the plaintiffs 3 and 4 herein as his LRs. Thus, the plaintiffs 1 to 6 alone are entitled to the estate of Mrs.Thara Bai.

(viii) This Court by an order dated 23.06.1986, directed the said application be posted along with the probate petition filed by the third defendant in O.P.No.12 of 1987 for grant of Letters of Administration with the alleged Will annexed and upon Mrs.Thara Bai entering caveat the said O.P. was converted into TOS No.13 of 1987.

(ix) TOS No.13 of 1987 along with another TOS No.12 of 1986, which was filed by one C.V.Ramakrishnan, who is the son of the second wife of the said Venugopal Mudaliar (the father of the original owner the said C.V.Gopinath) alleging that the said Venugopal Mudaliar had left behind a Will and that the property was really that of Mr.Venugopal Mudaliar and not that of C.V.Gopinath and both the above said testamentary

suits in TOS Nos.12 of 1986 and 13 of 1987 were disposed of by a common judgment of this Court dated 13.11.1996. As against the said common judgment dated 13.11.1996, the plaintiffs in TOS No.12 of 1996 filed O.S.A.No.101 of 1996, which is pending.

(x) The defendants herein are in occupation of the first floor and the third defendant herein is also utilising the garage in the ground floor and the open land for the garage. He is running the garage under the name and style of Easwari Motors (Maurthi Service Station).

(xi) That the plaintiffs 1, 5 and 6 issued notice dated 12.07.1998, to the defendants to vacate and deliver vacant possession and also demanded payment of damages for use and occupation of Rs.25,000/- per month and so far the same has not been complied with.

(xii) The property in occupation of the defendants viz., the garage in the ground floor and the first floor valuing about Rs.20.00 lakhs and the defendants had all along been squatting over the said property without any right and their possession is unlawful and illegal and they are liable to pay to the plaintiffs the said amount as damages for their use and occupation as the

Will in favour of the 2nd defendant herein and claiming title was dismissed by this Court.

(xiii) The area under the defendants occupation is about 1100 Sq.ft. in the first floor and 700 Sq.ft. in the ground floor and the open space used for the garage purposes and the minimum damages for the unlawful use and occupation of the said area will not be less than Rs.21,000/- per month and the plaintiffs are entitled to recover past damages for a minimum period of three years preceding the date of filing and also future damages at such rate as this Court may be pleased to fix upon, till the date of vacating and delivering vacant possession of the same to the plaintiffs. Further, the defendants are unlawfully enjoying the plaintiffs property without paying any single pie and running the workshop and secreting all the revenue there from for years together. Therefore, unless the defendants are directed to pay the past damages at least for the past three years as prayed for or they are directed to furnish security thereof and directed to deposit into Court the future damages at the same rate till the date of delivery of possession, the plaintiffs will not be able to recover anything from the defendants by executing the decree that may be ultimately passed by this Court.

(xiv) Since the defendants are not vacating the premises, the plaintiffs are forced to approach this Court for decree directing eviction of the defendants from the portions occupied by them in the first floor, ground floor, garage and the open space and also to pay damages till such time they vacate and deliver vacant possession.

8. The second defendant filed Written statement on 24.11.2000, inter alia, contending as follows:

(i) The second defendant submits that during the life time of Mrs.Sarada Gopinath, she was residing in the ground floor portion of the premises and two years prior to her death, she let out that portion to one Mr.Thirunavukarusu and the last rent that was paid to her was in the month of December, 1983 when she asked the said tenant to give the rent thereafter to the second defendant as she intended to bequeath the property to the second defendant and two others. Hence on her death even before the end of the month, at the request of the second defendant, the said tenant paid part of the rent to him and thus became a tenant under the second defendant and since the said tenant defaulted in paying rent and the rental dues are partly being adjusted by paying the taxes relating to the property, which also he is

in default. Ever since the days of Mrs.Sarada Gopinathan, this defendant has been in the occupation, possession and enjoyment of the suit property.

(ii) The second defendant further contended that as Mrs.Sarada Gopinathan not died intestate, the question of leaving behind Mrs.Thara Bai as her legal heir to succeed to all her properties does not not arise and further Mrs.Thara Bai was not the legal heir to succeed to the estate of late Sarada Gopinathan. In any event, the second defendant has become the legal owner of the property by adverse possession of the immovable property.

(iii) The second defendant denies that the first defendant fabricated a Will in favour of the second defendant. The second defendant submitted that he was living with Mrs.Sarada Gopinathan as she was the paternal aunt with all rights as of a grandson showering love and affection on him. Further, the common judgment in TOS Nos.12 of 1986 and 13 of 1987 are liable to be set aside as the same is per se erroneous. The second defendant has already filed an appeal against the same and therefore the suit is not at all maintainable in law as the matter is sub judice.

(iv) The second defendant denies the averment that after the dismissal of the TOS No.13 of 1987, he has no manner of right to remain in the suit properties and that he is a trespasser as on date as even otherwise, he has prescribed the title by adverse possession.

(v) The second defendant further submits that Mrs.Thara Bai was not the legal heir to succeed to the estate of late Sarada Gopinathan as the second defendant has prescribed the title by adverse possession and he has also filed a suit in that regard before this Court. Further, the second defendant is the true legal owner of the property, but at the same time the other defendants are also claiming rights in the suit property.

(vi) Further, the plaintiffs are not entitled to claim any damages, much less the sum of Rs.21,000/- p.m. for the three years or for vacating the property and hence the question of furnishing security also does not arise. The second defendant is enjoying the property lawfully, in his own right.

(vii) The second defendant further submits that the above suit is not at all maintainable or sustainable in law or on facts and it is bad for misjoinder of parties and non joinder of necessary parties and hence the suit is liable to be dismissed. Further, the suit is also barred by limitation.

(viii) For the above stated reasons, the second defendant seeks dismissal of the suit with costs.

9. The gist of the plaint filed by the plaintiff in C.S.No.654 of 2004 is as follows :-

(i) The Plaintiff herein is the paternal grandson of late Sarada Gopinathan. During her life time, he was residing in the suit property. She was residing in the ground floor of the property and two years prior to her demise, she let out that portion to one Mr.Thirunavukarasu and the last rent that was paid to her was in the month of December 1983, when she asked the said tenant to give the rent thereafter to the plaintiff herein as she intended to bequeath the property to the plaintiff herein and two others and hence, on her death, even before the end of the month, at the request of the plaintiff herein, the said tenant paid part of the rent to the plaintiff and thus he became a tenant under the plaintiff, but yet the said tenant defaulted in paying the rent and the rental dues were partly adjusted by paying the taxes relating to the property which also he has committed default.

(ii) Further, it is stated by the plaintiff that Mrs.Sarada Gopinathan died on 27.01.1984 leaving a Will behind her in favour of the plaintiff and the last two defendants viz., 7 and 8. At that time, the plaintiff was a minor, under the care and custody of certain responsible persons and hence, before this Court he initiated steps for probating the Will. In the mean time, one

Mrs.Thara Bai claiming herself to be the legal heir of Mrs.Sarada Gopinathan and obtained ex parte order for Letters of Administration in O.P.No.360 of 1984 before this Court without the knowledge of or impleading the plaintiff herein and hence, the plaintiff filed a petition to set aside the said order and also filed a petition for stay of the operation of the said ex parte order and this Court granted stay. Subsequently, Mrs.Thara Bai died and the said ex parte order ceased to have any force or validity in law. It is further stated by the plaintiff that he filed petition in O.P.No.12 of 1987 for probate of the Will of late Sarada Gopinathan and as the defendants 1 to 6 contested the same, it was converted as T.O.S.No.13 of 1987. The T.O.S. was dismissed against which the plaintiff and he has filed an appeal and the same is in the process of numbering.

(iii) Further, it is stated by the plaintiff that the defendants 1 to 6 have filed a suit in C.S.No.720 of 2000 before this Court for possession and damages and the plaintiff is contesting the same. In view of the suit filed by the defendants 1 to 6 and the defendants 7 to 9 in respect of certain portions under their exclusive occupation, possession and enjoyment and in so far as the 7th defendant is concerned, by way of adverse possession and in so far as the defendants 8 and 9 are concerned under the Will, on the ground that as

they were not a party to the Probate proceeding, the same is not binding on them, but since the plaintiff understands that they are going to take steps to file separate legal proceeding to vindicate their rights and for the reliefs, the plaintiff is joining them as necessary and proper parties to the suit.

(iv) The plaintiff has also stated that he has become the true, legal, absolute and sole owner of the property and the defendants 1 to 6 have no manner of rights in the property or in any event they have lost their rights by lapse of time limit and the plaintiff has prescribed the title to the property by adverse possession to the defendants 1 to 9. Hence, the suit and the cause of action for the suit arose within the jurisdiction of this Court where the parties reside and on or about 13.10.2000 when the plaintiff came to know about the suit in C.S.No.720 of 2000, filed before this Court for possession and damages, when the plaintiff has prescribed the title and become the legal owner of the property and continues till date.

10. The defendants 2 to 4 and 6 filed Written Statement on 15.02.2009, inter alia contending as follows:

(i) The defendants state that the present suit filed by the plaintiff is nothing but sheer abuse of process of Court and process of law and the same

is liable to be rejected and dismissed at the threshold in as much as the suit as framed by the plaintiff is nothing but a desperate attempt on the part of the plaintiff to squat on the property belonging to the defendants 1 to 9 who have filed a civil suit in C.S.No.720 of 2000 before this Court for recovery of possession, damages both past and future and for other reliefs.

(ii) Further, the plaintiff having accepted and admitted the title of late C.V.Gopinathan, since devolved upon his wife Sarada Gopinathan, having projected a Will said to have been executed by late Sarada Gopinathan in his favour and having failed in his attempts to prove the will in common form and the Court having dismissed the T.O.S. came to the conclusion that the alleged Will had come into existence under suspicious and fraudulent circumstances had categorically held that the testament projected by the plaintiff is neither valid nor genuine. That finding rendered by this Court having become final, conclusive between the parties to the proceedings, it is not open to the plaintiff to set up the plea of adverse possession as against the Estate of late C.V.Gopinathan and Mrs.Sarada Gopinathan. Further, there was no animus on the part of the plaintiff and he did not hold the property adverse to the Estate or his possession not having been notorious but only as a beneficiary under the alleged Will and in such circumstances, the present

suit filed by the plaintiff for declaration that the plaintiff had perfected title by adverse possession and for consequential injunction is barred by the principles of Constructive Res Judicata in view of the decision rendered by this Court in the Common Judgment dated 13.11.1996 in T.O.S.No.13 of 1987 and T.O.S.No.12 of 1986 and therefore the present suit is liable to be rejected and dismissed at the threshold.

