



WEB COPY

AS (MD) NO.71 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22 / 12 / 2020

DELIVERED ON: 21 / 12 / 2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

AS (MD) NO.71 OF 2020

AND

CMP NO.2508 OF 2020

1.Arulmigu Savundiyamman Thirukovil
Araichipatti Street,
Srivilliputtur.
Through its Trustee S.Murugesan

2.S.Murugesan

... Appellants/Plaintiff

Vs.

1.Gopal Raja

2.The Regional Manager
Regional Office
The Lakshmi Vilas Bank Ltd.,
97, Palace Road, 1st Floor,
Madurai - 625 001.

3.The Authorized Officer
The Lakshmi Vilas Bank Ltd.,
Tirunelveli Branch,
Tirunelveli.

...Respondents/Defendants

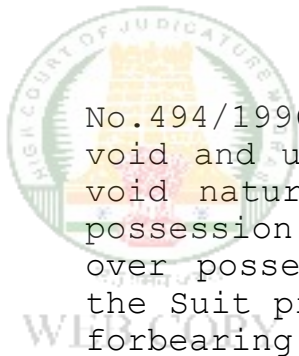
PRAYER: First Appeal filed under Section 96 CPC read with Order 41 Rules 1 and 2 CPC against the decree and judgment passed in O.S.No.111 of 2006 dated 10.01.2020 on the file of Additional District Judge, Srivilliputtur.

For Appellants	:	Mr.T.S.R.Venkatramana
For Respondent-1	:	Mr.M.Vallinayagam
		Senior Counsel
		for Mr.V.Meenakshi Sundaram
R2 & R3	:	No Appearance

J U D G M E N T

The plaintiffs are the appellants. The plaintiffs filed a Suit for declaration that the Document registered as Document

<https://hcservices.ecourts.gov.in/hcservices/>



No.494/1996 at the Office of the Sub Registrar, Srivilliputtur, as void and unenforceable and to order the Sub Registrar, to mark the void nature of the said Document in his books and for decree of possession in favour of the plaintiffs and order defendants to hand over possession or permit the plaintiffs to recover possession of the Suit property and for mesne profits and for permanent injunction forbearing the defendants from alienating the Suit schedule property till the disposal of the Suit.

2. According to the plaintiffs, the first plaintiff is a Temple under the purview of the Tamil Nadu Hindu Religious and Charity Endowments Act, 1959 and belong to Devangar Chettiar Community. The second plaintiff is a Trustee and worshipper and he filed a Suit as a worshipper and also as a representative of all the worshippers. The Devanga Chettiar Community purchased the Suit schedule property on 17.04.1916 for the temple. The first defendant's father took the schedule property on lease by a registered deed dated 01.05.1967. The Trustee of the temple filed a Suit in O.S.No.572 of 1980 for evicting the tenant. The tenant filed an Original Petition in O.P.No.2 of 1981 under Section 9 of Madras City Tenants Protection Act [Tamil Nadu Act III of 1929]. The Suit was dismissed and the Original Petition was allowed. The appeals and cross appeals were finally decided and the Sale Deed dated 11.01.1996 was executed and registered at the Office of the Sub-Registrar, on 18.01.1996. The property was illegally conveyed and the Original Petition was closed marking full satisfaction on 23.01.1996. The then Trustees of the temple were negligent in conducting the Suit and the Original Petition. As a worshipper, the second plaintiff now fear that there could have been collusion between the Trustee and the defendants. Therefore, he challenges the Sale Deed dated 11.01.1996 registered as Document No.494/1996 as fraud, illegal, void and ignore the Sale Deed. He challenged the Sale Deed as void on three specific grounds:-

(a) The Madras City Tenants' Protection Act, (Shortly "MCTP Act") was not validly extended to the non residential properties at Srivilliputtur. Therefore, the defendants are not entitled to the benefit of the Madras City Tenants' Protection Act and the Original Petition ought to have been dismissed.

(b) The Madras City Tenants' Protection Act came into force on 21.02.1923. But the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [Act 23 / 1959] (Shortly "HR & CE Act") came into force on 02.12.1959. Section 34 of the HR & CE Act prohibits sale of the property belonging to the temple under HR & CE Act and they cannot be sold without express consent of the Commissioner of HR & CE. As such, the sale without such a consent shall



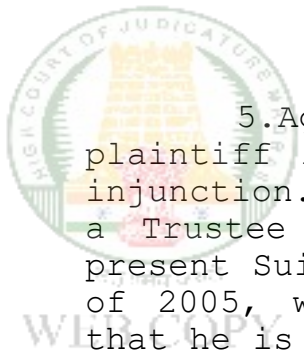
be null and void. Even a Court registered sale without consent of the Commissioner of HR & CE, as void as it is conflict with Section 34 of the HR & CE Act.

(c) Above all, the Tamil Nadu Legislature passed an Amendment to MCTP Act in Act II of 1996 which came into force on 11.01.1996. By this Amendment, all the Religious Institutions including Hindu Religious Temples are excluded from MCTP Act. So, the sale executed on 11.01.1996 and registered on 18.01.1996 is void *ab initio* and is not valid against the temple.

Therefore, on the basis of the above grounds, the Sale Deed dated 11.01.1996 was sought to be declared as void and unenforceable.

3. In the written statement, the defendants denied the averments made in the plaint. The Suit is liable to be struck off under Order VI Rule 16 CPC as it is scandalous. The litigations reached finality. In O.S.No.572 of 1980 and in O.P.No.2 of 1981, the plaintiffs' relief for recovery of possession was dismissed and the first defendant's petition under Section 9 of the MCTP Act was allowed on 16.09.1981. The appeal filed against the decree and judgment of the Trial Court vide A.S.No.36 of 1982 and A.S.No.11 of 1982 were dismissed on 16.11.1987. The Civil Revision Petition filed in CRP No.702 of 1988 against the decree and judgment passed in appeal preferred against O.P.No.2 of 1981 was remanded to the Trial Court with some observations on 21.09.1993. The remand order was challenged by the defendants vide SLP No.21884 of 1993. The SLP was partly allowed with a direction on 24.10.1994. The plaintiffs filed a Review Application in R.A.No.16 of 1995 against the SLP order, which was also dismissed on 18.01.1995. Thus, the litigations reached finality on 24.10.1994 much less on 18.01.1995. After conclusion of these proceedings, the plaintiffs are re-litigating the very same matter, which amounts to contempt.

