



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.11.2020

Pronounced on: 30.11.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.981 of 2012
and
M.P.Nos.1 to 4 of 2012
and
M.P.Nos.1 & 2 of 2013

V.K.Ramamoorthy .. Appellant/ Appellant/2nd Defendant
/versus/

1.M.K.Chandrabai (died)

2.Dhandapani

3.Parvatha

4.C.K.Chandra bai

5.C.J.Krishnamoorthy

..1 to 5 respondents/ Respondents/Plaintiff

6.Sri Jaya Educational Trust,
Rep.by its Chairman Mr.K.K.Selvam,
No.1, V.O.V. Street,
Kodambakkam, Chennai 600 024.

7.M.S.Vijaya

8.A.Babu

9.A.Thirunavukarasu

10.K.Devaki

11.K.Kanniappan

12.K.Vignesh

(RR7 to 12 brought on record as LRS of the
deceased R1 viz., M.K.Chandrabai vide
order of Court dated 14.02.2020 made in
C.M.P.No.6312, 6315 and 6317 of 2020 in
S.A.no.981 of 2012 (VPNJ))

.. Respondents



Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.03.2012 made in A.S.No.3 of 2011 on the file of the Principal District Judge, Tiruvallur, dismissing the appeal as barred by limitation and confirming the common judgment and decree dated 22.01.2020 passed in O.S.No.203 of 1996 along with others suits on the file of the Sub-Court, Poonamallee.

For Appellants :Mr.S.R.Raghunathan

For Respondents:Mr.R.Suresh for R2 to R5

Mr.B.Harikrishnan for R6

Mr.V.Vijay Shankar for R7 to R12

R1-died (S/Taken)

JUDGMENT

(The case has been heard through video conference)

The appellant herein is the 2nd defendant in O.S.No.203 of 1996. The suit was filed against him and Smt.V.Jayalakshmi by one Sivakolundu ammal and 7 others for declaration of title and injunction in respect of the suit property alleging that the defendants are seriously disputing the title of the plaintiffs and trying to trespass into the suit property.

2.The property measuring an extent of 26.50 acres of land situated at No.82 Maduravoil Village, Chengai MGR District comprised in S.Nos.13/1A1, 13/1A2, 13/1B, 13/2 and 13/3 is the subject matter of the suit. The plaintiffs claim the property as their ancestral property and trace their title from one Alagappa Mudaliar. As per the plaint averment, after the demise of Alagappa Mudaliar, the property devolved upon Perumal Mudaliar and subsequently upon Kanniappa Mudaliar, who is the father of the first plaintiff and grand father of plaintiffs 2 to 7. Contending that earlier, the defendants filed a suit for declaration of their title and recovery of possession in O.S.Nos.379 of 1958, 381 of 1958, 383 of 1958 on the file of the District Munsif Court, Poonamallee. The said suits were decreed in favour of the defendants by the trial Court, but reversed by the first appellate Court. In the second appeal, S.A.No.1598 of 1965 filed by the defendants, the High Court of Madras allowed the suit by judgment dated 14.11.1970. However, pursuant to the judgment and decree, the defendants have not taken possession of the property. It always stayed with the first plaintiff and her family members. For more than 38 years the suit property is in possession of the plaintiffs with the knowledge of the defendants, who did not execute the decree within the period of limitation. The plaintiffs 1 to 7 had entered into an agreement of sale with the 8th plaintiff Trust in respect of 16.5 acres out of 26.5 acres. The said Trust is running an Educational institute in the suit property. While so, the defendants along with nearby slum dwellers attempt to disturb the peaceful enjoyment. Hence, prayed for relief of declaration of title and



injunction.

3.The suit was resisted by the defendants, on the premise that, 26.20 acres land, which is the subject property in dispute, was purchased from one Balasundra Naidu by Ayyavoo Naidu and Bolaiya Naidu, on their behalf and on behalf of Kodandarama Naidu and Munusami Naidu under a sale deed dated 17/12/1942. They all were enjoying the property jointly and later, through oral partition divided it among them. Jayalakshmi ammal the first defendant in the suit purchased 6 acres of land in S.No.13/1A from one Bakkiyalakshmi . Her husband Kothandarama Naidu purchased 4.00 acres in S.No.13/1A from Ayyavoo Naidu on 19/05/1955 and enjoying it along with the other land he got as one of the four sharers to the porperty through the sale deed dated 17/12/1942. Besides the patta land in S.No.13/1A1, land classified as grama Natham in S.No.13/3 (part) also in possession of the Jayalakshmi ammal and her children. In the year 1958, when one Chandrasekara Mudaliar and others tried to encroach upon the patta land of Jayalakshmi ammal situated in S.No.13/1A1 , Jayalakshmi ammal filed O.S. No.379/1958 (on the file of the District Munsif Court, Poonamallee) for recovery of possession against them and succeeded. Similarly, Sivakolunthammal (the plaintiff in O.S.No.203/1996) encroached a portion of the property and against her O.S.No.164/1958 was filed for recovery of possession and succeeded. The plaintiffs in the suit in O.S.No.1029/1982 have admitted the possession of the defendants in respect of 19.40 acres of land comprised in S.No.13/1A1 and delivered the possession to the defendants. Therefore, the plaintiffs are neither the title holder of the suit property nor enjoying the possession.