(iii) According to the defendants, the suit property originally belonged to C.V.Gopinathan who had purchased the same by a deed of sale dated 14.02.1946 and registered as Doc.No.321 of 1946 in the office of the Sub Registrar, Mylapore from Mr.R.Vadivelu Gramani, Duraisingam Gramani, Meenakshisundaram Gramani, Nagaraj Gramani, Kanagaraj Gramani for valuable consideration. After the demise of C.V.Gopinathan, Mrs.Sarada Gopinathan permitted her sisters Mrs.Sakunthala Ammal and Manickam Ammal to remain in the suit property along with her and Mrs.Sakunthala Ammal along with her son and his children was living with Mrs.Sarada Gopinathan. After the demise of Mrs.Sarada Gopinathan, Mrs.Sakunthala Ammal and Manickam Ammal the plaintiff and his family members were in occupation of a portion of the suit property and the garage.

(iv) According to the defendants Mrs.Sarada Gopinathan died intestate on 27.01.1984 leaving behind her only legal heir her sister-in-law Mrs.Thara Bai being Class 2 Heir. Thereafter, Mrs.Thara Bai filed O.P.No.360 of 1984 for grant of Letters of Administration without Will and by an order dated 26.07.1985, Letters of Administration was granted to her by this Court. Therefore, on the death of Mrs.Thara Bai on 22.05.1987, her husband P.R.Govindaraja, her son Mr.P.G.Parthasarathy and two daughters A.G.Vatsala and P.R.Anusuya were entitled to succeed to her estate.

(v) The defendants further states that Mr.P.G.Parthasarathy, the son of Mr.P.R.Govindaraj Mudaliar died on 31.07.1999 leaving behind his wife Mrs.R.Saraswathy and 2 sons viz., P.Venkatesh and P.Kamesh Balaji. The defendants further state that Mr.P.R.Govindaraja Mudaliar also died on 28.05.2001 and Mrs.A.G.Vathsala died intestate on 15.11.2002, leaving behind her husband Mr.A.E.Govindan and three daughters viz., A.G.Thiruveni, G.Jaishree and A.G.Sarala and a son viz., A.G.Sethumadhavan as her LR's to succeed to her estate. By virtue of the devolution Mrs.R.Anusuya, P.Venkatesh, Kamesh Balaji, A.E.Govindan, A.G.Thiruveni, G.Jaishree, A.G.Sarala and A.G.Sethumadhavan have succeeded to the suit property.

(vi) However, the plaintiff projected an alleged Will dated 27.01.1984, purported to have been executed by Mrs.Sarada Gopinathan in his favour. The plaintiff filed a original petition for probate of the alleged Will of Mrs.Sarada Gopinathan and the defendants 1 to 6 herein filed a caveat in the said proceedings and the same was converted into T.O.S.No.13 of 1987. This Court vide judgment and decree dated 13.11.1996, dismissed the same holding that it is a concocted and fabricated instrument. The plaintiff herein did not choose to file any further proceedings as against the dismissal of T.O.S.No.13 of 1987. Further, the said T.O.S.No.13 of 1987 was tried along with another T.O.S.No.12 of 1986 filed by Mr.C.V.Ramakrishnan, who is the step brother of Mr.C.V.Gopinathan. The said T.O.S.No.12 of 1986 was also dismissed on 13.11.1996. As against the dismissal of T.O.S.No.12 of 1986, Mr.C.V.Ramakrishnan filed an appeal in O.S.A.No.101 of 1996 and the same was subsequently disposed of by consent of parties and it had ended in a compromise in and by which Mr.C.V.Ramakrishnan was paid money compensation though he did not have any interest in the property belonging to the Estate of late C.V.Gopinathan. The plaintiff herein who has been litigating all along under the testamentary disposition gave up his claim and did not pursue further appeal as against the common judgment rendered

in T.O.S.Nos.12 of 1986 and 13 of 1987 dated 13.11.1996 and allowed the matter to attain finality and the plaintiff is not entitled to relegate the same.

(vii) According to the defendants, the legal heirs of Mr.C.V.Gopinathan filed a suit in C.S.No.720 of 2000, claiming various reliefs for possession and damages and the same is pending. As an off shoot for the said proceedings, the present suit has been filed by the plaintiff without any semblance of right or shadow of title. The present suit has been filed by the plaintiff claiming that he has become exclusive owner of the property by adverse possession and consequently sought for a perpetual injunction as against the defendants herein from interfering with his alleged possession and enjoyment of the property. It is relevant to state that the relief of declaration that the plaintiff had perfected title to the suit property by adverse possession is misconceived, unsustainable, untenable in law and on facts.

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(viii) The plaintiff herein has been litigating over the property by virtue of an alleged testamentary dispossession dated 27.01.1984 and this Court having found that the alleged Will is fabricated and bogus has negatived the relief and in such circumstances, the plaintiff cannot approbate

and reprobate and claim title adverse to the Testator. The plaintiff having recognised the right, title and interest of Mr.Gopinath since devolved upon his wife Sarada Gopinathan is not entitled to set up adverse title to that of the Estate of late C.V.Gopinathan since devolved upon Sarada Gopinathan in as much as the testamentary Court which had gone into the validity of the testamentary disposition did not give sanction to the said Will and as such the said Will has not been proved in accordance with law, the person who is claiming right under a testamentary disposition under Section 213 of the Indian Succession Act is not entitled to claim independent claim over the schedule mentioned property other than the alleged will.

(ix) The plaintiff having accepted and acknowledged the title of Sarada Gopinathan is not entitled to repudiate her title in a subsequent proceedings and as such the plaintiff is estopped by his own conduct from pleading contrary to what he has stated in T.O.S.No.13 of 1987.

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(x) The Will having been found fabricated and concocted, it is not open for the plaintiff to plead that he had prescribed the title by adverse possession. The plea of adverse possession shall be applicable provided if he had not projected the alleged Will. The very fact that the plaintiff had

accepted and acknowledged the title of Mrs.Sarada Gopinathan and projected the alleged Will dated 27.01.1984, the alleged Will having been found to be a fabricated instrument, the plaintiff is not entitled for the relief of declaration in these proceedings. The legal heirs have sent a legal notice as early as in November, 1999 by instituting the suit in C.S.No.720 of 2000 for recovery of possession and the plaintiff herein instead of resisting the claim in the said suit he is not entitled to set up an independent title to the suit property and that too the plea of adverse possession, which is unknown to law.

(xi) The possession of the plaintiff is neither legal nor valid and the plaintiff has not come with clean hands and the case of the plaintiff is based on falsehood and false plea and he has been abusing the process of Court by indulging in vexatious and fraudulent litigation as against the true and lawful owners of the property who had succeeded to the Estate of late C.V.Gopinathan since devolved upon Mrs.Sarada Gopinathan by virtue of the grant issued in favour of Mrs.Thara Bai in O.P.No.360 of 1984, dated 26.07.1985.

(xii) The plaintiff without any semblance of right, shadow of title had claimed right over the property belonging to Mrs.Thara Bai since devolved

upon her and as such, the present suit is frivolous, vexatious, speculative, unsustainable, untenable in law and is liable to be rejected in limine and accordingly prays for the dismissal the said suit.

11. As stated earlier, based on the memo filed by the learned counsel for the defendants in C.S.No.720 of 2000, seeking for a common trial of the suit along with C.S.No.654 of 2004 and the no objection given by the learned counsel for the plaintiffs in C.S.No.720 of 2000, both the cases were tried together. Based on the pleadings of both the parties, documents filed by the parties and submissions made by the Counsel on either side, the following issues were framed in common for both the suits by this Court on 01.04.2010, for trial viz.,

“(i) Whether P.J.Jayaprakash, the second defendant in C.S.No.720 of 2000 and plaintiff in C.S.No.654 of 2004, has perfected title by adverse possession ?

(ii) Whether P.J.Jayaprakash is entitled to set up the plea of adverse possession, after having claimed to be the true owner of the property, in the written statement as well as in the previous proceedings TOS No.13 of 1987 ?

(iii) Whether C.S.No.720 of 2000 is barred by law in view of the order dated 23.06.1986 in Application Nos.2207 to 2209 of 1986 in O.P.No.360 of 1984 ?

(iv) Whether the plaintiff in C.S.No.720 of 2000 is entitled to recovery of possession of suit 'B' schedule property by virtue of the grant in O.P.No.360 of 1984 ?

(v) Whether the plaintiff in C.S.No.720 of 2000 is entitled to past damages for use and occupation in a sum of Rs.7,56,000/- together with interest at 21% per annum ?

(vi) Whether the plaintiff in C.S.No.720 of 2000 is entitled to future damages at the rate of Rs.21,000/- per month or any other amount ?

(vii) Whether the suit C.S.No.654 of 2004 is barred by res judicata in view of the judgment in TOS No.13 of 1987 ?

(viii) Whether the plaintiff in C.S.No.654 of 2004 is entitled to a declaration and permanent injunction as prayed for ?

(ix) To what other reliefs the plaintiffs in the respective suits are entitled, if any ? ”

12. After completion of the pleadings, in order to prove the case in C.S.No.720 of 2000 and C.S.No.654 of 2004, as per the order of this court, Joint Trial was conducted, common witnesses have been examined and common documents have been marked. On the side of the plaintiffs therein, (C.S.No.720/2000) Mr.A.G.Sethu Madhavan was examined as P.W.1, M.Ajeez Mohideen was examined as P.W.2 and Exhibits P1 to P6 were marked. On the side of the defendants therein, (C.S.No.720/2000) Mr.P.J.Jayaprakash alias P.J.Raju was examined as D.W.1 and Exhibits D1 to D9 were marked.

13. Mr.R.Thiagarajan, learned counsel appearing for the plaintiffs in C.S.No.720 of 2000 and defendants 2 to 4 & 6 in C.S.No.654 of 2004 has submitted as follows:

(i) The deceased 1st plaintiff in C.S.No.720 of 2000 has filed a suit for recovery of vacant possession of suit schedule mentioned property and also for past damages of Rs.7,56,000/- with interest at the rate of 21% per annum

and future damages at Rs.21,000/- per month for use and occupation from the date of institution of the suit till the date of actual delivery of possession.

(ii) The suit property is situated at No.13, Warren Road, Mylapore, Chennai-4, originally belonged to Late C.V.Gopinath who purchased the same for valuable consideration. C.V.Gopinath married one Sarada Gopinath. They do not have any issues. C.V.Gopinath died on 07.09.1981 leaving behind his wife Sarada Gopinath and both C.V.Gopinath and Sarada Gopinath died intestate. Sarada Gopinath died on 27.01.1984. After the death of C.V.Gopinath during the life time of Sarada Gopinath, she permitted her sister Sakuntalammal and Manickammal to reside along with her. Sakuntalammal was living with Sarada Gopinath in the first floor and the ground floor was rented out to a tenant. Manickammal was living alone. The defendants 2 to 4 are the sons and daughters of late Sakuntalammal, sister of Sarada Gopinath. Sarada Gopinath was in possession of the suit property till her death on 27.01.1984. The defendants fabricated the Will in the name of the 2nd defendant P.J.Jayaprakash @ Raju and filed O.P., for probate of the Will which was subsequently converted into T.O.S.13 of 1987. In the mean time, brother of C.V.Gopinath, filed O.P.No.202 of 1986 which was converted into T.O.S.No.12 of 1986. This court vide order dated

13.11.1996 dismissed T.O.S.No.12 of 1986 filed by C.V.Ramakrishnan, the step brother of late C.V.Gopinath and also dismissed T.O.S.No.13 of 1987 filed P.J.Jayaprakash @ Raju.

