

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.02.2020

PRONOUNCED ON: 21.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A. Nos.42 and 43 of 2008
and
M.P. Nos.1 and 1 of 2008
and
MP No.1 and 1 of 2012

1. Chandra
2. Ravichandran
3. Janakiraman
4. Kumar
5. Selvi Sumathi
6. Selvi Vimala

...Appellants in
both S.As.

Vs.

Sri Kakumani Adikesavalu Chetty Charities
Rep. by its Managing Trustees
Residing at No.15 and 16 Perumal Koil
North Mada Street,
Villivakkam,
Madras – 49.

By 1. Ananda Krishnan
2. N. Nammalvarchetty
3. Nathella Adikesavalu Gupta
4. P. Niranjana
5. C.N.Badrinath

6. K.Subbarayalu
7. K.Rajendran

... Respondents in
S.A. No.42 of 2008

Sri Kakumani Adikesavalu Chetty Charities
Rep. by its Managing Trustees
Residing at No.15 and 16 Perumal Koil
North Mada Street,
Villivakkam,
Madras - 49.

.. Respondent in
S.A. No.43 of 2008

Second Appeals filed under Section 100 of the Code of Civil Procedure as against the common Judgment and decree, dated 09.07.2007, passed by the III Additional City Civil Court, Chennai, in A.S. Nos.565 of 2004 and 580 of 2005, confirming the common judgment and decree, dated 31.08.2004, passed by the V Assistant City Civil Court, Chennai, in O.S. Nos.1874 of 1987 and 10276 of 1992.

For appellants
(in both S.As) : Mr.N.Manokaran for
M/s.Karthikeyan
& Rajeswari Karthikeyan

For Respondents
(in both S.As) : Mr.V.Ramesh for
M/s.T.Thiyagarajan

COMMON JUDGMENT

These two Second Appeals have arisen out of common judgments and decrees of the Courts below, in respect of two suits filed as between the plaintiffs and the defendants, respectively. The suit in O.S.No.1874 of 1987 has been filed by the plaintiff Trust seeking for recovery of possession from the defendants and for payment of damages for unlawfully occupying the suit schedule property. Another suit, in O.S.No.10276 of 1992, was filed by the defendants 4 to 9 in O.S.No.1874 of 1987 for bare injunction in respect of the same subject property. Both the suits were tried together and by a common judgment, the trial Court decreed O.S.No.1874 of 1987 in favour of the plaintiffs and dismissed the suit in O.S.No.10276 of 1992. As against the said judgment and decree passed in O.S.No.1874 of 1986, the defendants 4 to 9 therein have filed A.S.No.565 of 2004 and the same defendants (who are the plaintiffs in O.S.No.10276 of 1992) have filed A.S.No.580 of 2005, challenging the dismissal decree passed in O.S.No.10276 of 1992. By a common judgment, the appellate Court dismissed the appeal in A.S.No.565 of 2004 and partially allowed the appeal in A.S.No.580 of 2005. The said common

judgment and decrees are put to challenge by the defendants in the present Second Appeals.

2.The dominant ligation is filed by the plaintiffs in O.S.No.1874 of 1987 and therefore, the parties are referred to hereunder according to their litigative status and ranking in the said suit.

3.The plaintiffs have approached the trial Court in O.S.No.1874 of 1987 seeking for recovery of possession from the defendants and also for damages for unauthorizedly occupying the suit premises. According to the plaintiffs, the Trust is the owner of the property and they have absolute title over the suit property through various documents, filed along with the plaint, which documents were more than a century old. According to the plaintiffs, the defendants were the legal heirs of one Kanniah Naidu, who was actually working as a Caretaker/Watchman and was employed in the Trust property and he died on 27.12.1980 and thereafter, his legal heirs were also employed as Gardeners/Watchmen.

4.Since the defendants, when legal notice was issued on behalf of the plaintiffs, refused to vacate the subject premises, the plaintiffs were constrained to move the trial Court seeking for recovery of possession and for damages.