4.In respect of different portions of the suit property, there were 4 other suits. (i) O.S.No.336/1994 and (ii) O.S.No.338/1994 filed by Jayalakshmi ammal and others for injunction, (iii) O.S.No.337/1994 filed by Dr.B.R.Ambedkar Mandram, through its President against the present appellant as Proprietor of Jothi Brick Works and (iv) O.S.No.339/1994 filed by Sivakoluthammal and others against Jayalakshmi ammal and others. These 4 suits are for injunction based on the alleged possession in a portion of the suit property. O.S.No.203/1996 is the comprehensive suit for declaration of title and injunction to the entire extent covering 26.50 acres.

5.In all the five suits, V.K. Ramamoorthy the appellant herein is a party. His status and ranking in these suits are mentioned below:-

O.S.No.203/1996: 2nd Defendant.

O.S.No. 336/1994: 2nd Plaintiff.

O.S.No.337/1994: Sole Defendant as Proprietor of M/s Jothi Brick Works.

O.S.No.338/1994:5th Plaintiff.



O.S.No.339/1994: 2nd defendant.

All the five suits were taken up together for trial at the instance of the appellants herein.

6.The trial Court in O.S.No.203/1996 based on the pleadings of the parties, framed the following issues:

- 1)Whether the plaintiffs 1 to 7 are the owners of the suit property ?
- 2)Whether the suit property is in possession of the plaintiffs?
- 3)Whether the plaintiffs are entitled for the relief of permanent injunction ?
- 4)Whether the suit properly valued and affixed with the correct court fees?
- 5)Whether there is cause of action for the suit?
- 6)Whether the suit is bad for non joinder of necessary parties ?
- 7)What relief the plaintiffs are entitled?

7.Two witnesses for the plaintiffs and one witness for the defendant were examined. Exs.A-1 to A-12 on behalf of the plaintiffs and Exs.B-1 to B-49 were marked on behalf of the defendants.

8.A common judgment was passed by the trial Court on 22/01/2010 declaring the title in favour of the plaintiffs and injunction restraining the appellants and and his sister from interfering with the peaceful possession of the plaintiffs.

9.The appellant herein filed two copy applications. First application on 25.01.2010 in C.A.No.260 of 2010 and the second application on 28.01.2020 in C.A.No.339 of 2010. The copies in both the applications were made ready and delivered to the appellant's counsel on 04.02.2010.

10.The appellant herein challenged the judgment and decree passed in O.S.No.203 of 1996 dated 22.01.2010 in the writ petition in W.P.No.1520 of 2010 under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus to call for the records pertaining to O.S.No.203/1996 from the Sub Court, Poonamallee and quash the same and direct the police officials, arrayed as respondents 10 to 12 to restore possession of the suit property. The Judicial Officer, who delivered judgment in O.S.No.203 of 1996, the plaintiffs, Police Officials and Sub Registrar were all arrayed as respondents in this writ petition.

11.In the said writ petition W.P.No.1520/2010 filed by V.K.Ramamoorthy (the appellant herein), an interim order was passed by this Court on 28.01.2010. The interim order was challenged in Writ Appeals Nos.379 and 380 of 2010 by Sri Jaya Educational Trust which is the 8 the plaintiff in the suit. In



the said W.A.Nos.379 and 380 of 2010, it was contended that the writ petitions are misconceived. The remedy against the judgment of the trial Court is to file Appeal Suit under Section 96 of the Civil Procedure Code before the District Court.

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12.The first Bench of this Court, taking note the said objection regarding maintainability and the fact that V.K.Ramamurthy, the appellant herein/writ petitioner had already filed statutory appeal before the District Court and also taking into consideration the undertaking given by the respective parties, that they will maintain the status quo and expedite the appeal, the writ appeals and the writ petitions were disposed of on 01.04.2010 with direction to the parties to agitate their cause before the appellate Court without altering the position prevailed before the decree passed in the suit.