4. After conclusion of the proceedings in the year 1996, the plaintiffs have started the second round of litigation by virtue of O.S.No.48 of 2003, wherein, one J.Muthukumar, styled himself as representative for the community, filed a Suit for permanent injunction. The respondents filed a counter claim. For both the suits, the cause of action arose on the terms of compromise reached between the parties on 08.01.1995. The said Suit was dismissed on 18.09.2006 and injunction petition was also dismissed and the counter claim was allowed and injunction was granted in favour of the defendants in so far as the portion sold to him. Thus, again the dispute attained finality.



5. Again, third round of litigation was started by the present plaintiff in O.S.No.150 of 2005 for the relief of declaration and injunction. The very same second plaintiff again styled himself as a Trustee and worshipper, suppressing all the facts, filed the present Suit in O.S.No.111 of 2006 during the pendency of O.S.No.150 of 2005, which was later withdrawn unconditionally on the ground that he is not keeping good health and that he was aged 60 years and the Suit was dismissed as withdrawn on 23.01.2007.

6. The plaintiffs are attempting to invoke Section 34 of HR & CE Act to set aside the Sale Deed on three grounds. All those three grounds have already been settled and it amounts to re-litigation. The parties have acted upon the decree and the Sale Deed and after satisfaction of the decree, the present Suit is nothing but re-litigation by suppressing the earlier proceedings in violation of Section 12 CPC, Section 115 of the Evidence Act, Order XXIII Rule 1 CPC and also abuse of process of law. The temple in the execution petition filed by the tenant entered into a compromise and the same was recorded by the Court. Therefore, there is no cause of action to file the above Suit and it is liable to be rejected under Order VII Rule 11 CPC. The Court fee paid also is not correct and the Suit is hopelessly barred by limitation. Therefore, it shall be dismissed. The plaintiffs withdrew the deposit made to the tune of Rs.1,12,264 /- along with accrued interest on 09.08.1995 itself. The compromise order itself is a judicial admission and operates as estoppel. The full satisfaction was recorded by the Court on 03.01.1996 and the Sale Deed was executed on 11.01.1996. Therefore, it cannot be said that the proceedings stands abated and the challenge after a period of 12 years after execution of the Sale Deed after having received full consideration and acting upon is illegal, abuse of process of law and liable to be set aside.

7. Section 34 of the HR & CE Act will not have any application as it was not in existence at the time of filing of original Suit. The valuation of the Suit is also incorrect and the plaintiffs who are parties to the document cannot seek for the relief of declaration that the document is void.

8. The second and third defendants filed independent written statements that the property was mortgaged with the Bank on 22.09.2004. Due to the default, the property was declared as a "Non-Performing Asset" and proceedings under SARFAESI Act were initiated and the Civil Court cannot grant injunction against the same and any action initiated under SARFAESI Act can be challenged only before the Debts Recovery Tribunal. The Suit is hit by Order II Rule 2 CPC as the first Suit filed in O.S.No.48 of 2003 was dismissed on 18.09.2006 and the second Suit filed in O.S.No.150 of 2005 was withdrawn unconditionally and without the leave of the Court filed a fresh Suit. Therefore, the present Suit is not maintainable.



9. On the basis of the above pleadings, the Trial Court framed the following issues and dismissed the Suit on all the issues.

"1. Whether the Suit to declare that the document no.494 of 1996 in the office of Sub Registrar, Srivilliputhur as void and unenforceable and direct the decree be sent to the said S.R.O., and order him mark the void nature of the said document in his books in document No.494/1996 is maintainable without questioning the validity?

2. Whether the M.C.T.P. Act was validly extended to Srivilliputhur?

3. Whether the entire proceedings in and arising out of C.T.O.P.No.2 of 1981 has lapsed in view of Act 2/1996?

4. Whether the document No.494 of 1996 is void and not enforceable against the plaintiffs ?

5. Whether the plaintiffs are entitled to a decree for Recovery of possession?

6. Is the suit barred by Limitation, hit by Resjudicata and Order 2, Rule 2 ?

7. Whether the Court is not having jurisdiction to decide the case in view of the provision in SARFAESI Act ?

8. Whether the plaintiffs to mesne profit ?

9. To what other relief ?"

10. The plaintiffs examined one witness as P.W.1 and marked Exs.A1 to A15. The defendants examined two witnesses as D.W.1 and D.W.2 and marked Exs.B1 to B70. The Trial Court after elaborate discussions dismissed the Suit. Aggrieved over the same, the plaintiffs filed the present Second Appeal.

11. The plaintiffs filed the above Appeal on the following grounds:-

1. The Judgment and Decree of the Courts below are contrary to law and weight of evidence, probabilities and circumstances of the case and it is liable to be set aside and the suit is to be decreed as prayed for.

2. The Judgment under Appeal did not exhibit a judicial mind in choosing to dispose under issue 6 on the ground of res-judicata without any reference to issue No 2 and 3 which is should have been dealt



first as the MCTOP 2/81 and connected matters are admitted in Plaintiff and still the Plaintiff is filed for the specific reason mentioned in Para 4 of the Plaintiff for 2 and 3 the Learned trial Judge committed a judicial error in non-applying mind in this case.

3. Instead of writing of long Judgment starting from para 9 to 54 on ground of Res-Judicata which is not applicable to the facts of the case for the reason raised in issue 2 and 3. If the Learned Judge had only dealt with issue 2 and 3 first, the issue of Res-Judicata will not arise is overlooked.