5.The defendants resisted the suit on the ground that the premises, which was under their occupation, was a Government poramboke property, over which the plaintiffs have no title at all. According to the defendants, the Door number described in the suit schedule property was different, whereas, they were occupying a different door number and hence, the plaintiffs were not entitled to seek for recovery of possession.

6.As regards the other suit (O.S.No.10276 of 1992) is concerned, the defendants were the plaintiffs in that suit, and they filed the said suit for bare injunction in respect of the property under their occupation, against the plaintiffs in the other suit, viz., O.S.No.1874 of 1987. The trial Court, which heard both the suits, has ultimately, vide common judgment dated 31.08.2004, allowed the suit filed by the plaintiffs i.e., O.S.No.1874 of 1987 and dismissed the suit filed by the defendants in O.S.No.10276 of 1992.

7. According to the trial Court, the plaintiffs had established their title to the property and also found that the defendants were employed as Watchmen/Gardeners and they were only occupying the premises, which can be construed only as 'permissible occupation'. As regards the claim of the defendants that the premises was located in a Government poramboke land, the trial Court has discountenanced such plea stating that on behalf of the defendants no documents were produced in support of their claim. In the said circumstances, the trial Court has allowed the claim of the plaintiffs and dismissed the claim of the defendants. As against the said judgment and decrees, the defendants filed appeals in A.S.No.565 of 2004 and AS.No.580 of 2005 before the lower Appellate Court.

8. The lower Appellate Court, which dealt with the appeals, has partially allowed A.S.No.580 of 2005 and dismissed A.S.No.565 of 2004. The lower Appellate Court, while concurring with the findings of the trial Court, has held that the plaintiffs were entitled to recover possession from the defendants, as held by the trial Court. However, as regards the grant of damages by the trial Court, the same was set aside by the Appellate Court. In regard to

the other injunction suit filed by the defendants, the appeal was dismissed in *toto*. In effect, the lower Appellate Court has accepted the findings and the judgment and decrees of the trial Court substantially and it interfered only in regard to the grant of relief by the trial Court towards damages. Challenging the said common judgment and decrees of the appellate Court, the present Second Appeals have been filed by the defendants, raising the following Substantial Questions of Law:

i) Whether the Courts below are right in decreeing the suit in O.S.No.1874/1987, when there is nothing to adjudicate in the suit?

ii) Whether a decree could be given in abstrant and should not the courts below take into consideration the subsequent circumstances, to determine whether the course of action survives for adjudication?

iii) When the High Court had rejected the case of the plaintiff in O.S.No.1874 of 1987 and held that it is not permitted to include Door No.18 and 19 in the suit, whether the findings of the subordinate Courts that the plaintiff is entitled to a decree in respect of these items as well does not exhibit total

indifference to the order of High Court and lack of judicial discipline?

iv)Whether the Courts below are justified in ordering eviction of a property which does not form part of the subject matter of the suit?

v)When the nature of property in occupation of the appellants is grama natham and the Government has recognized its occupation, are the courts below justified in decreeing the suit?

vi)When the appellants has established the occupation and enjoyment of the property by production of documents, is the courts below right in dismissing the suit for injunction?

vii)In the absence of any testimony over the title to the property, are the courts below justified in decreeing the suit for possession?

viii)Whether the Courts below are not wrong in not even properly appreciating on whom does the burden of proof lies to prove title?

ix)Whether a suit for ejectment is maintainable in the absence of antecedent title to the property?"

9.Mr.N.Manoharan, the learned counsel appearing for the appellants/defendants would submit that the plaintiffs did not spell out in the plaint as to how they acquired title to the suit property. According to them, the plaint was silent and the averments as contained in the plaint did not establish the factum of title enjoyed by the plaintiffs over the suit property. According to the learned counsel, unless the title is established, the plaintiffs were not entitled to the relief of recovery of possession.