13.The appellant, who filed his statutory appeal suit in A.S.No.3 of 2011 on 04/03/2010 prior to the disposal of his writ petition did not re-present his appeal after curing the defects mentioned in the returns. Particularly, one of the defect pointed out by the Registry was to explain how the appeal is filed in time. After several returns and re-presentations, the appellant presented the appeal papers with the judgment and decree issued in C.A.No.260 of 2010 applied on 25.01.2010 to show that there was no delay in filing the appeal. Earlier, the appeal papers were presented along with the judgment and decree obtained under C.A.No.339 of 2010 dated 28.01.2010 without any petition for condonation of 3 days delay in filing the appeal. Later, without leave to substitute the judgment and decree copy obtained under C.A.No.260 of 2010 dated 25/01/2010 by replacing the judgment and decree copy obtained under C.A.No.339 of 2010, the appeal papers were represented on 26/04/2010.

14.The irregularity and the fact that the judgment and decree copy presented on 26.04.2010 much after the period of limitation was brought to the notice of the first appellate Court by the respondents herein through an interlocutory application after the first appeal was taken on file and assigned the Appeal Suit No.3 of 2011. in the said an interlocutory application I.A.No.80 of 2011 in A.S.No.3 of 2011 filed by the 6th Respondent/ 8th plaintiff (Sri Jaya Educational Trust) it was prayed to deface the appeal registered as A.S.No.3 of 2011 by striking out the same as time barred. The 6th respondent contended that the appeal papers were presented with several incurable defects such as delay in filing the appeal, appeal papers without signatures and attestation, substitution of judgment and decree copy and representing the appeal papers on 26.04.2010 without any condonation application. The applicant attributed ill-motive for filing appeal papers with defect and re-presenting, after disposal of his misconceived writ petition.

15.The Principal District Judge, Tiruvallur, after



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extracting the returns made by the Registry, pointing out the defect in filing, held the omission to file petition to condone the delay, while filing the appeal beyond the limitation period is incurable and allowed I.A.No.80 of 2011. While dismissing the appeal, it observed that the period of limitation has to be computed after presenting the appeal based on the entries made in copy issued pursuant to C.A.No.339 of 2010. While so computing the period of limitation, the appeal has been filed after expiry of the limitation by three days. The appellant has not taken out any application for condonation of delay under Order 41, Rule 3(A) of C.P.C. Therefore, the petition to deface the appeal by sticking out the same as time barred was allowed. As a result, the appeal suit in A.S.No.3 of 2011 was dismissed on 28.03.2012 as barred by limitation.

16. Against this dismissal order, the appellant herein preferred C.R.P.(NPD) No.2406 of 2012 under Section 227 of the Constitution of India before the High Court of Madras. The said revision petition filed against the order passed in I.A.No.80 of 2011 in A.S.No.3 of 2011 was dismissed by this Court on 31.07.2012.

17. This Court, while dismissing the said revision petition, observed that consequential to the order passed in I.A.No.80 of 2011 in A.S.No.3 of 2011 has been dismissed as barred by limitation. The issue relating to limitation, based on complicated fact, can rightly be taken as substantial question of law in a second appeal. Since I.A.No.80 of 2011 and A.S.No.3 of 2011 were dismissed on same set of facts, gave liberty to file second appeal against the judgment and decree passed by the first appellate Court. The time spent in agitating before the High Court under Article 227 of the Constitution of India by way of Civil Revision Petition was order to stand excluded. Thereafter, the appellant herein filed the second appeal under Section 100 of the Civil Procedure Code.

18. On receipt of the notice in the second appeal, the 8th plaintiff, who is shown as 6th respondent in the second appeal, filed M.P.No.1 of 2013 and M.P.No. 2/2013 under Order 6, Rule 16 r/w Section 151 of C.P.C, to direct the appellant to deposit back the compensation amount received fraudulently, failing which to strike of the second appeal in S.A.No.981 of 2012.

19. In these petitions in M.P.No.1 of 2013 and M.P.No.2 of 2013, it was contended that after the decree passed by the Civil Court in O.S.No.203 of 1996 on 22.01.2010 declaring the title in favour of the plaintiffs, the appellant and his siblings suppressing the decree passed by the Court had pursued before the National Highways Authority of India (in short "NHAI") and got compensation of Rs.1,12,09,983/- for the portion of the suit land acquired by NHAI for expansion of Highways. The land acquired is part of the suit property for which the title is declared in favour of the plaintiffs/ respondents. The appellant



and his siblings without any right or title over the property, had received the compensation by fraudulent means. Hence, he prayed to direct the appellant and his siblings to deposit the entire compensation amount with interest within the time limit fixed by the Court. Failing which, the second appeal has to be struck off.