4. The finding in Para no 21 is erroneous as the trial Judge failed to realize the collusion and cheating fraud between first Defendant and the previous trustee of the Plaintiff temple for the following reasons:

a. Supreme Court vide Ex.B7 following the High Court order in Ex.A10 directed the Defendants to return a specific property to the then trustees of the Plaintiff temple, which include the temple peedam, as well and 6 feet path road in a specific identified area. But this was not acted upon.

b. A mere verification of Ex.B9 the alleged compromise and the alleged E.P.Ex.B10 and the alleged final order in Ex.B11 are not in conformity with exhibit A10 and B7.

c. The Supreme Court order direct the then trustee of the Plaintiff temple to ascertain the value of the land to be given to them and refund the corresponding value for such land with 15% interest it was not done so where is the question of Res-Judicata?

d. A reading of Ex.B19 alleged compromise will expose that the Defendant ignoring the Supreme Court order took matter to the local MLA Thangam and paid Rs.200000/- extra to the said MLA on the promise that the then trustee to execute the sale deed. It is also admitted there that the then trustee will withdraw the deposit already made by the Defendant together with the accrued interest.

e. It stands no reasons why Defendant did not insist on the then trustee completing the execution of document now known as A3=B28 before paying money to Ex.MLA or allowing the trustee to withdraw the money from Court.

f. No sane Defendant will allow, unless there was collusion and fraud between Defendant and the then trustee of the Plaintiff temple, will give 2 Lakhs extra and waive the money ordered by the Supreme Court on his SLP and also change the place

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without executing the sale deed. Because it is collusion between the Defendant / Respondent. The then trustees to stage manage a sale deed by and in the hand of Learned District Munsif make the whole process **appear genuine and bonafide.**

5.The observation that the plaintiff has suppressed prior proceedings is unfortunately in Para 22 and it did not exhibit a judicial mind. The Plaintiff has only challenged Ex.A3=B28 Sale deed, accepting prior proceedings. But the Defendant has filed the certificate copy of the E.P.142/95, Ex.B11,a perusal of Ex.B11 will go to show that following collusion and fraud committed by this Defendant and the then Trustee.

a.	Column C	முகிர் தேதி 8/6/1995 தவணை காலம் 1 மாதம் Note: Proceedings before High court and Supreme court is suppressed.
b.	Column D	மேல் முறையீடு விவரம். உபயமனுதாரர் களும் தாவா மனுவை ராசியாக பேசி தீர்ப்பு, பெற்றுக் கொண்டபடியால் மேல் முறையீடு வேண்டிய அவசியம் கிடையாது/
c.	Column F	முகிர் மின் கட்சிகாரர்களுக்கு ஏதாவது பைசல் .. இல்லை
		Note: The collusion, cheating and fraud are complete between the Respondent and the then trustee of the temple. In this E.P. CRP 702/88 (Ex.A10), SLP No 21884/93 (Ex.B7) and Rev No 16/95 (Ex.B8) are all suppressed. But the Learned Judge here without applying his judicial mind on Ex.B9 and Ex.B10 conclude that this Plaintiff has suppressed the prior proceeding it is very unfortunate.

6.It was specifically admitted and urged in the plaint and evidence. Both oral and document also in arguments that the disputed document 1.1906.79 to 84 registered as document No.494/1996 registered in office of the Sub-Registrar, Srivilliputtur be as Void and Unenforceable and send such decree to the said Sub-Registrar office and make necessary entires in his book.

7.It is admitted and specifically alleged in the plaint that the prior proceedings under OS No 572/1980 DMC, Srivilluputtur and OP2/1981 under Section 9 of City Tenant Protection Act are not valid for the specific three grounds stated in Para 4 of the plaint.

a.The city Tenant protection Act was not validly extended to non Residential buildings of Srivilliputtur as held by the Madras High Court and so Defendant is not entitled to the benefits of MCTP



Act. In other words, the prior proceedings conducted and Judgment delivered on the assumption that MCTP Act is applicable to Srivilliputtur is "PER INCURIUM" and are not valid. This was proved by Exhibits A7 and A8 it was overlooked and not considered.

8. The above view was very clearly explained in 1998(1) MLJ 28 J this article view was approved by the Madras high court as reported in 2002 (1) LW 373 (DB).

9. In other words, when the plaintiff admit the prior proceedings and alleged that they are not binding on him as they are "Per In curiam" and cited two authority for it, namely 2002 (1) LW 373 (DB) and unreported Judgment in SA(MD).No.160/2004. The Learned Trial Judge should have first examined these points.

10. The second point for consideration in Para 46 is that the MCTP Act came into force on 1923 but the HR & CE Act came into force on 02-12-1959 and in view of subsequent development of law in Section 34 of the said Act, the MCTP Act provision cannot be extended to temple.

11. The important argument in this case is that MCTP Act was amended by Act 2/1996 and by this Act all the pending proceedings under MCTP Act as pending on the day namely 18-01-1996 will stand abetted and so the sale deed registered after the coming into force, will automatically stands abetted. So no plea of Res-Judicata, Order 2 Rule 2 etc., can be raised against the Plaintiff.

12. But it is most unfortunate that the Learned District Judge having framed issues in 1,2,3 and 4 and consequential decree of 5 goes on to ignore them and he takes up a special pleading of deciding issue No 6 first ignoring the change in law.

13. In fact, rulings was cited before the Learned District Judge to the effect that

a. Act 2 of 1996 is constitutionally valid as decided in 2003 (3) LW 291 and it was ignored.

b. Citing 2013 (2) CTC 641 it was clearly argued that when there is a change of law court should follow the change in law but it was ignored. But this ruling was not even referred to in the Judgment.

14. It was further urged that as per the following rulings (a) 1996 (2) LW 537 (b) 2001 (3) LW 445 (c) 2007 (5) CTC 881 (SC) approving 2001 (3) LW 445 (d) 2008 (3) LW 950 (DB). The sale executed



after the appointed day of coming into force of Act 2 of 1996 shall stand abetted and cannot be enforced. In spite of these rulings of Madras High Court and the Supreme Court can a Learned District Judge write as Judgment to uphold the suit document registered when the EP proceeding stand terminated after coming into force of Act 2 of 1996 ignoring the mandatory and statutory provision there in on the ground that the present sit is bared by Res-Judicata.

15. In fact by deciding the question of Res-Judicata first the Learned Judge has put the cart before the horse. It is very unfortunate.

16. Without prejudice to the above, the Doctrine of Res-Judicata or Order 2 Rule 2 will not apply to the facts of the case for the reason stated in the Para 4 of the written statement. This Defendants claim certain benefits under MCTP Act recognized in OP 2/1981 thinking that it has become final. The Benefit if any given to the Defendant it was erased by a "Statutory Rubber" by Act 2/1996. There is no Estoppel against statute when a statutory benefit is withdrawn from a certain date abetting all prior transactions and setting aside all subsequent transaction then no question of Order 2 Rule 2 or Res-Judicata arise. This simple point was not at all considered by the District Judge.