(iii) After the death of Sarada Gopinath, the sister of the Gopinath one Thara Bai filed O.P.No.360 of 1984 for grant of Letters of Administration in respect of the estate left behind by Sarada Gopinath. The Letters of Administration was granted in favour of Thara Bai, the sister of Gopinath on 26.07.1985 and Thara Bai was one of the daughters of C.M.Venugopal Mudaliar and the other daughter is Padmavathi. Padmavathi died on 1977, C.V.Gopinath died on 1981 and Sarada Gopinath was died on 27.01.1984. Thara Bai being only legal representative of C.V.Gopinath and Sarada Gopinath, sought for Letters of Administration which was duly granted on 26.07.1985 in O.P.No.360 of 1984.

(iv) After the demise of Thara Bai, her legal heirs who were contesting T.O.S.No.12 of 1986 and T.O.S.No.13 of 1987 filed C.S.No.720 of 2000, for recovery of possession and damages, past damages as well as future damages. During the pendency of the above said suit in C.S.No.720 of 2000, the 2nd defendant P.J.Jeyaprakash @ Raju filed suit in C.S.No.654 of 2004

for declaration that he has perfected title to the suit property by adverse possession and sought for consequential injunction from interfering with his peaceful possession and enjoyment of the suit property after the dismissal of T.O.S.No.13 of 1987 and T.O.S.No.12 of 1986. When both the above said suits were pending, M/s.Sivanthi Estates, a Partnership firm and N.Latha, filed a civil suit as against J.Jayaprakash @ Raju, P.Saraswathi and 8 others for permanent injunction from interfering with the peaceful possession and development of the suit property by plaintiffs and consequential alienation to third parties. The said suit was originally filed before the City Civil Court as O.S.No.3206 of 2010 which was subsequently transferred to this court and renumbered as Tr.C.S.No.16 of 2011.

(v) In the meanwhile, Jayaprakash alias Raju filed petition to revoke the Letters of Administration granted in favour of Thara Bai in O.P.No.360 of 1984 and the same was also dismissed. Thara Bai died on 22.05.1987 and her husband and children were made as parties to the proceedings. P.G.Parthasarathy died on 31.07.1989. The revocation application filed by P.J.Jeyaprakash @ Raju was directed to be posted along with T.O.S.No.12 of 1986 and T.O.S.No.13 of 1987. By virtue of the order of dismissal dated 13.11.1996 passed by this court, the Will projected by P.J.Jayaprakash @

Raju was found to be a fabricated bogus Will. The judgment rendered in T.O.S.13 of 1987 has become final and conclusive between the parties.

(vi) As against the dismissal of T.O.S.No.12 of 1986, C.V.Ramakrishna filed O.S.A.No.101 of 1998, but however, the said appeal was withdrawn and dismissed as settled out of court. Insofar as the decree passed in T.O.S.No.13 of 1987 is concerned, it has not been challenged and the judgment and decree rendered on 13.11.1986 has become final and conclusive between the parties. A person who had projected a Will did not set up any independent title to the property, but claimed on the basis of a Testamentary disposition purported to have been executed by late Sarada Gopinath in favour of P.J.Jayaprakash @ Raju. P.J.Jayaprakash @ Raju projected the Will dated 15.01.1984 purported to have been executed by Sarada Gopinath in his favour. The said Will was found to be fabricated and forged document and disbelieved by the court.

(vii) The 2nd defendant P.J.Jayaprakash @ Raju did not challenge the decree passed in T.O.S.No.13 of 1987. Having accepted the title of the original owner viz., C.V.Gopinath, since devolved upon Sarada Gopinath, the 2nd defendant P.J.Jayaprakash @ Raju is not entitled to plead adverse

possession. The possession of the 2nd defendant is only permissive occupation or at the best would be construed as gratuitous possession. A person, who occupies the property as a permissive occupant or remain in the property gratuitously is not entitled to plead adverse possession. It is strange that the 2nd defendant P.J.Jayaprakah @ Raju who was a party to the suit in C.S.No.720 of 2000 never set up adverse claim to that of the Estate of C.V.Gopinath. Out of sheer frustration, after having lost in T.O.S.No.13 of 1987, without knowing the legal consequences, pleaded adverse possession. Further it is strange in Tr.C.S.No.16 of 2011, M/s.Sivanthi Estates and Latha would project Joint Development said to have been entered into with P.J.Jayaprakash @ Raju. When admittedly he had no right, title or interest in the property and in such circumstances, a person who purported to have entered into Joint Development Agreement with such a person, cannot project any right in his favour. Admittedly, the firm M/s.Sivanthi Estates and Latha have not sought for performance of the Joint Development Agreement, but they have filed a suit for bare injunction.

(viii) On the side of the plaintiffs, Mr.A.G.Sethumadhavan, the 11th plaintiff was examined as P.W.1 and he has filed proof affidavit and also marked 6 documents and plaintiffs have produced their case that the suit

properties originally belonged to C.V.Gopinath and he died leaving behind him his wife Sarada Gopinath and in the year of 1981, since Gopinath did not have any issue, Sarada Gopinath was alone the legal heir. After the death of C.V.Gopinath, during the life time of Sarada Gopinath, her sister was living with Sarada Gopinath in the suit property and the defendants are the legal heirs of sister of Sarada Gopinath. Sarada Gopinath died intestate and after the death of Sarada Gopinath issueless, the property has to go to the heirs of the husband and as such, Thara Bai was the legal heir and therefore, the plaintiffs are the legal heirs of the said Thara Bai. Though after the death of the Sarada Gopinath, the 1st defendant set up a Will in favour of 2nd defendant, he filed T.S.No.13 of 1987 for probate and the same was subsequently, dismissed. The 2nd defendant P.J.Jayaprakash @ Raju did not prove the Will alleged to have been executed by Sarada Gopinath. Therefore, once the court held that the said Will was forged and C.V.Gopinath and Sarada Gopinath died issueless intestate without any testamentary disposition, the property naturally goes to the legal heir of C.V.Gopinath. C.V.Gopinath has two sisters. One of his sisters viz., Padmavathi predeceased C.V.Gopinath. Therefore, the sister who was alive at the time of death of C.V.Gopinath is the legal heir of C.V.Gopinath and as such,

Thara Bai who was the sister of C.V.Gopinath, filed O.P.No.360 of 1984 for Letters of Administration. This court also granted Letters of Administration. Though 2nd defendant has filed application to revoke the order of grant of Letters of Administration, subsequently that Petition was also dismissed. Therefore, except Thara Bai who was the only surviving legal heir, no other persons are entitled to the suit property. Though first defendant initially made attempt that Sarada Gopinath executed Will and not died intestate, but the court disbelieved the same and held that the Will was forged and as such, he failed in his attempt.

(ix) During the pendency of C.S.No.720 of 2000, the 2nd defendant filed suit against the plaintiffs in C.S.No.654 of 2004 for declaration that he has perfected title to the suit property by adverse possession. Therefore, he has admitted the title of C.V.Gopinath and also after the death of Sarada Gopinath, when the attempt was failed regarding the alleged execution of the Will by Sarada Gopinath, he perfected title by adverse possession, but that has not been proved. In order to substantiate his case, the learned counsel placed reliance on the following citations.

(1) 2012-3/L.W.1111-Maria Margadia Sequeria Fernandes & Ors Vs. Erasmo Jack De Sequeria (D) Tr.Lrs.& Others.

(2) *2012-3-L.W.130-A.Shanmugam Vs. Ariya K.R.K.M.N.P.Sangam through President. Etc.*

(3) *AIR 1976 Madras 124- Bhagavathy Pillai and another Vs. Savarimuthu and another.*

(4) *AIR 1976 Madras 128-C.Ramakrishnan and Others Vs. Corporation of Madras.*

(5) *(1995) 2 SCC 544 – Pandurang B.Sarnobat Vs. K.L.Sarnobat (Dead) By Lrs. And others.*

(6) *AIR 1995 Supreme Court 73 – Thakur Kishan Singah (dead) Vs. Arvind Kumar*

(7) *AIR 1970 Madras 411 (V 57 C 122) – Sabura Ammal and others Vs. Ali Mohamed Nachiar and Others.*

14. Mr.K.Ramachandran, learned counsel appearing for the second defendant in C.S.No.720 of 2000 [learned counsel for the plaintiff in C.S.No.654 of 2004 and first defendant in Tr.C.S.16 of 2011], submitted as follows:

(i) He would submit that the suit property belonged to C.V.Gopinath who died leaving behind him his wife Sarada Gopinath. Since Sarada Gopinath had no issues, the paternal grand mother of the 2nd defendant viz.,

P.Jayaprakash alias Raju and sister of the Sarada Gopinath were living along with Sarada Gopinath and during her life time, Sarada Gopinath executed a Will in favour of the 2nd defendant P.J.Jayaprakash @ Raju. Even otherwise, Thara Bai was not the legal heir of Sarada Gopinath. Sarada Gopinath has no issue and only sisters of Sarada Gopinath was living along with Sarada Gopinath. The father of the 2nd defendant P.J.Jayaprakash @ Raju was living in the suit property. After the death of grand mother of P.J.Jayaprakash @ Raju and death of his father, the 2nd defendant was living in the suit property and property tax, water tax and Electricity Bills have been paid by him. He was enjoying the property. All these days after the death of Sarada Gopinath, he has prescribed the title by adverse possession and Thara Bai had never been in possession of the suit property even after obtaining Letters of Administration, she never entered into the property and the plaintiffs have never been in possession of the property. The second defendant alone was in enjoyment of the property. Even assuming that the Will has not been proved, but after the death of Sarada Gopinath, the father of the 2nd defendant is enjoying the property. Therefore, the 1st defendant prescribed title by adverse possession and he produced all the documents such as Photocopy of Family Card for 2005-2009 (Ex.D.4), Photocopy of the

property tax demand card (Ex.D.5), Electricity Consumption cards (Ex.D.6 series), Photocopy of the Water and sewerage tax cum charges card (Ex.D.7), Photo copy of the extract from the Permanent Land Register (Patta) (Ex.D.9).