20. The Court on hearing both sides and the prayer in the Miscellaneous Petition Nos.1/2013 and 2/2013 formulated the following Substantial Questions of Law:-

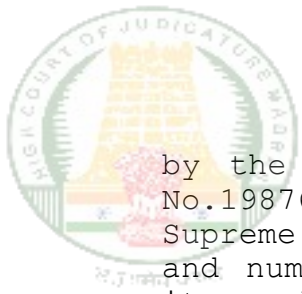
(1) Whether the first appellate Court was justified in dismissing the appeal on the ground of limitation, even though initially there had been return of the appeal memorandum on the ground of limitation and subsequently, after hearing the advocate of the appellant and on office note, there was an order numbering the appeal?

2. Whether an opportunity has to be given to the appellant-V.K.Ramamoorthy to file an application to get the delay condoned ex post facto in filing the first appeal and also for the purpose of enabling him to prosecute the first appeal afresh before the first appellate Court?

3. Whether the sixth respondent/8th plaintiff was justified in its M.P.No.2 of 2013 in seeking an order to direct the appellant herein to deposit a sum of Rs.1,12,09,983/- as a sine qua non for prosecuting the matter further and whether the M.P.No.1 of 2013 to get struck down the second appeal in limini is tenable?

21. Earlier this Court, after considering the impugned judgment of the first appellate Court dismissing the first appeal on the ground of limitation and hearing the contention of the 6th respondent/8th defendant regarding the receipt of compensation amount by the appellant and his siblings from the National Highways Authority of India (NHAI) payable for the portion of the suit property acquired, accepting the contention of the appellant that he had received only Rs.17 lakhs as his share after TDS, allowed the second appeal on 23/04/2013 and directed the appellant herein to deposit the said amount on or before 04.06.2013 along with the application before the lower appellate Court to condone the three days delay.

22. The order of this Court giving liberty to the appellant herein to pursue his statutory appeal after depositing Rs.17 lakhs which he has received towards cost of the land acquired by the National Highways Authority of India (NHAI) was challenged



by the appellant. He filed Special Leave Petition in SLP (C) No.19876 of 2013 before the Hon'ble Supreme Court. The Hon'ble Supreme Court granted leave and converted it as Civil Appeal and numbered as C.A.10860/2014. The Hon'ble Supreme Court vide its order dated 02.12.2014 condoned the three days delay in filing the statutory appeal. Without expressing any opinion on the merits of the case, set aside the order of the High Court dated 23.04.2013 and remitted the matter back to the High Court to decide on merits all points raised by the appellant.

23.A review petition in R.P.(C)No.408 of 2015 against this order was filed by the 6th respondent/8th defendant alleging that after the judgment and decree, the appellant had fraudulently received the compensation of Rs.1,12,09,983/- despite the fact he is not entitled to get it, as per the decree passed in O.S.No.203 of 1996. He had also suppressed the fact that there was actually 1185 days delay in presentation of the appeal suit papers.

24.The said review petition in R.P.(C).No.408 of 2015 was dismissed by the Hon'ble Supreme Court on 18.03.2015. The Hon'ble Supreme Court held, "In our opinion, no case for review for the order dated 02.12.2014 is made out". It dismissed the review petition on merits.

25.In the above said factual background, the second appeal remitted back from the Hon'ble Supreme Court is taken up for disposal in the presence of the learned counsels representing the appellant and the respondents.

26.The learned counsel appearing for the appellant would submit that after Hon'ble Supreme Court setting aside the earlier order of the High Court passed on 23.04.2013 and on condonation of 3 days delay in filing the first appeal, the natural corollary is to formally allow the second appeal and remit the matter, back to the first appellate Court without any condition, for the first appellate Court, to decide the appeal on merits.

27.Contrarily, the learned counsel appearing for the respondents submitted that the Hon'ble Supreme Court vide order dated 02.12.2014 had directed this Court to decide the second appeal on merits and they have recorded the same. When certain facts were brought to the notice of the Hon'be Supreme Court in the review petition, which was omitted to be considered earlier, the Hon'ble Supreme Court declined to review the order dated 02.12.2014. Therefore, the merits of the second appeal has to be decided in the light of the grounds raised in the second appeal challenging the order passed by the trial Court and the contention raised by the 6th respondent/8th plaintiff in M.P.No.1 of 2013 under Order 6, Rule 6 R/w Section 151 of the C.P.C., to strike off of the second appeal and M.P.No.2 of 2013



seeking direction to deposit the sum of Rs.1,12,09,983/- by the appellant and his siblings within the time frame as a pre-condition to entertain the second appeal.