17.a. Act 2/1996 came into force on 11.01.1996 at midnight.

b. The disputed document was registered on 18.01.1996 at 3 p.m.

c. The E.P. Proceedings were terminated as per Ex.A4 on 23.01.1996 long after the coming into force of the Act 2/1996.

d. for the benefit of the court Section 3 of Act 2/1996 is herewith extracted.

"Section 3 : Certain pending proceedings to abate: Every Proceedings instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court of other authority or officer on the date of publication of this Act in the TN government Gazette shall in so far as the proceedings related to any matter falling within the scope of the principal Act, as amended by this Act in respect of such land abate and **all rights and privileges which may have occurred to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights**



and privileges relate to any matter falling within the scope of the principal Act as amended **by this Act cease and determine and shall not be enforceable.**

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date".

18. At the cost of repetition, Act 2/1996 came into force on 00.00.00 hours on 11.01.1996 Ex.A3=Ex.B28 on and proceedings in OP 2/1981 was terminated only on 23.01.1996. So it is clear that this case will not come under proviso to Section 3 and come directly under the main Section 3 of Act 2/1996.

19. The question of Limitation will not be applicable to a religious institution is the general law this was reiterated by section 109 of HR & CE Act. In spite of the fact Section 109 was brought to the knowledge of the Trial Court and argued that the suit is not barred by time it has held otherwise Section 109 of HR & CE Act is extracted hereunder.

"Section 109 Central Act 36/1963 not to apply for recovery of properties of religious institution: Nothing contained in the Limitation Act, 1963 (Central Act 36/1963) shall apply to any suit for possession immovable property belonging to any religious institution or for possession of an interest in such property".

But it was not referred to in the Judgment at all.

20. The Trial Court has wrongly understood the concept of Res-Judicata because when O.P 2/81 was conducted Act 2/96 was not in the statute books. It gives new right to the plaintiff that is why the document has to be set-aside.

21. Above all when there is a change of Law that law has to be applied for the facts of case and the concept of Res-Judicata will not apply to the facts of the case. Act 2/96 was not directly and substantially in issue in the previous OP.

22. Again according to the Defendant / Respondent the Supreme Court remanded the matter at request of the Respondent and ordered the Petitioner there at to refund the money with 15% interest but what happened in the Musif Court E.P Was that the Respondent allegedly paid 2 Lakhs Ex.MLA and changed the area allotted by the High Court and approved by the Supreme Court, No one can rewrite the Judgment



of High Court and Supreme Court. The Execution proceedings is fraud on court and got abetted and cease to exist in view of the Act, 2/1996.

23. The concept of compromise is apply only to a suit or appeal only a "LIS" can be compromise, a decree cannot be compromise as there is no "LIS" here to be compromise (See Order 23 Rule 4) the sale deed Exhibit A3=Exhibit B28 run counter to the Supreme Court direction and is a nullity and should go under Act 2/1996.

24. The observation in Para 14 is most unwanted, the court should take judicial notice that the HR & CE department has not appointed any other trustee since 2005, more over PW1 filed a suit as a nominated trustee as well as a worshipper so also the suit is maintainable under Order 8 Rule 1.

25. Ex.A1 is a standard printed format and PW1 was the only person appointed as Trustee as seen by the typed wordings. When the suit is filed under Order 1 Rule 8 and there was no objection was not noted Para 2 of the Ex.A1 was deliberately wrongly read by the trial Judge it reads "nkw;fhQqk; mw';fhtyh;fs; epakdk; bra;ag;gl;l xU khjj;jpw;Fs; xUtiu mw';fhtyh; FG jiytuhf njh;t[bra;a ntz;Lk;;" but in Para 1, only PW1 alone was appointed as trustee. So it is clear that the Learned District Judge is taking a special pleading for the Defendant.

26. The comments in Para 14 are very unfortunate not expected from the Learned District Judge only one person is appointed as trustee where is the question of the election of a chairman is overlooked.

27. The comments for the Learned District Judge in para 18 and para 19 are most unfortunate because the suit itself filed to declare Ex.A3=Ex.B28 as void. So where is question of suppression arise particularly when Para 3 of the plaint speaks about the appeals and cross appeal.

28. If only the Learned District Judge has cared to verify Ex.A4 certificate copy of the C.P Register and Ex.11 there was no mention about the appeal upto supreme Court and the Defendant suppress them to create a fraudulent compromise our specific allegation is that, there was in collusion between the Defendant / Respondent then trustees of the temple.

29. The finding of the learned District Judge in para 20 did not exhibit a judicial mind. According to him Ex.B11 E.P.142/95 was filed on the Ex.B6 Judgment. It was vehemently argued



before him that Ex.B11 & B9 are fraud on court because it was not disposed of in conformity with the order of High Court in Ex.A10 or Supreme Court in Ex.B7 it is the Respondent who has cheated the court, he managed the Munsif Court with Ex.B6 Judgment which is not the final order in this case. The date of the compromise is one day before the stamp paper purchased so the collusion and the fraud are complete. On the short ground that suit should have been decreed.

30.Recording a compromise B9 after High Court and Supreme Court decree is illegal and unknown to law and violates Order 23 Rule 4. Recording the alleged compromise Ex.B10 aid not have any signature but is an alleged notarized copy without any court seal. It was only a compromise allegedly outside the court before some compromise which is a attested Xerox copy and there is no court seal it is a cooked up document. Under Order 23 Rule 4 even if the document is true it is not valid in law.

31.In Para 23 of the Judgment the Learned trial Judge agrees that a compromise cannot be entered into post decree in the following words

“அசல் வாக்கின் வாதி கட்டளை 23 விதி 4 ன் பழ நிறைவேற்றுகை மனு நிலுவையில் இருக்கும்பொழுது அந்த மனு விசாரணையில் கட்டளை 23 விதி 3 ன் பழ எவ்வித மனுவும் தாக்கல் செய்ய இயலாது என்று சட்டபிரிவில் குறிப்பிடப்பட்டுள்ளது வாதியின் தரப்பில் எடுத்துரைத்த சட்ட கள் உண்மை”

32.But the learned Judge in the Para 24 says Ex.B9 was executed outside the court. The Learned Judge failed to appreciate that the alleged compromise post decree entered in the court or outside the court is hit by Order 23 Rule 4. Above all the parties cannot in the disguise of a compromise cannot rewrite the Judgments of High Court or Supreme Court. This is great mis-carriage of this justice.