(ii) Learned counsel for the 2nd defendant submits that it is the duty of the plaintiffs to prove their case. The plaintiffs have to stand on their own legs. They cannot take advantage of the loop holes left by the 2nd defendant. Whereas the 2nd defendant has established his title. Therefore, plaintiffs are not entitled for recovery of possession, past damages and future damages and C.S.No.720 of 2000 is liable to be dismissed and C.S.No.654 of 2004 is liable to be decreed.

15. Heard the arguments advanced by the learned counsel for the respective parties and I have also considered the pleadings and evidence in the light of the arguments advanced on both sides.

Issue No.(i):

16. Issue No.(i) is as to whether Mr.P.J.Jayaprakash, the second defendant in C.S.No.720 of 2000 and plaintiff in C.S.No.654 of 2004, has perfected title by adverse possession ?

(i) The case of the plaintiffs in C.S.No.720 of 2000 is that the suit property originally belonged to C.V.Gopinath and he died intestate leaving behind him his wife Sarada Gopinath on 07.09.1981. Sarada Gopinath also died intestate at Chennai on 27.01.1984. Therefore, since C.V.Gopinath and Sarada Gopinath had no issues and died intestate, issueless, after the death of Sarada Gopinath, the property goes to Thara Bai, wife of the 1st plaintiff. After the death of Sarada Gopinath, Thara Bai filed O.P.No.360 of 1984 for grant of Letters of Administration in respect of estate let by Sarada Gopinath. The same was granted on 26.07.1985 and since Thara Bai was the sister of C.V.Gopinath, after the death of Sarada Gopinath, viz., the wife of C.V.Gopinath, Thara Bai was the only legal heir during the life time of Sarada Gopinath. After the death of the said Sarada Gopinath, the 1st defendant set up the Will stating that Sarada Gopinath executed the Will in favour of the second defendant and he filed T.O.S.No.13 of 1987 to probate the Will. The said suit was dismissed. Yet another O.P., was filed by Mr.C.V.Ramakrishnan step brother of late C.V.Gopinath and it was also dismissed along with T.O.S.No.13 of 1987. The said C.V.Ramakrishnan filed O.S.A. against the dismissal order. The said O.S.A., was withdrawn dismissed as settled out of court.

(ii) As far as T.O.S.No.13 of 1987 filed by the 2nd defendant in C.S.No.720 of 2000 is concerned, he has not challenged the order passed in the above said T.O.S., and therefore, the order dated 13.11.1996 was confirmed and has become final and therefore, the alleged Will has not been proved. Therefore, the 2nd defendant has no title in the suit property, whereas, if the alleged Will has not been proved before the court of law, the possession of the 2nd defendant is only permissive possession after the death of Sarada Gopinath and after the dismissal of the T.O.S., the possession has become wrongful possession. Therefore, during the life time of Sarada Gopinath, the possession of the 2nd defendant is only permissive possession or gratuitous possession. Therefore, the person who is in permissive occupation or gratuitous possession cannot claim any right against the true owner or the legal heirs subsequently. Therefore, once the 2nd defendant admitted that the suit property originally belonged to C.V.Gopinath, Sarada Gopinath, ie., wife of C.V.Gopinath and both died intestate issueless, after the death of C.V.Gopinath, Sarada Gopinath is alone the legal heir of C.V.Gopinath. Therefore, Sarada Gopinath is the only legal heir of C.V.Gopinath and therefore, entitled for the suit property. After the death of Sarada Gopinath, since Sarada Gopinath has no legal heir and she has not

executed the Will or settlement. Even otherwise, the Will said to have been executed by Sarada Gopinath has not been proved, which is clearly shown in T.O.S.No.13 of 1987. Therefore, it is clear that Sarada Gopinath died issueless and also died intestate. Therefore, once Sarada Gopinath died intestate and she had no issue or direct legal heirs, as per Section 8 of the Hindu Succession Act, 1956, when there is no direct legal heirs to Sarada Gopinath, as per Section 15(1)(b) of the Hindu Succession Act, the heirs of the husband will only succeed the property, since C.V.Gopinath predeceased Sarada Gopinath and both died issueless and intestate.

(iii) Sarada Gopinath and C.V.Gopinath had no issue and at the life time of C.V.Gopinath, Thara Bai alone is the legal heir of C.V.Gopinath. The defendants have not disputed the fact that C.V.Gopinath died intestate leaving behind him his wife Sarada Gopinath in the year 1981. Subsequently, Sarada Gopinath also died in the year 1984. Since Sarada Gopinath had no issue and also the defendants have not denied the relationship between Thara Bai and C.V.Gopinath, once the Will is alleged to have been executed by Sarada Gopinath was disbelieved by this Court and rejected the claim of the 2nd defendant, it automatically shows that the said Sarada Gopinath died intestate.

(iv) Since Sarada Gopinath died intestate and no issue and no legal heir as per Section 8 of the Hindu Succession Act, Section 15 of the Hindu Succession Act comes into play and therefore, Thara Bai was the legal heir and she also obtained Letters of Administration in O.P.No.360 of 1984 and though the 2nd defendant tried to get revocation of the said order of Letters of Administration, but it was also dismissed and therefore, considering the facts and circumstances of the case and pleadings, oral and documentary evidence, this court finds that as per Section 15 of the Hindu Succession Act, Thara Bai is entitled to the suit property. Since Thara Bai died, leaving behind her husband and sons and that the husband of the Thara Bai filed suit and during the pendency of the suit, she died, other legal heirs have been impleaded in the suit.

(v) Therefore, once the relationship of the parties are not in dispute and the O.P., filed by 2nd defendant in T.O.S.No.13 of 1987 was dismissed, the right of the Thara Bai was upheld. Admittedly, the 2nd defendant was initially claiming title to the Will alleged to have been executed by Sarada Gopinath. However, the 2nd defendant has failed to prove the same. Thereafter, the 2nd defendant claimed title by adverse possession, in such

circumstances, it was the duty of the 2nd defendant to prove the title by adverse possession by cogent evidence.

(vi) Admittedly, Sarada Gopinath died in the year of 1984. The 2nd defendant filed application for revocation of Letters of Administration granted in O.P.No.360 of 1984, wherein, Thara Bai got the Letters of Administration on 26.07.1985 itself. The second defendant filed T.O.S.No.13 of 1987 and the same was dismissed on 13.11.1996. Though the 2nd defendant filed an application to revoke the grant of Letters of Administration and subsequently the same was also dismissed and Letters of Administration till date stands good and therefore, the plaintiffs have proved their title.

(vii) Once the plaintiffs have proved their title and the 2nd defendant who are claiming title by adverse possession, it is the duty of the 2nd defendant to prove their case that he is entitled to the suit property by adverse possession. Though the second defendant was examined as D.W.1, he has stated that the 2nd defendant is in possession of the property and the plaintiffs, legal heirs of Thara Bai never entered into the property and further he only obtained Ration card, Electricity Consumption Cards, Water and

Sewerage Tax Receipts viz., Exhibits D.4 to D.9 and all the tax receipts filed in his favour and therefore, he has claimed title by adverse possession. Further, it is admitted that they are in possession since the life time of Sarada Gopinath. After the death of Sarada Gopinath, the 2nd defendant claimed title through Will, but they failed to establish the Will. Therefore, their possession is only permissive possession or gratuitous possession and after the death of Sarada Gopinath, they have to prove their title by adverse possession. Merely obtaining ration card and house tax receipts, the 2nd defendant cannot strengthen his claim of adverse possession. In this regard, the citations relied on by the learned counsel for the Plaintiffs and the ratio laid down therein squarely apply to the facts in this case. Firstly, in the decision reported in **2012-3-L.W.130 [A.Shanmugam Vs. Ariya K.R.K.M.N.P.Sangam through President]**, the Honourable Supreme Court observed that respondent's suit for injunction against the true owner-appellant was not maintainable; no one acquires title to the property if he or she was allowed to stay in the premises gratuitously; even by long possession of years or decades such person would not acquire any right or interest in the said property. Likewise, in the decision reported in **(1994) 6 Supreme Court Cases 591 [Thakur Kishan Singh (Dead) Vs. Arvind Kumar]**, it is held that when initial possession is under a licence or is

permissive, burden lies on the person claiming adverse possession to establish by cogent evidence that the possession became adverse. It is further held that the person who claims title by adverse possession must be shown to be hostile to the knowledge of real owner. In paragraph 5 of the above said decision, it is held as follows:-

“In this case the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for however length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse. That finding could not be demolished by relying on the evidence led by the parties. Such an exercise is not permissible even in second appeal, or under Article 136 of the Constitution. Further, the appellant had not suffered any injustice to be remedied by the Supreme Court. “

17. In the decision reported in (1995) 2 SCC 544 [*Pandurang B.*

Sarnobat Vs. K.L.Sarnobat (dead) by Lrs and others], the Supreme Court held

that Burden of proof on the person claiming possession must be shown to be hostile to the real owner and to have amounted to denial of his title, Possession on behalf of another which is referable to a lawful title, cannot become adverse on mere denial of that other's title.

18. Therefore, in this case, the plaintiffs established their title that the suit property originally belonged to C.V.Gopinath, after the death of C.V.Gopinath, their heirs are entitled to claim suit property. Further, Sarada Gopinath died intestate and issue less. As per Section 15 of the Hindu Succession Act, the property goes to the sister of C.V.Gopinath i.e., Thara Bai one who obtained Letters of Administration. Therefore, when the plaintiffs established their title and the 2nd defendant claimed the title by filing suit in C.S.No.654 of 2004, it is the duty of the 2nd defendant to put forth cogent evidence that he has prescribed title by adverse possession. In this case, the 2nd defendant, during the life time of Sarada Gopinath had come to the suit property and it is only permissive possession or gratuitous possession. Therefore, the person who is in permissive possession or gratuitous possession, cannot claim title by adverse possession. After the death of Sarada Gopinath, the second defendant claimed title through Will and he failed to establish the said Will and after obtaining the Letters of Administration by Thara Bai, and after filing of the suit in C.S.No.720 of 2000

by the first plaintiff, the 2nd defendant who already lost all the legal battle in T.O.S.No.13 of 1987, filed the present suit in C.S.No.654 of 2004 and claimed the title by adverse possession. Even a reading of the evidence of DW.1 viz., P.J.Jayaprakash @ Raju, it would go to show that he has admitted the relationship of the parties and has not disputed the fact that initially during the life time of Sarada Gopinath, he failed to plead and prove on which date, he was in possession has turned as hostile animus and therefore, he has to plead and prove adverse possession by cogent and convincing evidence and possession adverse to the real owner for prescribed period.

19. A reading of the entire materials available on record would go to show that the 2nd defendant has not proved the adverse possession in the manner known to law as held in the case of *A.Shanmugam Vs. Ariya K.R.K.M.N.P.Sangam through President etc., reported in 2012 -3-L.W.130*, wherein, it is categorically held that only by obtaining the ration card and the house tax receipts, the party cannot strengthen his claim of adverse possession. Therefore, this issue is answered in favour of the plaintiffs in C.S.No.720 of 2000 and answered against the 2nd defendant.