28.Learned counsel appearing for the appellant submitted that right of first appeal is a statutory appeal and cannot be deprived by the appellant herein for hypertechnical reason. If the the second appeal is disposed, based on the substantial questions of law alone, the appellant's right and opportunity to agitate question of fact will be taken away. He will be deprived of his statutory appeal before the District Court.

29.Relying upon the judgment of the Hon'ble Supreme Court in Khoday Distilleries Ltd (now known as Khoday India Limited)and others vs Sri Mahadeshwara Sahakara Sakkare Karkhane ltd., kollegal(under liquidation) represented by the liquidator dated 01.03.2019, the learned counsel appearing for the appellant would submit that in the Civil Appeal, the Hon'ble Supreme Court has set aside the judgment of the High Court. The delay for which the first appeal got dismissal was condoned. Therefore, the Civil Appeal order consequentially set aside the judgment of the first appellate Court dated 28.03.2012 passed in A.S.No.3 of 2011 by doctrine of merger. Therefore, the matter may be remitted back to the first appellate Court for fresh consideration.

30.Per contra, the learned counsel appearing for the respondents submitted that if the appellant should be extended the right of appeal before the first appellate Court, he and his siblings first restore the position on the date of decree. They should first deposit the entire compensation amount with interest received by deceit and misrepresentation. By playing fraud on the Court, the appellant and his siblings have received from NHAH the money for the suit land acquired for road formation. The appellant and his siblings who after loosing the litigation regarding title and possession of the properties, had enriched by act of fraud. Under coercion by filing a contempt petition against the authorities, he got the compensation amount. Unless the appellant restore as far as possible the position as it was on the date of decree, he is not entitled to pursue his appeal.

31.Relying upon the judgment of the Hon'ble Supreme Court rendered in S.P Chengalvaraya Naidu vs Jagannath reported in [1994 SCC (1) 1] the learned counsel appearing for the respondents argued that Court should not assist a fraudster. The Hon'ble Supreme Court, while considering the SLP was aware of the fact that the appellant was ordered to deposit Rs.17 lakhs. The Hon'ble Supreme Court has not whisper anything about the conditional order either in the main S.LP or in the review petition. While so, the appellant is estopped from canvassing the plea of merger.



32. Heard the learned counsels. The records perused.

33. Out of three Substantial Questions of Law framed, the first two questions require no further deliberation, since the Hon'ble Supreme Court vide its order dated 02/12/2014 has passed the below order :-

"Leave granted.

We have heard learned counsel for the parties.

It appears that the question is of only 3 days delay in the matters. The parties should not be hypertechnical in the matters in question.

In view of the same, we set aside the order of the High Court and remit the matters back to the High Court to decide the same on merits. The question of delay is condoned.

We have not expressed any opinion on the merits of the case and all points raised are kept open.

The appeals are disposed of accordingly."

34. In effect, the above order of the Hon'ble Supreme Court amounts to condonation of delay by holding the dismissal of the appeal suit on the ground of delay as hypertechnic. The learned counsel appearing for the appellant referring the order passed by the Hon'ble Supreme Court in the review petition claims that applying the dictum laid by the Hon'ble Supreme Court in Khodays Distilleries Case, the second appeal has to be allowed and remitted back to the first appellate Court.

35. Per contra, the learned counsels for the respondents submitted that, if the intention of the Hon'ble Supreme Court was to restore the appeal suit on the file of first appellate Court, it would have not remitted the matter back to the High Court without expressing any opinion on the merits of the case raised in the second appeal and left open all points for the parties to canvass the merits of the same before the High Court.

36. This Court finds logical force in the submission of the learned counsels representing the respondents. Out of three Substantial Questions of Law formulated, the third question is independent of the first two. This question was framed, pursuant to the petition in M.P.No.2/2013 in the pending second appeal. The part of the subject matter of the suit, converted into cash by the appellant, after the decree in favour of the respondents led to formulating the third question. The Hon'ble Supreme Court either in the main civil appeal order or in its review order had expressed its view on the condition imposed by this Court in the



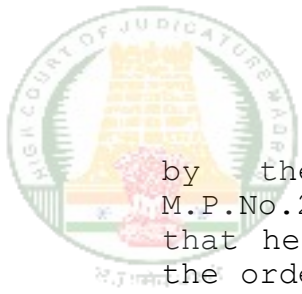
judgment dated 23/04/2013.