10.The learned counsel for the appellants/defendants would also submit that it is trite in law that the plaintiffs have to prove their case in order to get the reliefs as prayed for in the suit and they cannot be allowed to take advantage of the weakness of the case of the defendants. In essence, the submission of the learned counsel is that in the absence of proper pleading in regard to the title enjoyed by the plaintiffs, the finding by the trial Court that the defendants did not prove their case with supportive documents about the land being a Government poramboke land, cannot be the basis for allowing the suit in favour of the plaintiffs for recovery of possession. The learned counsel would, therefore,

submit that the trial Court and the lower Appellate Court have erred in allowing the claim of the plaintiffs.

11.The learned counsel would submit that the suit was filed in 1987 by the plaintiffs and the documents marked were *lis-pendens* documents and therefore, the plaintiffs failed to prove their title to the property. The learned counsel also submitted that the plaintiffs, in order to sustain their claim of having title over the suit property, ought to have produced necessary documents. Withholding of documents of title would amount to playing fraud on the Court and would also lead to adverse inference against the plaintiffs. In fact, the learned counsel would also refer to Section 114(g) of the Indian Evidence Act, 1872 with reference to the said submission.

12.The learned counsel, in support of his contentions, would rely on the following decisions:

(i)The decision of the Hon'ble Supreme Court of India *in the case of Ananthula sudhakar Vs. P. Buchi Reddy(dead) by LRs and Others [(2008) 4 SCC page 594]*. The learned counsel

would draw the attention of this Court to paragraph No.21, which is extracted hereunder:

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

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

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

a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be

driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

The learned counsel would submit that in a suit for recovery of possession, it is always essential to seek for declaration of title, as the Courts could have an opportunity for giving a finding in regard to the ownership of the property before possession is ordered. According to the learned counsel, the above observation of the Hon'ble Supreme Court and the legal principle evolved therein needs to be applied in the case on hand.

(ii) The decision of the Hon'ble Supreme Court of India in the case of ***Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others [(2014) 2 SCC page 269]***. The learned counsel would draw the attention of this Court to

paragraph No.15, which is extracted hereunder:

"15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

According to the learned counsel, the above observation and the principle evolved by the Hon'ble Supreme Court of India would unequivocally demonstrate the legal position that in a suit for declaration of title and possession, the plaintiffs have to succeed on the basis of their own case and the onus was completely on them to sustain their claim. According to the learned counsel, in this case such onus was not discharged by the plaintiffs successfully.

(iii)The decision of the Hon'ble Supreme Court of India in the case of ***S.P.Chengalvaraya Naidu(dead) by LRs Vs. Jagannath (dead) by LRs and Others [(1994) 1 SCC page 1].***

The learned counsel would refer to a portion of the judgment in paragraph No.6, which is extracted hereunder:

"6.Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

In the above decision, the Hon'ble Supreme Court has observed that a litigant, who approaches the Court, must produce all the documents, which are relevant to the litigation. In the absence of

production of all relevant documents, the litigant can be found guilty of playing fraud on the Court. The learned counsel would submit that the plaintiffs have not filed any documents to show their title over the suit property and therefore, as per the above observation, the plaintiffs ought to have been non-suited by the Courts below.

(iv) The decision of the Hon'ble Supreme Court of India in ***Rame Gowda (dead) by LRs Vs. M.Varadappa Naidu(dead) by LRs and Another [(2004) 1 SCC page 769]***. The learned counsel would draw the attention of this Court to Paragraph No.9 of the judgment, which is extracted hereunder:

"9.It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh

(1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram & Ors.'s case* (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case* (supra), the Court clarified that it is

difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;*
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however,*

be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

The above ruling of the Hon'ble Supreme Court, according to the learned counsel, would support the case of the defendants since the defendants even otherwise have been in possession of the suit property for several decades and it amounted to 'settled possession'.