Issue No.(ii):

20. Issue No.(ii) is as to whether Mr.P.J.Jayaprakash is entitled to set up the plea of adverse possession, after having claimed to be the true

owner of the property, in the written statement as well as in the previous proceedings TOS No.13 of 1987 ?

(i) As already stated in the previous issue, plaintiffs have proved their title and 2nd defendant also admitted that the original owner is C.V.Gopinath and also subsequently, the wife of Gopinath viz., Sarada Gopinath. Even as per T.O.S.No.13 of 1987, the 2nd defendant claimed the property as owner of the property. The 2nd defendant claimed that the said Sarada Gopinath alleged to have executed Will at the time of his father viz., 1st defendant. But he lost his claim in T.O.S.No.13 of 1987. Even in the written statement filed by the 2nd defendant in C.S.No.720 of 2000, he claimed to be the owner of the property based on the Will. After the death of Sarada Gopinath, the 2nd defendant is entitled to suit property through Testamentary succession. Since T.O.S.No.13 of 1987 went against the 2nd defendant.

(ii) Initially the 2nd defendant pleaded in the written statement in C.S.No.720 of 2000 that Sarada Gopinath written Will in favour of him. As per the plea, he has filed T.O.S.No.13 of 1987. Subsequently, after the dismissal of T.O.S.No.13 of 1987 and during the pendency of C.S.No.720 of 2000, after filing written statement, denying the title of the plaintiffs, now they filed the suit

in C.S.No.654 of 2004 claiming the plea of adverse possession. Once they have been denied the title and they having failed to prove his title, now turned to say that his possession was adverse and claiming title by adverse possession, strictly speaking, it is estoppel. The 2nd defendant estopped by his conduct but however, when he pleaded title by adverse possession, he has to prove by cogent evidence. In this case, till the disposal of T.O.S.No.13 of 1987, he was under the impression that he was the owner of the property. T.O.S.No.13 of 1987 was disposed of on 13.11.1996, thereafter, the plaintiffs filed suit in C.S.No.720 of 2000; and 2nd defendant filed the suit in C.S.No.654 of 2004. Before the year 2004, only by saying that he paid the water tax, property tax, Electricity Bills and therefore, his possession is adverse to the true owners from the date of disposal of T.O.S.No.13 of 1987 on 13.11.1996. C.S.720 of 2000 came into existence in the year 2000 itself. Therefore, to show hostile animus and possession adverse, 2nd defendant has to establish his hostile possession atleast for 12 years. Since the 2nd defendant failed to prove that possession was not adverse, the 2nd defendant is not entitled to claim title by adverse possession.

(iii) The documents relied on by the 2nd defendant in support of his adverse possession are seem to be dated during the pendency of the suit in

C.S.No.720 of 2000. It will not be helpful to the 2nd defendant. Ex.D.9 stands only in the name of Sarada Gopinath and not the 2nd defendant. Therefore, it is not helpful to prove his adverse possession. Further, they admitted the title of Sarada Gopinath. After the death of Sarada Gopinath, Thara Bai is the legal heir as per Section 15 of Hindu Succession Act. Therefore, plaintiffs are entitled to the suit schedule property. Issue No.2 is answered accordingly, against the 2nd defendant.

Issue No.(iii):

21. Issue No.(iii) is as to whether C.S.No.720 of 2000 is barred by law in view of the order dated 23.06.1986 in Application Nos.2207 to 2209 of 1986 in O.P.No.360 of 1984 ?

Since the Issue Nos.1 and 2 held in favour of the plaintiffs and against the 2nd defendant, this court finds that C.S.No.720 of 2000 is not barred by law in view of the order dated 23.06.1986 in application in O.P.No.360 of 1984 and therefore, this issue is held in favour of the plaintiffs.

Issue No.(iv):

22. Issue No.(iv) is as to whether the plaintiff in C.S.No.720 of 2000 is entitled to recovery of possession of suit 'B' schedule property by virtue of the grant in O.P.No.360 of 1984 ?

(i) Since Issue Nos.1 to 3 are answered in favour of the plaintiffs and the 2nd defendant has not proved title by adverse possession and his possession has been turned to be unlawful possession, plaintiffs are entitled to recovery of possession of suit 'B' schedule property by virtue of grant of Letters of Administration in O.P.No.360 of 1984. Accordingly, Issue No.(iv) is answered in favour of the plaintiffs.

Issue No.(v):

23. Issue No.(v) is as to whether the plaintiff in C.S.No.720 of 2000 is entitled to past damages for use and occupation in a sum of Rs.7,56,000/- together with interest at 21% per annum ?

(i) Once the plaintiffs have been declared as owner of the property and the possession of the 2nd defendant is found to be illegal, the plaintiffs are entitled to get damages for use and occupation. Accordingly, Issue No.5 is answered in favour of the plaintiffs and against the 2nd defendant.

(ii) As far as the quantum of damages is concerned, in order to prove the quantum, the plaintiffs examined one M.Ajeez Mohideen, Civil Engineer as P.W.2. He has deposed that he inspected the suit property and quantified damages at Rs.21,000/- per month and therefore, based on that, the plaintiffs

have calculated the past damages. P.W.2 has deposed that recovery of past damages at Rs.21,000/- per month for three years preceding to the date of filing of the suit i.e., Rs.7,56,000/-. So in order to disprove the same, the 2nd defendant has not examined any witness and has not produced any documents so that the report of P.W.2 holds good. Therefore, the plaintiffs are entitled to past damages use and occupation in a sum of 7,56,000/-. As far as interest is concerned, this court feels that plaintiffs are entitled to only 12% interest per annum. This issue is answered accordingly.

Issue No.(vi):

24. Issue No.(vi) is as to whether the plaintiffs in C.S.No.720 of 2000 is entitled to future damages at the rate of Rs.21,000/- per month or any other amount ?

(i) It is held in Issue No.5 that plaintiffs proved through P.W.2 regarding damages and therefore, the plaintiffs are entitled to future damages at the rate of Rs. 21,000/- per month as claimed by the plaintiffs. This issue is answered accordingly.

Issue No.(vii):

25. Issue No.(vii) is as to whether the suit C.S.No.654 of 2004 is barred by res judicata in view of the judgment in TOS No.13 of 1987 ?

Regarding Issue No.(vii), the 2nd defendant filed T.O.S.13 of 1987 claiming that Sarada Gopinath executed Will in his favour and though the said T.O.S. was dismissed, the 2nd defendant has filed C.S.654 of 20004 not on the same cause of action. The 2nd defendant filed suit for declaration and claiming title by adverse possession. Therefore, the judgment in T.O.S.No.13 of 1987 does not operate as resjudicata for the suit in C.S.No.654 of 2004. However, the 2nd defendant [plaintiff in C.S.No.654 of 2004] has not established his title by adverse possession. This issue is answered accordingly.

Issue No.(viii):

26. Issue No.(viii) is as to whether the plaintiff in C.S.No.654 of 2004 is entitled to a declaration and permanent injunction as prayed for ?

(i) Since Issue Nos.1 and 2 are answered in favour of the plaintiffs and against the defendants, and it is held that the defendants have not established their title through adverse possession, the 2nd defendant is not entitled to declaration and permanent injunction as claimed in C.S.No.654 of 2004.

Issue No.(ix):

27. Issue No.(ix) is as to what other reliefs the plaintiffs in the respective suits are entitled, if any ?

(i) Answering Issue No.9, in the suit in C.S.No.720 of 2000, the plaintiffs are entitled to get decree in favour of them. However, they are entitled to get interest at 12% per annum but not at 21% per annum.

28. In view of my above conclusions, since Issue Nos.1 and 2 are answered in favour of the plaintiffs and against the 2nd defendant, and it is held that the 2nd defendant has not established his title through adverse possession, the 2nd defendant is not entitled to declaration and permanent injunction as claimed in C.S.No.654 of 2004.

Tr.C.S.No.16 of 2011:

29. Initially O.S.No.3206 of 2010 has been filed before the learned I Assistant Judge, City Civil Court, Chennai seeking a permanent injunction restraining the defendants therein from interfering with the peaceful possession and development of the property at Door No.13, (Old No.6/F; New No.94) Warren Road (now Bakthavachalam Road), Mylapore, Chennai - 600 004 (more fully described in the suit schedule) by the plaintiffs therein and consequent alienation to third parties either by obstructing the demolition work, erecting superstructure or in any other work incidental thereon.

30. As the parties in C.S.No.720 of 2000 and C.S.No.654 of 2004 were

arrayed as defendants in the suit in O.S.No.3206 of 2010 pending on the file of the learned I Assistant Judge, City Civil Court, Chennai and since the issue revolves around the same suit schedule property, the plaintiffs in C.S.No.720 of 2000 filed a transfer application in Tr.A.No.2554 of 2010 in C.S.No.720 of 2000 to withdraw O.S.No.3206 of 2010 filed by M/s.Sivanthi Estate against the plaintiffs and defendants in C.S.Nos.720 of 2000 pending on the file of the I Assistant Judge, City Civil Court, Chennai and to transfer the same to the file of this Court and to be tried along with C.S.No.720 of 2000 and C.S.No.654 of 2004. This Court by an order dated 13.07.2010, allowed the said application and directed that the suit in O.S.No.3206 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai be transferred to this Court and tried simultaneously along with the suits in C.S.No.654 of 2004 and C.S.No.720 of 2000. On being transferred to this Court O.S.No.3206 of 2010 was re-numbered as Tr.C.S.No.16 of 2011.

31. The gist of the plaint filed by the plaintiffs in Tr.C.S.No.16 of 2011 (O.S.No.3206 of 2010) is as follows :-

(i) According to the plaintiffs herein, the second plaintiff herein is the sale agreement holder as per registered sale agreement dated 26.09.2007 between herself and that of the first defendant viz., Mr.J.Jayaprakash for a

valuable sale consideration, which is registered as document No.2392 of 2007 on the file of SRO, Mylapore, Chennai in respect of suit schedule property viz., land and building bearing plot No.5, Door No.13, Warren Road, Mylapore, Chennai-600 004, measuring an extent of 7,320 square feet.

(ii) The plaintiffs further stated that the first plaintiff firm has entered into a tripartite agreement viz., agreement for joint development cum sale with the second plaintiff and that of the first defendant by an agreement dated 11.12.2007. As per the said agreement, the first plaintiff has to demolish the existing structure in the suit schedule property after obtaining proper sanction from the competent authority. The second plaintiff and the first defendant shall have 40% of the construction area for their disposal and the first plaintiff shall have 60% in the proposed building in the schedule mentioned property as per building sanctioned plan. Further, the first plaintiff also has to spend the necessary amounts for getting necessary approvals, licenses and other miscellaneous expenditure.