37.To decide whether the 6th respondent/8th plaintiff was justified in its M.P.No. 2/2013, seeking an order to direct the appellant herein to deposit a sum of Rs.1,12,09,983/- as a sine qua non for prosecuting the matter further and whether the M.P.No. 1/2013 to get struck down the second appeal in limini is tenable ? It is necessary to find out how and under what circumstances, the appellant and his siblings got the money from NHA and whether at all such question of law relevant for deciding the second appeal.

38.The proposal for acquiring land for widening the Poonamallee High Road was published in the local dailies on 15/09/2005 and objections from interested parties was invited through paper publication dated 20/11/2005. Portion of land in S.No.13/1 A 1 and S.No.13/ 3 (part) were sought to be acquired for the said purpose along with other lands running linear. The land acquired in these two survey numbers are subject matter of the suit. While so, when the suit for title was pending and the title for the property was under cloud, the appellant and his two brothers had made representation to the Competent Authority & Special Revenue Thasildar (Land Acquisition) claiming exclusive title over the property and sought for compensation. To their representation, the Competent Authority has called them to participate in the enquiry. After affording them the opportunity of hearing, the claim of compensation in respect of S.No.13/3(part) which was classified as grama natham was rejected by Proceedings dated 23/03/2006. The appellant along with his 2 brothers and 3 sisters joined together and filed W.P.No. 22960/2009 seeking Writ of Mandamus for Disbursement of Compensation of land acquired in S.No.13/1A1 and S.No.13/3 (part). This writ petition was disposed on 07/12/2009 with a direction to the appellant to resubmit his representation again within one week from the date of receipt of the writ petition order copy. Further directed, on receiving the representation, the Competent Authority shall pass appropriate order on merits within 4 weeks thereafter.

39.Alleging the Competent Authority failed to pass order as per the direction of the Court passed vide order dated 07/12/2009, Contempt Petition No.1417/2010 filed. In the contempt petition, the contemnor reported that in compliance of the order passed by the High Court in the contempt petition, Government has issued G.O.Ms.No.25, Highways and Minor Ports (HV1), Department dated 29/02/2012 sanctioning a sum of Rs.1,12,09,983/- to be paid as compensation to the petitioners (the appellant and his siblings) towards the land acquired. Recording the same, the contempt petition was closed on 09/03/2012 with further direction to release the money within 4 weeks from the date of receipt of copy of the order.

40. When these facts were brought to the notice of this Court



by the 6th respondent/petitioner in M.P.No.1/2013 and M.P.No.2/2013, the appellant in his counter admitted the fact that he and his siblings received the compensation amount after the order passed by the High Court in the contempt petition. His plea was that after TDS, he received only Rs.17,00,000/- out of Rs.18,16,283/- as his share and the balance amount was received by his siblings.

41. In the light of these facts, this Court in its judgment dated 23/04/2013 disposed of the second appeal in S.A.No.981 of 2012 on condition (i) the appellant to deposit Rs.17,00,000/- by 04/06/2013 and (ii) to file petition to get the delay condoned expost facto. With direction to the first appellate Court (i) to invest the deposited money in a Nationalised Bank; (ii) dispose the delay application within one month time; and (iii) from the date of condonation of delay, the appeal to be disposed on merits within three months period.

42. Reverting back to the order of the Hon'ble Supreme Court in C.A. No.10860/2014 dated 02/12/2014 and the order passed in the review petition R.P.(C) No.408/2015 dated 18/03/2005, the plea raised in the SLP filed by the appellant and the plea raised in the review petition were considered by the Hon'ble Apex Court and consciously, it had addressed the delay aspect alone and condoned it. As far as the pre condition to deposit Rs.17,00,000/- it has left the point open for the parties to agitate its merits before this Court. If the argument of the learned counsel appearing for the appellant has to be accepted, then there is no necessity for the Hon'ble Apex Court to remit the matter back to the second appellate Court with specific observation that it is not passing any order on merits and keep it open for the parties to agitate before the High Court. If the issue in the SLP was only the condonation of delay in filing the first appeal, the Hon'ble Supreme Court would have remitted the matter back to first appellate Court.