33.It is very unfortunate that in Para 24 the Learned Judge record that s if PW1 has admitted the registration of execution of Exhibit A3=Exhibit B28 on 18.01.96 and termination of E.P.No.142/95 on 23.01.96 it is not new admission but this is our case and the case is filed only on the basis of this. Our case is Act 2/96 came into force on 11.01.96 and E.P.142/95 was pending on that day and when E.P. Was pending on that day and terminated only on 23.01.96 “Recording Full Satisfaction”. The E.P. Able was not noted. The proceeding ceases and abates. So under Section 3 of Act 2/96 (issue no.3) come into play. The E.P. Has abetted the compromise



has abetted, the MACTOP Judgment has abetted and so the property should go back to the Plaintiff temple. In spite of repeated arguments the Learned trial Judge has not understood the implications of Section 3 of Act 2/96 and wrongly dismissed the suit.

34. The observation made in the Para 25 of the Judgment is factually correct but unfortunately it also exposes the fact that the Learned Judge has not understood the impact of Section 3 of the Act 2/1996 on the facts of this case and it has resulted in the wrong judgment.

35. The observations and conclusions in Paras 26 to 29 make one feel that the Learned Judge has missed the argument and the citations placed before him. It is a matter of admission that there was a proceeding under MCTP Act under OP 2/1981 and the 1st Defendant got the sale deed in his favour what is now argued before him is that the MCOP proceedings are "PER INCURIAM" as they were conducted on the wrong assumption that City Tenants Protection Act was validly extended to Srivilliputtur. It is a settled law that there is no "Estoppel to a Statute" by producing Ex.A7 and Ex.A8 it was factually proved that there was no valid extension of MCTP Act to Srivilliputtur, so the entire proceedings in MCTOP 2/1981 is "PER INCURIAM" and in support of that view 1982 2 MLJ 28 J and 2002 1 LW 373 were cited. It is unfortunate the Learned Judge has not understood this. To prove that "PER INCURIAM" judgments are not binding a ruling of Madurai Bench in SA (MD) No.160/2007 dated 13.08.2013 was also cited it is unfortunate the Learned Judge has not taken note of any of them.

36. In Para 30 to 35 the Learned District Judge has cited some of the rulings in favour of Plaintiffs under Act 2/1996. But the observation in Para 36 is shocking when the Learned Judge says that all these rulings were considered and rejected in OP 2/1981 itself. It is very unfortunate and does not exhibit a judicial mind. For, Act 2/1996 came into force on 11.01.1996 but Exhibit B6 Judgment was delivered on 16.09.1981 and the Judgments came 15 years later. Ex.A3 = Ex.B28 registered only on 18.01.1996 and E.P. was terminated only on 23.01.1996 so none of the rulings were not delivered at that time. It is sad that the Learned District Judge is suffering from anachronism (fhyg; gpiH). To top it all, he says that all these ruling were not relevant to the present case.

37. Exhibit B12 suit is for bare injunction and was dismissed for default so it has no bearing



on this case hence.

38.The observations in Para 37 to 39 is irrelevant to the facts of the case. Ex.B13 and Ex.B14 are for bare injunction and not to disturb Defendant by force. Filing a civil suit for recovery of possession cannot be construed as use of violence or force. Ex.B1 to Ex.B3 has no relevancy to this case for the following reasons:

a.It is not a contested case.

b.The cause of action for this case is 04.04.2005 and that is not a cause of action to this case.

c.The prayer in that suit and the prayer in this suit are totally different.

d.The Prayer and Court fee in both the suits are not identical and different.

e.To top it all in Ex.B2 there is no schedule.

39.The observation in Para 41 are not relevant to this case. This present suit is on a different footing.

40.The special pleading of the Learned District Judge that a suit under Section 34 of Specific Relief Act has to be filed within 3 years has no relevancy to the facts of the case for two reasons.

a.This suit is not under Section 34 of Specific Relief Act.

b.At a cost of repetition it is reiterated as per Section 109 of Hr & CE Act limitation law is not applicable to temples that the same is true under common law also.

41.The observations in Para 44 are only prove that the trial Judge has not understood the nature and purpose of the present suit. The judgment quoted in Para 44 are not relevant to the facts of this case. The learned Trial Judge has taken a special pleading for the 1st Defendant, the suit is filed as per the power given to the plaintiff under Act 2 of 1996 for which he has not answered anything.

42.In para 49 of the Judgment, the Trial Judge enumerate 3/4 points to invoke Order 2 Rule 2

No.	Judgment	Fact
A	Both the suits should have the same cause of action	Ex.B6 = Ex.B35 Suit was filed for eviction under TP Act. But the present suit is filed for cancellation of a sale deed Ex.A3 = Ex.B28 by virtue of power give under TN act 2/96. The cause of action are totally different.

No.	Judgment	Fact
<i>B</i>	<i>When the first claim was made, the second claim should also be available</i>	<i>When suit for eviction in Ex.B6 = Ex.B35 was filed. Act 2 of 1996 has not been enacted and was not in force.</i>
<i>C</i>	<i>Both the suits must be between the same parties</i>	<i>Parties are same but the cause of action and relief are different.</i>
<i>D</i>	<i>Both the cases should have been decided on merits</i>	<i>i. First Suit Ex.B6 = Ex.B35 was decided on merits but subsequently law was amended giving fresh cause of action to the present plaintiff under the act 2/1996</i> <i>ii. Ex.B12 suit was dismissed for default and Not on merits.</i> <i>iii. Ex.B2, Ex.B3 suits were filed on different cause of action and dismissed as withdrawn. So none of the cases were decided on merits on points raised now under Act 2/1996.</i>
<i>E</i>	<i>Res-Judicata</i>	<i>i. Res-judicata will not be applicable when a statute gives a new right.</i> <i>ii. There is no estoppel against a statute.</i>

43. In Para 50, the Trial Judge has come to a wrong conclusion as if the suit property is in possession of the Bank D2 and D3, because they have taken over the symbolic possession. The Supreme Court has clearly held that the possession under the SARFAESI Act is only a symbolic possession and not actual possession. Such a symbolic possession was taken by the bank vide notification dated 08.09.2008 after suit so such a takeover is hit by doctrine of Lis pendence, in any case. Further it was suit for declaration of title the suit did not challenge the loan given by the bank to the first Defendant. Section 34 of the SARFAESI Act barred the the civil suit "in respect of any matter which a DRT or the Appellate Tribunal empowered by or under the act". The DRT court is established only to recover the dues to the bank, it is not a civil court and it cannot go into the title disputes of parties. Certainly DRT has no power to set aside a sale deed issued by the Civil Court wrongly under the



presumption it has such power.