(iii) Further the plaintiffs stated that consequently, they have also obtained order of demolition from the competent authority and for the purpose of promoting building in the suit schedule property, they have also

entered into agreement of sale in respect of undivided share of land in proportion to the built up area to be put up there on with a large number of third parties. Thus, the third party interest is also involved in the subject matter.

(iv) The plaintiffs further stated that the first defendant represented to the plaintiffs that he is the sole and absolute owner of 1/4th undivided share of land and building in the schedule mentioned property acquired by way of inheritance from his father late Mr.P.S.Jaishankar through a legal heir certificate dated 19.07.2007, issued by Tahsildhar, Tambaram, Chennai and got the release deed in respect of 3/4th undivided share of land and building described in the schedule by way of release from his mother, Mrs.J.Prema Kumari, his younger sister, Mrs.Jaishree and his younger brother, Mr.J.Ravishankar and the same was registered as release deed dated 24.09.2007, registered as document No.2375 of 2007 on the file of SRO, Mylapore, Chennai-4. Ever since its release, the first defendant is in continuous possession and enjoyment of the suit schedule property without any encumbrance.

(v) The plaintiffs further stated that in accordance with the agreement of sale between the second plaintiff and that of the first defendant and in consonance with another tripartite agreement made among the plaintiffs and the first defendant, the possession of the suit schedule property was delivered to the first plaintiff, who is the developer herein, with power of alienation as per the terms of the said agreements. Thus, the plaintiffs are entitled to deal with the suit schedule property, which are conducive in promoting the suit schedule property for the benefit of plaintiffs as well that of the first defendant.

(vi) The plaintiffs further stated that while the facts and circumstances remain as stated above, the defendants 2 to 10 allegedly claim that they have a right in the suit schedule property as legal heirs. However, the first defendant clarified to the plaintiffs that the suit schedule property was originally purchased by one Mr.C.V.Gopinath, S/o.late C.M.Venugopal from and out of his self earned funds from one Vadivelu and 4 others and the same was registered as sale deed dated 14.02.1946, registered as document No.231 of 1946 on the file of SRO, Mylapore, Chennai.

(vii) The plaintiffs further stated that they were informed that the

above named C.V.Gopinath died on 03.09.1981, leaving behind his wife Mrs.Sarada Gopinath as his sole legal heir and that the said Mrs.Sarada Gopinath has seized, possessed and enjoyed the property as the sole legal heir of deceased Gopinath, which has been sustained as per the legal heir certificate dated 22.10.1981 issued by Tahsildhar, Mylapore-Triplicane Taluk, Chennai and a patta was also obtained in her favour vide patta No.108 dated 29.01.1982. Ever since then, she was in continuous possession and enjoyment without any encumbrance and she died on 27.01.1984, leaving behind one Mr.P.S.Jaishankar as her only legal heir.

(viii) The plaintiffs further stated that the first defendant informed that that the said P.S.Jaishankar is none other than the father of the first defendant and the releasors, who died on 10.10.2004, leaving behind the first defendant and his mother, sister and brother, who have executed release deed in his favour. Thus, there can be no other person, who can have any right in respect of the suit property, except the first defendant.

(ix) The plaintiffs further stated that while the fact and circumstances remain as stated above, the defendants 2 to 10 are obstructing in the demolition work itself, when the first plaintiff with his labourers on the strength of order of demolition issued by the competent authority attempted to execute the work. When the matter was referred to the first defendant

seeking his assistance to thwart the obstructions and attempt, there was a quarrel and fighting between themselves, which ultimately prevented the plaintiffs from performing their legal obligations. That apart, the third parties, who have entered into agreement for sale of undivided share of land with the plaintiffs for building flats are exercising pressure and are also threatening to cancel the agreements already entered into. A huge sum of money is involved in the execution of the work as agreed upon between the parties to the agreement as well with the third parties. Any obstruction at this stage, by the defendants will result in huge loss and also will cause irreparable injury to the plaintiffs in the form of damages and untold hardships, besides compensation to third parties for non-performance of the contractual obligations. In such an event, multiplicity of proceedings is also inevitable. All the efforts made by the plaintiffs with the defendants in mediation and conciliation to set right the issues went as a futile exercise. On the other hand, every day, whenever there is an attempt by the plaintiffs in execution of the work, there is a scene created by the defendants 2 to 10, resulting in eroding of the assets and dis-reputation to the promoted/building, viz., the first plaintiff herein.

(x) The plaintiffs further stated that according to the representation,

documents in respect of the title, right, possession, etc., the suit schedule property in clinchingly proved that the first defendant is entitled to succeed, who in turn transferred the same right by mutual agreement and delivered vacant possession to the first plaintiff. Therefore, the defendants are to be restrained from interfering with peaceful possession and development of the suit schedule property by the plaintiffs herein. Hence, the plaintiffs are left with no other option, except to approach this Court by filing the instant suit for a permanent injunction restraining the defendants from interfering with the peaceful possession and development and consequential alienation of their respective shares to third parties, as agreed between the parties.

32. The first defendant filed Written Statement on 13.07.2011, inter alia contending as follows:

(i) The first defendant stated that he is the absolute owner of the suit property having inherited the same from Mrs.Sarada Gopinath. The property originally belonged to the Late Mr.Gopinath, who purchased the same from and out of his self earned funds from one Vadivelu and 4 others by means of a Registered Sale Deed dated 14.02.1946 and registered as Document No.231 of 1946 in the office of the Sub-Registrar, Mylapore, Chennai.

(ii) The first defendant further stated that Mr.C.V.Gopinath died on

03.09.1981, leaving behind him as his sole legal heir, his wife Mrs.Sharada Gopinath. From the date of the death of Mr.Gopinath, the property came to the possession and enjoyment of Mrs.Sharada Gopinath. The same was also evidenced by the legal heir certificate issued by the Tahsildhar, Mylapore Taluk, dated 22.10.1981 and the Patta No.108 was also obtained by her on 29.01.1982. Since then, the said Mrs.Sharada was in continuous enjoyment and possession and without any encumbrance and she died on 27.01.1984 leaving behind his father Mr.P.S.Jaishankar as his only legal heir. The said Mr.Jaishankar died on 10.10.2004, leaving behind him, the first defendant his mother, sister and brother who had executed a release deed in favour of the first defendant.

(iii) Thus, according to the first defendant he has become the absolute owner of the suit property. In that capacity as absolute owner the first defendant entered into an agreement with the second plaintiff on 26.09.2007 and the same was registered as Document No.2392 of 2007 on the file of the SRO, Mylapore, Chennai in respect of the suit schedule property of an extent of 7,320 sq.ft. comprising land and building.

(iv) The first defendant further stated that he came to know from

various quarters that the first plaintiff was an expert in real estate and was also floating joint ventures. According to the first defendant, the plaintiffs approached him and all the three of them entered into a joint development cum sale agreement, in and by which the property was to be demolished by the first plaintiff who obtained the necessary sanctioned from the competent authority, the first defendant was to have a 40% share and the first plaintiff will have 60% share. All the out of pocket expenses were also to be borne only by the first plaintiff and the first plaintiff was also put in possession of the property.

(v) The first defendant further stated that all the necessary spade work had been done by the first plaintiff and the first plaintiff has also entered into various agreements with third parties and thereby the property also got saddled with third party interest.

(vi) The first defendant further stated that on his part though originally he was having only 1/4th share of the property he got release deed in his favour in respect of the entire rest of 3/4th extent of the property and was therefore in a legally strong position to enter into sale agreement.

(vii) The first defendant further stated that none of the defendants 2 to

10 have any interest in the suit property. They have also at no point of time evinced any interest. In fact, it is doubtful whether the defendants 2 to 9 are even aware of the case. It is only the 10th defendant who is behind the assertions of rights by the defendants. He is also being actively encouraged by one Gajarajan who is a financier and also deals in disputed properties. In fact he is a Court bird.

(viii) The first defendant further stated that as a fact, the possession was only with the first defendant and the same was handed over to the plaintiffs by virtue of the tripartite agreement.

(ix) The first defendant further stated that there are number of suits pending before this Court and in C.S.No.720 of 2000, the possession of the first defendant is admitted by all, because it is a suit for possession. Therefore, the first defendant as a person in possession is entitled to induct the plaintiffs into possession.

(x) The first defendant further stated that though a letters of administration was obtained by the other defendants, the first defendants has already filed applications in O.P.No.360 of 1984 and the ex-parte order

granting Letters of Administration has also been stayed by this Court. Therefore, it is presumptuous on the part of the defendants 2 to 10 to contend that they are the owners of the suit property.

(xi) Therefore, the first defendant, in order to protect his rights and as a person in possession of the suit property through his agreement holder he is also entitled for an injunction restraining the defendants 2 to 10 in any manner interfering with the suit property.

33. The tenth defendant filed Written Statement and Counter Claim on 04.04.2011, on his behalf and on behalf of defendants 2 to 5 and 7 to 9, inter alia contending as follows:

(i) The defendants 2 to 5 and 7 to 10 submitted that as the legal heirs of Mr.C.V.Gopinath and Mrs.Sarada Gopinath, they have filed a suit in C.S.No.720 of 2000 and the first defendant herein has filed C.S.No.654 of 2004 as a counter to C.S.No.720 of 2000 before this Court. However, concealing and suppressing the said proceedings before this Court, the present suit has been filed by the plaintiffs herein on the file of the learned I Assistant Judge, City Civil Court, Chennai in O.S.No.3206 of 2010 and an order of interim injunction was obtained by the plaintiffs herein as against

the defendants 2 to 5 and 7 to 10 in the said proceedings.

(ii) On coming to know about the said proceedings, the defendants 2 to 5 and 7 to 10 filed a Transfer Application in Tr.Appln.No.2554 of 2010 for withdrawal of the proceedings from the file of the learned I Assistant Judge, City Civil Court, Chennai to the file of this Court to be tried along with C.S.No.720 of 2000 and also C.S.No.654 of 2004 under Clause 13 of the Letter Patent. Besides that, the defendants 2 to 5 and 7 to 10 herein have filed applications in A.No.2555 of 2010 for suspension of the order of interim injunction granted by the learned I Assistant Judge, City Civil Court, Chennai. This Court after considering the submissions made on behalf of the defendants 2 to 5 and 7 to 10, suspended the order of injunction granted by the City Civil Court, Chennai and subsequently the Tr.Appln.No.2554 of 2010 filed by the defendants 2 to 5 and 7 to 10 under Clause 13 of the Letters Patent was ordered and by virtue of the orders of this Court, the proceedings originally instituted in O.S.No.3206 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai, came to be transferred to this Court and re-numbered as Tr.C.S.No.16 of 2011 and directed to be tried along with C.S.No.720 of 2000 and C.S.No.654 of 2004.