43. In Khoday Distilleries Ltd. (Now known as Khoday India Limited) and others v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (under Liquidation) represented by the Liquidator in SLP (Civil) No. 490/2012, the Hon'ble Apex Court by order dated 19/10/2012, recorded the fact that large number of review petitions are filed by the parties before High Court, after the dismissal of the SLP by the Hon'ble Supreme Court, either by non-speaking orders (or) speaking orders (or) on merit. Depending upon the out-come of review petition, again SLP is filed before the Hon'ble Supreme Court. In view of conflicting views by different Benches of co-ordinate strength regarding maintainability of such SLP's, to resolve the conflict and for proper guidance to the High Courts the matter was referred to Larger Bench for an authoritative pronouncement. Accordingly, the three Judges Bench of the Hon'ble Supreme Court in its order dated 01/03/2019, resolved the conflict as under:-

27. From a cumulative reading of the various



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judgments, we sum up the legal position as under:

(a) The conclusions rendered by the three Judge Bench of this Court in Kunhayammed and summed up in paragraph 44 are affirmed and reiterated.

(b) We reiterate the conclusions relevant for these cases as under:

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in



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Act give some assistance to the issue in hand.

Section 144. Application for restitution:- (1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree[or order] or [such part thereof as has been varied, reversed, set aside or modified] and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly[consequential on such variation, reversal setting aside or modification of the decree or order].

47. This section empowers the court to restore the parties to the position prior to the decree in case of any variation, modification or reversal of a decree in appeal. The reason and logic of this section is to put parties in the position as far as possible in tune with the decree in force. Apply the logic, in this case the compensation amount received by the appellant, after the decree against him has to be restored before hearing his statutory appeal or else it will amount to permitting the violator of the Court decree to enjoy the benefit of his suppression of truth.

48. If there is any element of doubt about application of section 144 C.P.C since in strict sense, the said provision will lie only before the Execution Court and when there is no variation or reversal of decree or order as contemplated under Section 144 C.P.C, then, under the inherent power given in section 151 C.P.C, the relief of restoration has to be granted. The said view of this court is fortified by the judgment of the Apex court in Bandishar Sharma (since Deceased) Rep by its legal Representative -vs- The State of Rajasthan and others: Reported in 2020 (4) LW 438. In almost identical factual scenario, the Hon'ble Supreme Court has observed as below:-

"17. It clearly transpires that Section 144 CPC applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of



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doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they were in at the time when the Court by its action had displaced them.

18. Indisputedly, in the instant case, there was no decree or order of the trial Court by virtue of which the appellant was given possession of the subject property. On the contrary, the suit filed at the instance of the appellant plaintiff came to be dismissed with costs and that came to be confirmed on dismissal of the first appeal by the Single Judge of the High Court and special leave petition filed before this Court also came to be dismissed. The possession was handed over to the appellant of the subject property under the interim order passed by the High Court pending first appeal of which a reference has been made and after the appeal came to be dismissed, its logical consequence was noticed by the High Court in its judgment dated 20th April, 2018 directing the appellant to hand over possession of the subject property to the respondents defendants obviously for the reason that on dismissal of the first appeal preferred by the appellant, he was under an obligation to restore back peaceful possession to the respondents on vacation of the interim orders.

19. In the present facts and circumstances, the respondents have not committed any error in taking decision to call upon the appellant for handing over possession of the subject property at least after the special leave petition filed at



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the instance of the appellant came to be dismissed under order dated 17 th May, 2018 and in sequel thereto, there was no other remedy left with the respondents than to file an application under Section 151 CPC before the High Court for restoration of possession of the subject property."

49. The only factual difference in the present case is that, part of the suit property has been converted into cash and presently in the hands of the appellant and his siblings. The money has been disbursed to them by NHAI on the intervention of the High Court unknowing about the pendency of the civil suit regarding the title.

50. The inherent power under Section 151 of C.P.C is to prevent the abuse of the process of Court. In the instant case, the appellant has received the compensation amount making a false representation that he and his siblings alone are the owners of the property. In view of contrary entries found in the revenue records, the Competent Authority was not initially inclined to pay the compensation. However, fearing action in the contempt petition filed against him, the money has been paid. If this abuse of the process of Court is left un-amended, there will be grave miscarriage of justice. This Court is of the view that precisely for the said reason, the Hon'ble Apex Court has remitted the matter back to this Court for proper appreciation of this contentious issue.