44.The Judgment 2006 4 MLJ 914 and CDJ 2018 MHC 6474 both the rulings does not apply to the facts of the case. In that case the borrower has filed the suit to prevent a bank from enforcing the claim of the bank. In this case we are not challenging the banks' right to recover the loan, our point is temple property cannot be sold to recover the Gopal Rajas' Wives' loan, as per the Tamil saying that அரான் வீட்டு நெய்யே/ என் பொண்டாட்டி கையே " .

45.The observation in Para 52 is wholly irrelevant the suit was filed on three specific grounds listed in Para 4 of the plaint at the case developed it was also came to light that the first Defendant and the previous trustees of the temple have colluded together and committed fraud and cheating but the learned Trial Judge conveniently thought that the suit is filed only on the ground of fraud to meet his agenda of dismissing the suit. It is very unfortunate. The parrot like repetition in the plaint that the suit is barred by limitation in spite of Section 109 of HR & CE Act does not exhibit a judicial mind.

46.It is very unfortunate that the Learned Judge simply brush aside the issue No.3 the most important issue in this case without even attempting to answer it. If issue 3 is decided first the suit ought to have been decreed for which a Judgment of Supreme Court, DB and Three single Judges were cited and not followed. It is most unfortunate the suit is dismissed with cost.

47.The Appellant reserves his right to take and urge additional grounds at a time of argument.

12.The following points are now arises for consideration in this appeal:

(i) Whether the Suit is maintainable or barred by law?

(ii) Whether the judgment in the previous proceedings in O.S.No.572 of 1980 and O.P.No.2 of 1981 are *per incuriam* ?

(iii) Whether the Sale Deed dated 11.01.1996 is void or not in view of Act II of 1996 ?



(iv) Whether the plaintiffs waived their rights and whether the Suit is properly valued ?

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(v) Whether the appellants are entitled to the consequential relief of possession and injunction ?

(vi) Whether the decree and judgment of the Trial Court is liable to be set aside?

13.The learned counsel for the appellants would submit his elaborate arguments on the grounds raised and confine his arguments mainly on the major three objections raised by him before the Trial Court namely,

a) The MCTP Act was not validly extended to the non-residential properties at Srivilliputtur. Hence, the Original Petition filed under Section 9 of the MCTP Act at Srivilliputtur ought to have been dismissed and the sale of the property of the temple on the basis of the illegal notification is bad in law.

(b) The MCTP Act came into force on 21.02.1923. But the HR & CE Act, came into force on 02.12.1959. Section 34 of the HR & CE Act prohibits the sale of the temple without express consent of the Commissioner of HR & CE. The sale without such a consent shall be null and void. In the present case, the sale was made without the consent of the HR & CE Commissioner and Section 9 of the MCTP Act is not an exception for getting the consent. Therefore, the Sale Deed registered without the consent of the Commissioner is void as it conflict with Section 34 of the HR & CE Act.

(c) All religious institution including Hindu Religious Temple are excluded from MCTP Act by an amendment to MCTP Act by Act 2 of 1996 which came into force on 11.01.1996 and hence the sale deed dated 11.01.1996 and registered on 18.01.1996 is void.

14.In support of his contention, the learned counsel for the appellants relied on the following judgments:-

(a) Division Bench judgment of this Court in

<https://hcservices.ecourts.gov.in/hcservices> **P. N. CHOKKALINGAM PILLAI VS. A. NATARAJAN & OTHERS**



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[2002 (I) L.W. 373]

(b) Full Bench judgment of this Court in **N.SREEDHARAN NAIR AND OTHERS VS. MOTTAIPATTI CHINNA PALLIVASAL MUSLIM JAMATH AND OTHERS [2003 (3) LW 291]**

(c) Judgment of this Court in **RADHA BAI VS. SRI GANGADHEESWARAR DEVASTHANAM [1996 (2) LW 537]**

(d) Judgment of this Court in **V.SRINIVASA MUDALIAR VS. SRI NAGAREESWARAR DEVASTHANAM [2000 (3) MLJ 216]**

(e) Judgment of this Court in **PALANI ROMAN CATHOLIC MISSION VS. S.BAGIRATHI AMMAL [2001 (3) LW 445]**

(f) Judgment of the Hon'ble Supreme Court in **S.BAGIRATHI AMMAL VS. PALANI ROMAN CATHOLIC MISSION [2007 (5) CTC 881]**

(g) Division Bench judgment of this Court in **KHURSHEED BANU VS. THE OFFICIAL TRUSTEE OF TAMIL NADU REP. THE ESTATE OF CAKU ADIKESAVALU NAIDU [2008 (3) LW 950]**

(h) Judgment of this Court in **V.MUTHUSAMY VS. THE JOINT COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENT DEPARTMENT AND OTHERS [WP (MD) NO.16833 OF 2017 DECIDED ON 12.02.2018]**

(i) Judgment of the Hon'ble Supreme Court in **S.P.CHENGALVARAYA NAIDU (DEAD) BY LRS. VS. JAGANNATH (DEAD) BY LRS. AND OTHERS [1994 (1) LW 21]**

(j) Division Bench judgment of this Court in **B.RAMALINGAM, ADDITIONAL DISTRICT JUDGE CUM PRESIDING OFFICER, SPECIAL COURT, CONSTITUTED UNDER E.C. ACT, SALEM [2006 (1) MLJ 75]**

(k) Judgment of this Court in **SOMASUNDAR AND OTHERS VS. SANKARAMOORTHY AND OTHERS [SA (MD) NO.160 OF 2007 DECIDED ON 13.08.2013]**

(l) Judgment of this Court in **A.VENKATESH VS. THE DISTRICT COLLECTOR, TIRUNELVELI [WP (MD) NO.5206 OF 2019 DECIDED ON 14.03.2019]**

(m) Judgment of the Hon'ble Supreme Court in



A.V.PAPAYYA SASTRY AND OTHERS VS. GOVT. OF A.P. AND OTHERS [2007 (4) SCC 221]