13. The learned counsel for the appellants/defendants, therefore, submitted that the Courts below have not taken these legal principles into consideration and erroneously dismissed the

claim of the defendants as against the plaintiffs.

14.Per contra, Mr.V.Ramesh, the learned counsel appearing for the respondents/plaintiffs would submit that the principal arguments put forth on behalf of the appellants/defendants was contrary to records and facts and therefore, those arguments need to be brushed aside as being completely devoid of truth, substance and merits.

15.The learned counsel would submit that along with the plaint, several documents were marked in order to support the claim of title enjoyed by the plaintiffs over the suit properties. Those documents were marked in the suit proceedings, as could be seen, particularly, from Exs.A15 to A20. All these documents are not *lis-pendens* documents, but are more than a century old. The learned counsel would wonder as to on what basis such submission was made by the learned counsel for the appellants when century old documents were staring at the appellants/defendants. These documents were very much considered by both the Courts below and since these documents had established the title of the plaintiffs over the suit property in no uncertain terms, the question of filing a

declaration suit did not arise at all.

16. The learned counsel would also submit that the defendants, being the legal heirs of the Caretaker/Gardener, viz., Kanniah Naidu, cannot claim any right over the suit property. Both the Courts below have appreciated this position and rightly dismissed the claim of the defendants. The factum of employment of the forefather of the legal heirs was clearly established even by the defendants' documents itself. The learned counsel would draw the attention of this Court, particularly, to a portion of the judgment of the lower Appellate Court, wherein, the appellate Court has observed that when a notice to evict the defendants was issued on behalf of the plaintiffs, vide Ex.A1 dated 18.09.1986, a reply notice was sent on behalf of the defendants on 08.10.86, which was marked as Ex.A2, wherein, it was admitted that the defendants' forefathers, including the grandfather and father, have been under the employment of the plaintiffs as Gardeners and it is hereditarily provided to the descendants of the family. The learned counsel would submit that in the face of such clear admission given in the reply notice, which was marked as Ex.A2, the entire case of the defendants would have to be construed as total falsehood.

17.The learned counsel would also submit that as regards the different door numbers as enjoyed by the defendants and the plaintiffs are concerned, the trial Court has given a clear finding that all the door numbers belonged to the plaintiff Charity. He would draw the attention of this Court to the finding as given by the trial Court, wherein, the trial Court has found that for all door numbers from 17 to 19, the property tax has been paid by the plaintiff Charity and receipts were also produced. In fact, in the same breath, the trial Court has also found that Exs.A15 to A20 would establish the ownership of the property by the plaintiffs.

18.The learned counsel would also draw the attention of this Court to a particular finding of the lower appellate Court that the Revenue document relied on for claiming right over the suit property by the defendants, through Ranganathan, deceased father/grandfather of the legal heirs, was in fact canceled by the Tahsildar and the appeal filed by the defendants was also dismissed by the Collector. He would, therefore, submit that there is no iota of truth in the claim of the defendants and the defendants, who were merely being employed by the plaintiff Charity, have brazenly

misused their long occupation and started claiming right over the suit property. Their counter claim and response against the plaintiffs' claim, was without any legal or factual basis and in fact, the defendants have abused the process of Court by setting up a fake counter case and dragged the proceedings for long years.

19.The learned counsel for the respondents/plaintiffs would rely on the following decisions in support of his contentions:

(i)The decision of the Hon'ble Supreme Court of India in the case of **A.Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, rep.by its President and others [(2012) 6 Supreme Court Cases 430]**.He would rely on paragraph No.43 of the judgment, which is extracted hereunder:-

"43.On the facts of the present case, following principles emerge:

43.1. It is the bounden duty of the Court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial

proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4.Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5.It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

43.6.Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant

who was only allowed to live into the premises to look after the same.

43.7.The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8.The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour."