51. The Learned counsels appearing for the respondents would submit that the appellant had played fraud on the Court. So, he has lost the right to pursue his statutory right of appeal. Referring the observation of the Hon'ble Supreme Court in S.P.Chengalvaraya Naidu by its LR's -vs- Jaganath by its LR's and others reported in [1994(1) SCC 1], the amount received by non-disclosure of decree against him is a fraud on the Court and the appellant has to be non-suited. Further relying upon Dalip Singh -vs- State of Uttar Pradesh and others reported in [2010 (2) SCC 114], the learned counsel appearing for the respondents submitted that the litigant, who attempts to pollute the stream of justice or who touches the pure foundation of justice with tainted hands, is not entitled to any relief, interim or final.

52. Viewed from any angle, whether the appellant and his siblings retaining the money fraudulently or innocently, the fact remains that, the appellant and his siblings are not entitled to receive compensation from NHAI for the acquired land after the decree of the trial Court dated 22/10/2010. Keeping the said money with them is unjust, since it is part of the suit property converted into cash.

53. Very strangely, in this case after losing the suit, the



appellant instead of filing the statutory appeal under Section 96 of the Code immediately, he first filed writ petition challenging the trial Court judgment. Presented the appeal papers defectively and kept pending, without numbering, inspite of several returns. Simultaneously, he and his siblings filed contempt petition to get compensation amount for the land. Only after the disposal of the Writ petition he has re-presented his defective appeal suit papers and got it numbered without even an application to condone the delay. Meanwhile also got the compensation amount which he is not entitled as per the decree of the trial Court.

54. Pending suit, he and his siblings without disclosing the pendency of the suit in O.S.No.203/1996 regarding declaration of title, had filed W.P.No.22960/2009 swearing affidavit that they are the absolute owners of the property in S.No.13/1 A1 and S.No.13/3 (part). In continuation, they have filed Contempt petition on 18/09/2010 and got the money pursuant to the order dated 09/03/2012.

55. This Court, on considering the facts, hold that the money presently held by the appellant paid as compensation for the land acquired due to mistake of fact and it is an unjust benefit derived by him by suppression of facts. In this contest, the principle of unjust enrichment as mentioned in Section 72 of the Indian Contract Act has to be applied.

"Section 72 of the Indian Contract Act, 1872: Liability of person to whom money is paid, or thing delivered, by mistake or under coercion—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

56. The Hon'ble Supreme Court in Mafatlal Industries Ltd., - vs- Union Of India and others dated 19.12.1996 reported in [1997 (68) ECR 209 (SC) : 1997 (89) ELT 247], while considering the issue whether the assessee is entitled for the refund of excise duty collected in excess, after passing off to the customer had observed as below:

Law is fairly settled that "Money paid under a mistake or on a consideration which has wholly failed or under duress falls under the general head of money "had and received." An action for money "had and received" is an action "founded on simple contract" which has been called quasi contract or restitution." (See Pollock & Mulla -Indian Contract And Specific Relief Acts (10 the Edition) page 598).

The Law of Restitution is founded upon the principle of "unjust enrichment". As stated by



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the learned authors, Lord Goff of Chieveley and Gareth Jones in the book "The Law of Restitution" (3rd Edn.) 1986, "It presupposes three things: first, that the defendant has been enriched by the receipt of a benefit; secondly that he has been so enriched at the plaintiff's expense; and thirdly, that it would be unjust to allow him to retain the benefit.(emphasis added)

57.In the instant case, the appellant and his siblings have benefited themselves unjustly at the expense of the respondents. If the appellant is allowed to retain the unjust benefit, it will be against all equity and fairness.

58.Therefore, M.P.No. 1/2013 and M.P.No. 2/2013 are disposed of with direction to the appellant to deposit Rs.17,00,000/- with 6 % interest p.a. from 01/04/2012 to 31/10/2020 within 8 weeks from today in the account of O.S.No.203/1996. If the money as directed is deposited within the time mentioned, the A.S.No.3/2011 will be restored on file. On restoration of the Appeal Suit No.3/2011, the Principal learned District Judge shall invest the amount in any of the Nationalised Bank, till the disposal of the appeal. In case the appellant fails to comply the above condition, he and his siblings will forfeit the right of appeal and non-suited. The Substantial Questions of Law formulated are answered accordingly.

59.As a result, the Second Appeal is allowed on condition. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ari
To:-

- 1.The District Court, Tiruvallur.
- 2.The Judge, Sub Court, Poonamallee.

+2ccs to Mr.B.Harikrishnan, Advocate SR.No.38072
+1cc to Mr.S.R.Raghunathan , Advocate SR.No.38154

S.A.No.981 of 2012
and
M.P.Nos.1 to 4 of 2012
and
M.P.Nos.1 & 2 of 2013

VSN II(CO)
A.SK(05.08.2021)