15.The learned counsel for the appellants would strongly place his reliance on the point namely, the Sale Deed executed on 11.01.1996 and registered on 18.01.1996 is void *ab-initio* and it is not valid against the temple, who is the first plaintiff. Though he relied on several judgments, he would insist the Court to draw its attention to the judgment of the Hon'ble Supreme Court in **S.BAGIRATHI AMMAL VS. PALANI ROMAN CATHOLIC MISSION [2007 (5) CTC 881]** wherein it is held as under:

"10) Both before the High Court as well as before this Court, it was contended that in view of the orders/decisions of various Courts including this Court, the issue cannot be agitated once again by way of review application; hence, the impugned order of the High Court is to be set aside. Mr. P.P. Rao, learned senior counsel appearing for the respondent, has brought to our notice that in the earlier proceedings, this Court in Civil Appeal Nos. 1055-1056 of 2001 directed the High Court to consider the review applications afresh. In other words, by virtue of the said order, the High Court was directed to decide the review applications on merits. In such circumstances, the High Court was fully justified in analyzing the issue as directed by this Court and its ultimate decision that Roman Catholic Mission is a "religious institution" cannot be faulted with since it relied on acceptable materials in the form of oral and documentary evidence (vide Ex. A-1 to A-15 and evidence of PW-1, PW-2). It was demonstrated that these religious and charitable institutions were not only deprived of their legitimate income but also their valuable properties. It was also their claim that because of the provision, namely, Section 9 of the Act, the tenants flourished and the landlord- institutions were crippled. It was further pointed out that in those circumstances Act No.2 of 1996 was enacted in order to protect those religious institutions. We have already concluded that pleadings of the respondent herein-review petitioners and various orders/judgments show that it is a "religious institution". As rightly observed by the High Court, the claim that the "Mission" is a "religious institution" is apparent from the materials without any further investigation. In such circumstances, as per Section 1(f) of the amended Act, all proceedings



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instituted by a tenant would abate. The amended Act came into force from 11.1.1996 and on the question whether on the date of coming into force of the amended Act, giving certain benefits to the religious institutions and taking away the right of the tenant under Section 9, the High Court concluded as under: "The Transfer C.M.A. which was a continuation of the application under Section 9 of the Tamil Nadu City Tenants Protection Act filed by the respondent who is the tenant was still pending. The proceedings had not attained finality. Therefore, they terminated and they became unenforceable. On the date when the first appeal and the C.M.A. were disposed of, tenancy granted by religious institutions were still governed by the provisions of the Act. Now, by the introduction of Act 2 of 1996, they cease to apply, ergo, all proceedings instituted by the tenant shall abate. All rights and privileges that may have accrued to her cease. They come to an end and they shall not be enforceable. The jurisdiction of the Court to decide the tenants claim ceased."

It is clear that on the date when the amended Act came into force, the application under Section 9 of the principal Act filed by the tenant-appellant herein was still pending. Though Mr. M.N. Krishnamani, learned senior counsel appearing for the appellant, submitted that all formalities were completed before coming into force of the amended Act, as pointed out earlier, pursuant to the order of the High Court, the sale deed was executed only on 28.10.1996 whereas the amended Act (Act No.2 of 1996) came into force on 11.1.1996 much earlier to the execution of the sale deed, hence, the contention of learned senior counsel for the appellant is not acceptable and we are in agreement with the conclusion arrived at by the High Court. As rightly concluded by the High Court, the decree in O.P. No. 4 of 1977 became a nullity on and from 11.1.1996, the executing Court committed an error in executing the sale deed after coming into force of amended Act. Further as rightly observed by the High Court, unless the sale deed is executed either by the Mission or by the Court, the fruits of the decree will not be realized by the tenants and the proceedings will come to an end only upon execution of the sale deed. Therefore, the tenant cannot be heard to say that the proviso applies to him and that the proceedings are not invalidated. The High Court is right in holding that the decree not having



been executed by means of a sale deed, the proceedings are deemed to be pending and, therefore, were determined with the coming into force of the amendment Act.

11) Finally, Mr. M.N.Krishnamani placing reliance on the Full Bench decision of the Madras High Court rendered in CRP(NPD) 2758 of 1996 titled Arulmigu Kasi Viswanathaswamy Devasthanam vs. Kasthuriammal submitted that the moment tenant deposited the amount the order is fully satisfied. He further pointed out that as per the said decision the moment the order under Section 9 (3) (a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9 (3) (b) of the Act. We are unable to accept the said proposition. The relevant provisions are as follows:-

"9. (3) (a) On payment of the price fixed under clause (b) of sub-section (1) the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any, the stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

It is clear that if the tenant complies with the order passed under Section 9 (1) (b) and deposits the amount within the time as fixed, the Court has to pass an order directing the conveyance by the landlord to the tenant. It is true that as per Section 9 (3) (b) on passing an order under clause (a) the suit or proceeding shall stand dismissed. In the light of the language used in clause (a) i.e. "conveyance" to be made by the landlord to the tenant, till the proper document conveying title to the tenant it is presumed that the proceeding is kept pending. To put it clear that unless the sale deed is executed by the landlord in favour of the tenant or in the alternative by the Court on behalf of the landlord the fruits of the decree can not be realized. The suit or proceeding will come to an end immediately on execution of sale



deed either by the landlord or by the Court on behalf of the landlord. In our case, as said earlier, the sale deed was executed only on 28.10.1996, however the amended Act 2/96 came into force on 11.01.1996 much earlier to the execution of sale deed. The view expressed in the Full Bench decision runs counter to the language used in the statute and we are unable to accept the same."

16. According to the appellants, the Sale Deed was executed on 11.01.1996 and it was registered only on 18.01.1996. The same was recorded before the Execution Court only on 23.01.1996. Therefore, the conveyance was completed only after Act II of 1996 came into force. As per Section 3 of the Amending Act, all proceedings pending before any Court shall stand ceased and abated. In so far as it falls within the scope of the Principle Act, as amended by the Act, in respect of such lands abate. All the rights and privileges which may have accrued to the tenant in respect of any land ceased and determined and shall not be enforceable and the proviso to the said section says those proceedings which has been executed or satisfied in full before such date viz., 11.01.1996. In so far as the present Suit is concerned, the Original Petition in O.P.No.2 of 1981 is a pending proceeding and therefore, all the rights and privileges accrued on the tenant ceased and determined and hence, the sale executed on 11.01.1996 and registered on 18.01.1996 and recorded on 23.01.1996 is void.