20.The above observations of the Hon'ble Supreme Court, according to the learned counsel, are analogous to the factual matrix of the present case, which are to be applied in order to discountenance the claim of the defendants. No matter how long the defendants have been in occupation of the suit premises, yet, they cannot acquire any right over the property merely by passage of time since.

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(ii) The decision of the Hon'ble Supreme Court of India in the case of **Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (dead), through Lrs [(2012) 5 SCC page 370]**. The learned counsel would draw the attention of this

Court to Paragraph No.97, which would run thus:

"97.Principles of law which emerge in this case are crystallized as under:-

1. 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.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."

21. The above observation of the Hon'ble Supreme Court is also on the issue regarding the Caretaker/Watchman claiming right over the property because of their long possession. The learned counsel would submit that the arguments advanced on behalf of the appellants/defendants, viz., "settled possession" is suitably answered in the above observation of the Hon'ble Supreme Court of India. Therefore, the learned counsel would submit that in all fours, the Second Appeals filed by the defendants are liable to be dismissed.

22.Heard Mr.N.Manoharan, the learned counsel appearing for the appellants/defendants and Mr.V.Ramesh, learned counsel appearing for the respondents/plaintiffs and perused the materials and pleadings placed on record.

23.As could be seen from the records and evidence and also the findings of the Courts below, the status of the appellants/defendants viz-a-vis, the plaintiffs and their relationship is well established. The fact that the defendants' forefathers were employed as Gardener/Caretaker, cannot be disputed by the legal heirs of the forefathers and lay a claim on the suit schedule property. As rightly contended by the learned counsel for the plaintiffs, by misusing their long occupation of the property in question, the defendants have resisted the claim of the plaintiffs for recovery of possession and further, filed a suit for bare injunction as against the plaintiffs pleading nothing but falsehood as if the property under occupation is in government poramboke land.

24.The arguments advanced on behalf of the appellants/defendants that the plaintiffs ought to have filed a suit for declaration of title before seeking for recovery of possession,

cannot lie in the mouth of the defendants, who had no interest whatsoever in the plaintiffs' property. In any event, the plaintiffs have filed century old documents, particularly, Exs.A15 to 20 to prove their title to the suit property. In the face of these documents, the defendants assertion of their right to occupation of the property amounts to consummate fraud being played on the Court by the defendants and not by the plaintiffs, as contended by the learned counsel for the appellants/defendants.

25.From the materials and the evidence, no great efforts needed to expose the falsity of the defendants claim to retain their hold over the property. The claim of the defendants edified on unalloyed lies and chicanery, has unfortunately, helped them to squat over the property belonging to the plaintiff trust for many years now.

26.Both the Courts below in fact, ought to have come down heavily on the defendants for their fake, mischievous and frivolous claim, but the Courts have gone about their job and discharged their duties perfunctorily. When a case of this nature is put forth by the defendants, the Courts below ought to have

exposed the complete hollowness of the claim of the defendants as against the plaintiffs in clear terms. In any event, the Courts below have dutifully confined their focus on the unimpeachable evidence in favour of the plaintiffs and allowed the claim of the plaintiffs. The Courts below have also found that the defendants had no case at all for injunction as against the plaintiffs. In fact, once the injunction suit filed by the defendants was dismissed, the defendants ceased to have any interest over the suit property at all in whatever capacity. However, the defendants, by misusing the justice delivery system inevitably harmed by judicial delays, became emboldened to stake an audacious claim over the suit property. When the fact of the matter is that the defendants were employed by the plaintiff trust as Gardener/Care-taker/Watchman and the said relationship is admitted and born out by the records. Fortunately, the attempt by the defendants to convert their gratuitous occupation into a regular occupation with deceitful claim has not been successful before both the Courts below and thus the claim as such has to be the same fate before this Court as well.