(iii) The defendants 2 to 5 and 7 to 10 submitted that the suit property originally belonged to one Mr.C.V.Gopinath, who died intestate on 07.08.1981 without any issues, leaving behind him his wife Sarada Gopinath as his sole surviving legal heir to succeed to his estate. After the demise of C.V.Gopinath, his wife Sarada Gopinath permitted her sisters Sakunthala Ammal and Manicka Ammal to remain along with her, since she was living all alone in the premises and Sakunthala Ammal preferred to stay with Sarada Gopinath and stayed with her along with her children and the said Manicka Ammal was staying alone. P.Jayashankar alias Ramani, P.J.Jayaprakash alias Raju, P.J.Ravishankar and P.Jayanthi are the sons and daughter of late Sakunthala Ammal and the said Sarada Gopinath was living in the first floor of the premises and Sakunthala Ammal along with her family members as well as the said Manicka Ammal along with her family as well as the said Manicka Ammal were also living in the same premises.

(iv) The defendants 2 to 5 and 7 to 10 submitted that Sarada Gopinath had let out the ground floor to tenant and was enjoying the rental income derived therefrom. These defendants state that Sakunthala Ammal and Manicka Ammal were in occupation of the property by virtue of the permission granted by Sarada Gopinath during her life time. These

defendants state that Sarada Gopinath died at Chennai on 27.01.1984 and her legal heir viz., sister of C.V.Gopinath, Mrs.G.Thara Bai succeeded to the property left by C.V.Gopinath, since devolved upon Sarada Gopinath. Which reverted to her husband's legal heir on her demise, since she died issueless. The defendants 2 to 5 and 7 to 10 further states that P.Jayashankar alias Ramani, P.J.Jayaprakash Alias P.J.Raju, P.J.Ravishankar and P.Jayanthi were allowed to stay with Sarada Gopinath in the premises and as such, they were permissive occupants. The defendants 2 to 5 and 7 to 10 further stated that the genuineness and validity of the said Will set up by P.Jayashankar and P.J.Jayaprakash @ P.J.Raju was questioned and challenged by the defendants 2 to 5 and 7 to 10 and consequently O.P.Nos.4202 of 1986 and 202 of 1986 were filed and the said O.Ps were converted into Testamentary Original Suits in T.O.S.Nos.13 of 1987 and 12 of 1986, (O.P.No.202 of 1986) another Will set up by C.V.Ramakrishnan. This Court by an order dated 13.11.1986, dismissed both the TOSs holding that the validity of the Wills had not been proved in accordance with law. In so far as T.O.S.No.12 of 1986 is concerned an appeal in O.S.A.No.101 of 1988 was filed by C.V.Ramakrishnan which subsequently ended in a compromise between these defendant and C.V.Ramakrishnan and the original side appeal was disposed of in terms of the compromise filed by the parties thereto. As

against the order in T.O.S.No.13 of 1987, no appeal was filed and the matter has attained finality and Mr.P.J.Jayaprakash alias P.J.Raju, the first defendant herein is not entitled to relegate or go back on the same.

(v) The defendants 2 to 5 and 7 to 10 further stated that Mrs.G.Thara Bai during her life time filed Letters of Administration to have effect of limited grant in respect of the Estate of Sarada Gopinath, since devolved upon her being the Class II heir of late C.V.Gopinath in O.P.No.360 of 1984 and this Court was pleased to grant Letter of Administration by order dated 26.7.1985. Attempts were made to get the Letters of Administration revoked, but however, they have not been successful. The said Mrs.G.Thara Bai died at Chennai on 22.5.1987. By virtue of devolution R.Anusuya, P.Venkatesh, Kamesh Balaji, A.E.Govindan, A.G.Thiruvani, G.Jaishree, A.G.Sarala and A.G.Sethumadhavan have succeeded to the suit property.

(vi) The defendants 2 to 5 and 7 to 10 further submitted that the plaintiffs herein purported to have entered into a tripartite agreement for joint development cum sale with N.Latha, the 2nd plaintiff herein, on 11.12.2007. By virtue of the said agreement, they obtained a demolition plan from the Corporation of Chennai by playing fraud on the defendants 2 to 5

and 7 to 10 , who are the true owners of the property.

(vii) The defendants 2 to 5 and 7 to 10 further stated that the tripartite agreement dated 11.12.2007, shall not confer any right in favour of the plaintiffs herein and the suit filed by the plaintiffs herein is nothing, but yet another attempt made by certain persons who have no title to the property are attempting to grab the same under the guise of tripartite agreement.

(viii) The defendants 2 to 5 and 7 to 10 further submitted that the first defendant in collusion and connivance with the plaintiffs herein are indulging in the property grabbing and are attempting to dispossess the true and lawful owners of the property, whose rights have been recognized by this Court and which remained unchallenged as on date.

(ix) According to the defendants 2 to 5 and 7 to 10, the present suit has been filed on the strength of certain dubious and doubtful records secured by the plaintiffs herein such as, death certificate of P.S.Jeyashankar and the Release deed dated 24.9.2007 executed by P.J.Jayaprakash and the subsequent agreement between N.Latha the 2nd plaintiff herein and the 1st defendant herein dated 26.9.2007 and the said agreement is sham and

nominal and the same has been brought about with a view to defraud the defendants 2 to 5 and 7 to 10 who are the true and lawful owners of the suit property.

(x) The defendants 2 to 5 and 7 to 10 further stated that the plaintiffs herein in collusion and connivance with the first defendant herein are trying to indulge in fraudulent attempts to get at the property by creating fictitious documents and on the strength of the same, they obtained demolition plan from the Corporation of Chennai on 01.02.2008, by paying the requisite fee on 30.01.2008. The first plaintiff is not a bonafide promoter of the property and the second plaintiff had entered into a fraudulent transaction with the first defendant on 26.9.2007, to create source of title to their property as if the release deed executed in her favour would confer her right, title and interest in relation to the suit property. The suit transaction projected by the plaintiffs is a classic example to defraud the true and lawful owners of the property on the strength of fraudulent documents.

(xi) The defendants 2 to 5 and 7 to 10 further stated that the first defendant who projected the alleged Will purported to have been executed by Sarada Gopinath and having failed in his attempt, has chosen to file

C.S.No.654 of 2004 which is pending before this Court and it is strange that the said suit has been filed for declaration of his title alleging as if he has perfected his title to the property by adverse possession. A person who has presented the Will having recognized right, title and interest of C.M.Venugopal and C.V.Gopinath and Sarada Gopinath cannot plead adverse possession as against true owners which had devolved upon the defendants 2 to 5 and 7 to 10 by virtue of the grant originally granted in favour of G.Thara Bai in O.P.NO.360 of 1984. When the first defendant has no title to the property any person claiming to be the legal heirs of P.J.Jayashankar alias Ramani or P.J.Jayashankar and P.Jayanthi cannot plead better title in their favour in view of dismissal of T.O.S.No.13 of 1987 by this Court. The plaintiffs are indulging in frivolous and vexatious litigations to litigate over the property without an iota of right or title or interest in their favour and the so-called joint development agreement with the first plaintiff firm dated 11.12.2007 and the sale agreement dated 26.09.2007, by the first defendant in favour of the second defendant would not entitle the plaintiffs to maintain the present suit and it is liable to be rejected and dismissed with exemplary costs.

(xii) The defendants 2 to 5 and 7 to 10 further stated that the Release Deed dated 24.09.2007 executed in favour of the first defendant and the other documents brought about in respect of the suit property such as Agreement of Sale dated 26.9.2007, Joint Development Agreement dated 11.12.2007 are all only to create an encumbrance over the property and thereby create a cloud in the title of the defendants 2 to 5 and 7 to 10 in relation to the suit property which the plaintiffs are not entitled to do in collusion and connivance with the first defendant. Unless a declaration is granted to the effect that the documents secured by the plaintiffs in collusion and connivance with the first defendant are sham and nominal and illegal and declare the same so, the title of the defendants 2 to 5 and 7 to 10 will not be free from doubt to cloud. It is under these circumstances, the defendants 2 to 5 and 7 to 10 are seeking for a declaration that the purported release deed and other documents seeking to create an encumbrance over the property brought about by the first defendant and the plaintiffs herein are illegal, invalid and non est in the eyes of law and the defendants 2 to 5 and 7 to 10 would suffer grave prejudice, irretrievable loss which cannot be compensated in terms of money at a later date and hence the defendants 2 to 5 and 7 to 10 are seeking for a counter claim as against a co-defendant viz., the first defendant and the plaintiffs herein under Order V-A read with Order

VIII-A of C.P.C.

34. Based on the pleadings of both the parties, documents filed by the parties and submissions made by both the Counsel, the following issues were framed by this Court on 24.01.2012, for trial viz.,

“(i) Whether the suit is maintainable ?

(ii) Whether the suit filed by the plaintiff is an abuse of process of Court and process of law liable to be rejected at the threshold in as much as the 1st defendant who had projected an alleged Will purported to have been executed by Sarada Gopinath having failed in T.O.S.No.13 of 1987 ?

(iii) Whether the plaintiffs are entitled to the relief of permanent injunction ?

(iv) Whether the counter claim made by the defendants 2 to 10 is not liable to be rejected on the ground of delay ?

(v) Whether the defendants 2 to 10 are entitled to seek the relief of either declaration or mandatory injunction as set out in the counter claim, while the suit is for permanent injunction ?

(vi) Whether the defendants 2 to 5 and 7 to 10 are entitled to the relief of declaration as sought for ?

(vii) Whether the defendants 2 to 5 and 7 to 10 are entitled for mandatory injunction directing the plaintiffs and the first defendant to cancel all the instruments and documents as described in the schedule appended to the written statement along with the counter claim ?

(viii) To what reliefs are the parties are entitled to ? ”

35. After completion of pleadings, in order to prove the case on the side of the plaintiffs therein, Mr.S.Jaganatha Pandian was examined as P.W.1. and Exhibits P1 to P35 were marked. On the side of the defendants therein, Mr.P.J.Jayaprakash, was examined as D.W.1, Mr.A.G.Sethumadhavan was examined as D.W.2 and Exhibits D1 was marked.

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36. Ms.A.Sumathy, learned counsel appearing for the plaintiffs submitted that the first defendant entered into Joint Development Agreement on 11.12.2007 with the plaintiffs. Therefore, based on the

agreement, they have started building promotion project. In the mean while, defendants 2 to 10 interfered with their possession. Therefore, the plaintiffs filed the present suit for injunction.

37. The learned counsel for the 1st defendant would submit that he is entitled for title by adverse possession and he is in possession of the property from the date of death of Sarada Gopinath. On the date of entry into Joint Development Agreement, 1st defendant was in possession of the property and he is the original owner and therefore entered into agreement. As per the Joint Development Agreement, the plaintiffs are in possession of the property.