27.The decisions cited by the learned counsel for the appellants/defendants, as extracted supra, are not to be applied for

the simple reason that this Court finds that the case of the appellants/defendants is totally mendacious and baseless. Such decisions lay down legal principles to be followed for upholding the valid cause and not for dubious cause like the present one. On the other hand, the decisions cited on behalf of the respondents/plaintiffs are fully supportive of the case of the plaintiffs and therefore, the said decision ought to be followed without hesitation.

28. On the whole, this Court is of the view that both the Courts below have rightly dismissed the claim of the defendants as against the plaintiffs and ordered recovery of possession to the plaintiffs. However, this Court finds one sour note in the approach of the appellate Court in partially allowing the appeal, viz., A.S.No.580 of 2005, refusing to confirm the damages ordered by the trial Court. When the defendants are found to be occupying the property unlawfully, the plaintiffs, as a natural corollary, are entitled to the relief of damages. This Court is unable to appreciate as to how the lower appellate Court has interfered with the judgment and decree of the trial Court in respect of grant of damages to the plaintiffs. In the opinion of this Court, the lower appellate Court has

erred completely in modifying the judgment and decree of the trial Court to that extent. When falsehood was the basis of the claim of the defendants, the Courts need to be wary of granting any relief to such litigants. Such litigants, the defendants herein must be dealt with severely by Courts in order to show them that the Courts are not to be taken for granted.

29.Although this Court is conscious of the fact that the plaintiffs have not filed any appeal before this Court in respect of refusal of damages by the lower appellate Court, by invoking its inherent power conferred on the Appellate Court under Order 41 Rule 33 CPC, this Court, in the interest of justice, has to necessarily uphold the judgment and decree of the trial Court in toto in O.S.No.1874 of 1987, dated 31.08.2007. The lower appellate Court judgment in A.S.No.580 of 2005, dated 09.07.2007, to the extent that the relief of damages was denied to the plaintiffs is hereby set aside.

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30.In the result, both the Second Appeals stand dismissed. The Substantial Questions of Law framed in both the Second Appeals are answered against the appellants. The appellants

S.A.No.42 & 43 of 2008

herein are directed to handover the vacant possession of the suit schedule property to the respondent Charity within two months from the date of receipt of copy of this judgment. No costs. Connected miscellaneous petitions are dismissed.

21.02.2020

msk

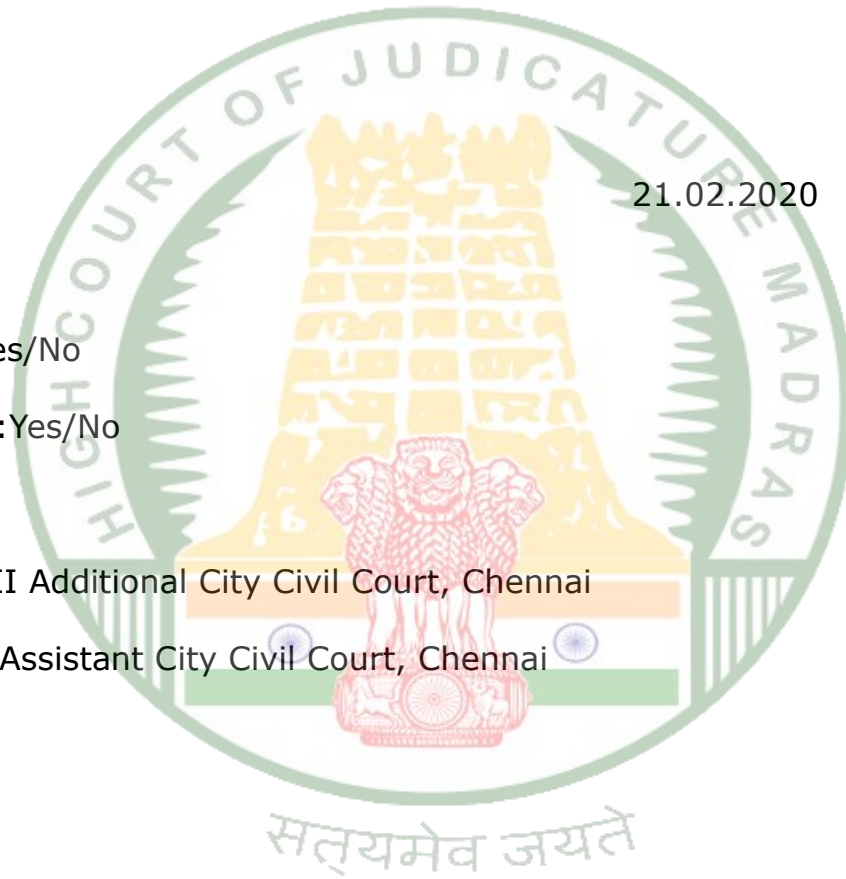
Index:Yes/No

Internet:Yes/No

To

1.The III Additional City Civil Court, Chennai

2.The V Assistant City Civil Court, Chennai

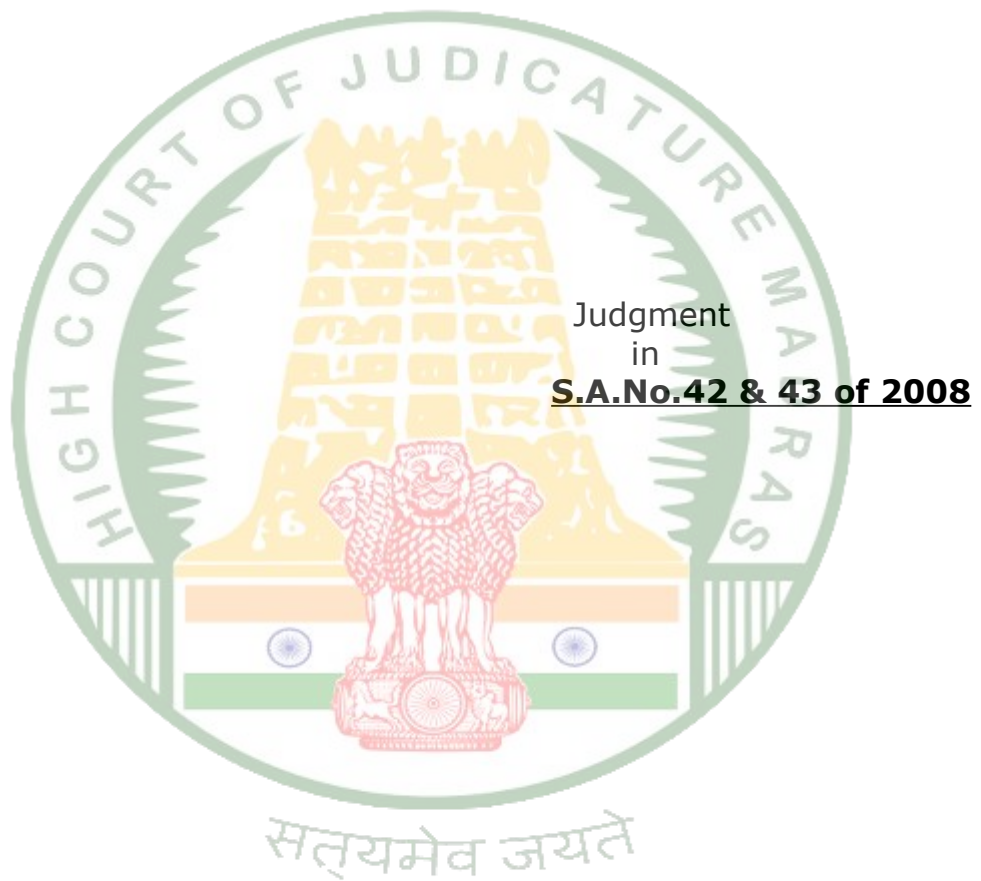


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V.PARTHIBAN.J.,

msk



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