38. The learned counsel for defendants 2 to 10 would submit that since C.V.Gopinath and Sarada Gopinath died intestate issueless, Thara Bai who is the sister of C.V.Gopinath is the legal heir. Therefore, after the death of Thara Bai, who obtained Letters of Administration, the legal heirs of Thara Bai is entitled to suit property. Though the 1st defendant filed T.O.S.No.13 of 1987 and the step brother of C.V.Gopinath filed T.O.S.No.12 of 1986, both petitions were dismissed and the petition filed for revocation of the letters of administration was also dismissed. Therefore, the defendants 2 to

10 who are the legal heirs of Thara Bai, are the true owners of the suit schedule property and therefore, injunction cannot be granted against the true owners. Therefore, the suit is liable to be dismissed.

39. Since already this court held that Plaintiffs in C.S.No.720 of 2000 are entitled to suit property and the 2nd defendant is not the owner of the property, no injunction can be granted against the true owner. Therefore, in view of the finding given in the above suits C.S.No.720 of 2000 and C.S.No.654 of 2004, the plaintiffs in Tr.C.S.No.16 of 2011 are not entitled to the relief sought for.

40. Further, the 2nd defendant in C.S.No.720 of 2000, [plaintiff in C.S.No.654 of 2004] is not the owner of the suit schedule property and therefore, he is not entitled to enter into Joint Development Agreement. Once the plaintiffs in C.S.No.720 of 2000 are held to be the owners of the property, no injunction can be granted against the true owners. The person with whom Joint Development Agreement was entered into was not at all the owner of the property. Hence, the Agreement will not bind the true owner of the property. Therefore, injunction cannot be granted against the true owners viz., the defendants 2 to 10. Therefore, in view of the findings given in

C.S.Nos.720 of 2000 and 654 of 2004, the plaintiffs in Tr.C.S.16 of 2011 are not entitled to relief sought for.

41. In view of the above reasonings, **Issue Nos.(i) to (viii) are answered against the plaintiffs.**

42. In view of my above conclusions, the suit in Tr.C.S.No.16 of 2011 is dismissed.

43. In the result,

(i) C.S.No.720 of 2000 is decreed with cost, at 12% interest per annum as prayed for on the terms indicated above;

(ii) C.S.No.654 of 2004 is dismissed; and

(iii) Tr.C.S.No.16 of 2011 is dismissed. Considering the facts and circumstances of the case, the respective parties are directed to bear their own costs in both C.S.No.654 of 2004 and Tr C.S.No.16 of 2011.

11.11.2020

Index : Yes / No

Internet : Yes / No

kk/nvsri

**Common oral and documentay evidence filed in
C.S.No.720 of 2000 and C.S.No.654 of 2004:**

List of Witness examined on the side of the plaintiffs (C.S.No.720/2000)

- (1) Mr.A.G.Sedhu Mathavan - P.W.1
(2) Mr.M.Ajeez Mohideen -P.W.2

List of documents marked on the side of the plaintiffs (C.S.No.720/2000)

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Letters of Administration granted by this Court in O.P.No.360 of 1984	...
2.	P2	Certified copy of decree in TOS No.13 of 1987	...
3.	P3	True copy of the notice issued by the plaintiff's through their lawyer to one Mr.M.Thirunavukkarasu	12.7.1998
4.	P4	Photocopy of the death certificate of Mr.P.S.Jaishankar	...
5.	P5	Photocopy of the Release deed	24.9.2007
6.	P6	Photocopy of the Sale Agreement	26.9.2007

List of Witness examined on the side of the defendants:-

P.J.Jayaprakash alias Raju – D.W.1

List of document marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Certified copy of the Sale deed executed by Mrs.R.Anusuya and others	26.12.2007
2.	D2	Photocopy of the order in	26.7.1985

		O.P.No.360/1984, High Court, Madras	
3.	D3	Photocopy of the order made in A.Nos.2207 to 2209/1986 in O.P.No.360/1984, High Court, Madras	26.6.1986
4.	D4	Photocopy of the family card for 2005-2009	...
5.	D5	Photocopy of the Property tax demand card	...
6.	D6 (Series)	Two Electricity consumption cards for Electricity connection No.128.030.67 and 128.030.68	...
7.	D7	Photocopy of the Water and sewerage tax cum charges card	...
8.	D8	Photocopy of the legal heir certificate	...
9.	D9	Photocopy of the Photocopy of the Extract from the Permanent Land Register (Patta)	29.1.1982

Tr.C.S.No.16 of 2011 :

List of Witness examined on the side of the Plaintiffs:-

- 1) S.Jaganatha Pandian – P.W.1

List of Documents marked on the side of the Plaintiffs:-

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	Ex.P1	Notarised photocopy of agreement for joint development cum sale	11.12.2007
2.	Ex.P.2	Photocopy of the property tax receipt	22.11.2007
3.	Ex.P.3	Photocopy of payment of requisite fee to Corporation of Chennai.	30.01.2008

4.	Ex.P.4	Photocopy of demolition order issued by Corporation of Chennai.	01.02.2008
5.	Ex.P.5	Photocopy of the certificate of Registration of Firm.	--
6	Ex.P.6	Certified copy of Sale deed registered as Doc.No.231/1946 at SRO, Mylapore.	14.02.1946
7	Ex.P.7	Certified copy of Release deed registered as Doc.No.2375/2007 at SRO, Mylapore	24.09.2007
8	Ex.P.8	Certified copy of Sale Agreement registered as Doc.No.2392/2007 at SRO, Mylapore	26.09.2007
9	Ex.P.9	Original Death Certificate of C.Saradha	26.03.2015
10	Ex.P.10	Original Uthiragriya invitation of Saradhammal	05.02.1984
11	Ex.P.11	Certified copy of Typed set filed in C.S.No.654 of 2000 in O.P.No.360 of 1984	26.07.1985
12	Ex.P.12	Xerox copy of Order in A.No.2207 to 2209 of 1986	23.06.1986
13	Ex.P.13	Original Death certificate of Sakunthala Bai.	26.03.2015
14	Ex.P.14	Original Death Certificate of P.S.Jayasankar	26.03.2015
15	Ex.P.15	Original Death certificate of C.V.Gopinath	26.03.2015
16	Ex.P.16	Computer generated copy of Electricity consumption charges	---
17	Ex.P.17	Computer generated copy of Electricity consumption charges	---
18	Ex.P.18	Original Memorandum of Understanding	28.06.2007

19	Ex.P.19	Original Rental agreement between J.Jayaprakash and Sri Meenatchi Realors.	01.10.2007
20	Ex.P.20	Original Instruction given by the plaintiff to the Postal department	13.10.2007
21	Ex.P.21	Letter by the first defendant to the Tahsildar, Triplicane and DRO with A/d card, dated 24.09.2007	---
22	Ex.P.22	Original letter by the plaintiff to CMDA with A/d card	18.09.2010
23	Ex.P.23	Original letter to the plaintiff from CMDA	20.10.2010
24	Ex.P.24	Copy of complaint sent to Bar council of Tamilnadu	23.06.2010
25	Ex.P.25	Certified copy of Sale deed	26.12.2007
26	Ex.P.26	Certified copy of Judgment and decree in O.S.No.5401/2011	19.04.2012
27	Ex.P.27	Original Memorandum of Understanding	22.10.2008
28	Ex.P.28 series	Copy of notice issued to the counsel for D2	11.06.2010
29	Ex.P.29	Original preliminary Memorandum of Understanding	28.02.2009
30	Ex.P.30	Original preliminary Memorandum of Understanding	20.06.2008
31	Ex.P.31	Original Deed of Partnership	01.10.2007
32	Ex.P.32	Certified copy of Deed of General Power of Attorney	26.09.2007
33	Ex.P.33	Copy of Application under Right to Information Act	05.03.2015
34	Ex.P.34 series	Copy of complaint to Inspector General of Registration, Chennai	09.03.2015
35	Ex.P.35 series	Originaly reply received from Inspector General of Registration	20.04.2015

List of Witness examined on the side of the Defendants:-

1. P.J.Jayaprakash – D.W.1
2. A.G.Sethumadhavan – D.W.2

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Photocopy of the Partnership Agreement	26.11.2003

Index: Yes/No
Internet: Yes/No
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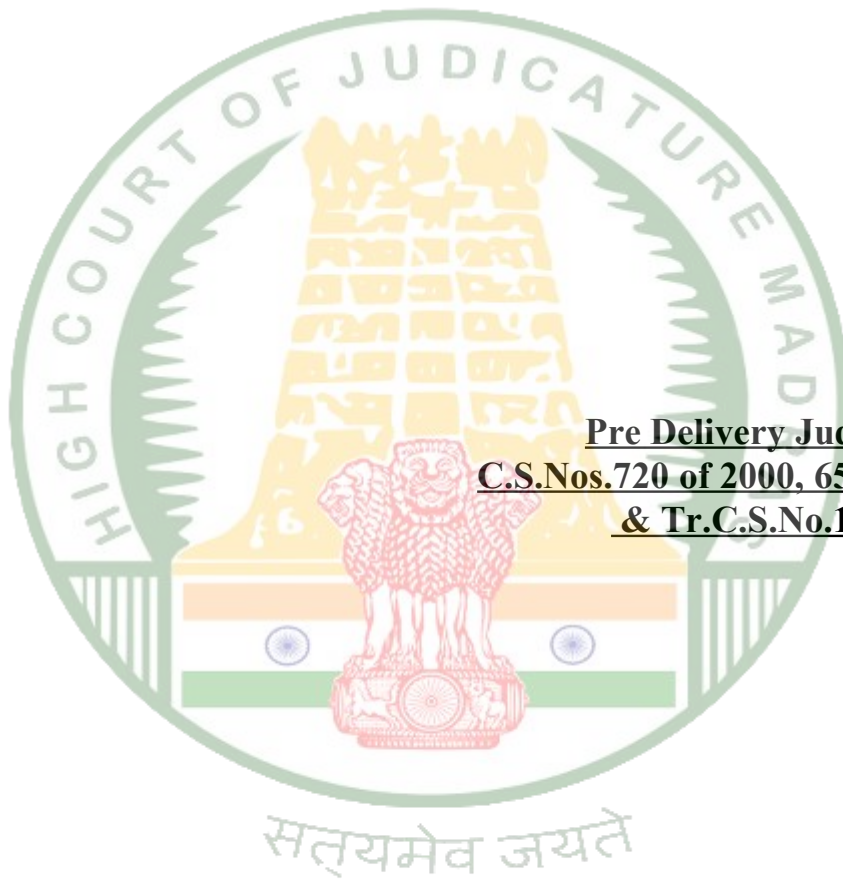
(P.V.J.)



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P.VELMURUGAN, J.

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Pre Delivery Judgment in
C.S.Nos.720 of 2000, 654 of 2004
& Tr.C.S.No.16 of 2011

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RESERVED ON : 23.02.2017

PRONOUNCED ON : 11.11.2020