17. The learned counsel for the appellants would also contend that the Act came into force at the wee hour and whereas the Sale Deed was executed during office hours. Therefore, the sale deed executed after the Act came into force on 11.01.1996 is void and therefore, the Sale Deed shall be recorded as void in the registers of Sub Registrar.

18. In so far as the contentions raised by the learned counsel for the appellants are concerned, all these points were available to the appellants even at the first round of litigation, while contesting the Original Petition filed under Section 9 of MCTP Act. The litigation went upto the level of Hon'ble Supreme Court. Therefore, it is unnecessary to go into the issues again as it will amount to re-agitating the settled issue.

19. Per contra, the learned counsel for the first respondent in his written arguments would contend as under:

" 7. The suit is barred by limitation.

Admittedly the appellants/plaintiffs pleaded that he asked for the relief for declaring the document No.494 of 1996 as void under Section 31 of the Specific Relief Act. Section 31 of the Specific Relief Act runs as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> 31. (1) Any person against whom a written



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instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) - If the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the office in whose office the instrument has been so registered.; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation. "

8. The appellants/plaintiffs have coined the relief (b) in accordance with Section 31 of the Specific Relief Act. Hence, the relevant article under the Limitation Act is Article 59. Article 59 is read as follows:-

Description of suits	Period of Limitation	Time from which period begins to run
P A R T - IV - Suits to decrees and instruments		
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

9. Now it has to be seen when the appellants/plaintiffs first became known relating to the document No.494 of 1996.

10. One Muthukumar as the representative of Devangar Community People filed a suit in O.S.No.48 of 2003 on the file of the District Munsif Court, Srivilliputhu restraining the 1st defendant from interfering with the property allotted to the plaintiffs Temple as per the compromise between the temple and the 1st defendant herein on 27.01.2003. The temple belongs to Devangar Community. The 2nd plaintiff' belongs to Devangar Community. Further, the plaint in O.S.No.48 of 2003 has been annexed with the plaint in O.S.No.150 of 2005 filed by the present appellants/plaintiffs against the 1st defendant herein. In fact the sale deed No.494 of 1996 has been annexed by the present plaintiff's along with the



plaint in O.S.No.150 of 2005. The above said facts clearly establish that the plaintiff's have knowledge about the deed in question all along. Atleast from the date of filing of O.S.No.48 of 2003 on 27.01.2003. The present suit in O.S.No.111 of 2006 has been filed on 20.12.2006. Therefore three years period for filing the present suit has already been expired. Therefore, the suit is barred by limitation and on this sole ground alone the suit has to be dismissed.

For the above said proposition of law, the 1st respondent/defendant relies upon the following judgment:-

a) 1996 (7) SCC 767 (Para.6)

b) 2009 (6) SCC 160 (Para.26 & 27 to 29)

11. The appellants/plaintiffs side in their reply say that as per Section 109 of the H.R.& C.E Act, there is no limitation regarding the properties of religious institutions. For considering the above said contention, we have to read Section 109 of the H.R.& C.E Act which runs as follows:-

"109. Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property".

Therefore, non applications of the provisions and articles of limitation act has been restricted to a suit for recovery of possession of immovable property of Religious Institution alone. The limitation act is applicable to all other kinds of suits relating to the Religious Institution. The relief (b) of the present suit is relating to the validity of document No.494 of 1996. Therefore, the suit is barred by limitation. The recovery of possession of the property asked for relief (c) is not an independent relief in this suit. It is based upon the granting of relief (b) alone. Hence, the reply by the plaintiff with respect to the non application of the Limitation Act is not acceptable.

12. The suit is hit by the provisions of Order 23 Rule 3(A) of C.P.C.

The Order 23 Rule 3 (A) of C.P.C. is extracted hereunder:-

".....3A Bar to suit - No suit shall be lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful".

The sale deed in question had been executed only in pursuance of a compromise recorded by the Court in C.T.O.P.No.2/1981 in the suit in O.S.No.572

<https://hcservices.ecourts.gov.in/1980ces/> It is evident from the very recitals in the





the compromise order passed in C.T.O.P.No.2 of 1981 is capable of execution. The sale deed in question namely sale deed No.494 of 1996 was executed in the execution proceedings filed to execute the compromise decree passed in C.T.O.P.No.2 of 1981 and on execution of the sale deed No.494 of 1996 " Full Satisfaction" was recorded on 23.01.1996 and the execution proceedings was closed. Hence any question between the parties to the decretal relating to the execution or satisfaction of the decree shall be adjudicated only by the Executive Court not by a separate suit as per Section 47 of C.P.C. Therefore the present suit in O.S.No.111 of 2006 is not maintainable and liable to be dismissed.

16.The above said proposition of law is supported by the following judgment reported in AIR 2007 Andhra Pradesh 142.

17.Admittedly, the present appellants / plaintiffs filed a suit in O.S.No.150 of 2005 accepting the compromise between the parties and the execution of the sale deed in question and asked for declaration of its title in respect of the property allotted to the 1st appellant / plaintiff temple in the said compromise. The plaint in O.S.No.150 of 2005 has been marked as Ex.B5 in this suit. The cause of action for the said suit is the compromise effect in C.T.O.P.No.2/1981 and the execution of the sale deed in question. The cause of action for the present suit is also the same. The conjoined reading of Order 2 Rule 2 and Rule 3 of C.P.C., makes it very clear that failure to sue for all reliefs arising out of the same cause of action prevent the plaintiffs from filing a subsequent suit for the omitted reliefs. Therefore also the present suit is not maintainable.

18.Further, the present suit in O.S.No.111 of 2006 has been filed during the pendency of O.S.No.150 of 2005. The Suit in O.S.No.150 of 2005 was filed by the present plaintiff on 04.04.2005 and the present suit in O.S.No.111 of 2006 filed by the same plaintiff on 20.12.2006. As already stated the cause of action for filing the both suits is arising out of the compromise entered between the party in C.T.O.P.No.2 of 1981 and the execution of the sale deed No.494 of 1996 in the execution proceedings of the compromise decree stated above. The Appellants / Plaintiffs who filed the present suit in O.S.No.111 of 2006 has not obtained leave of the Court to sue for any other relief arising out of the cause of



action, while filing the suit in O.S.No.150 of 2005. Therefore, the Suit in O.S.No.111 of 2006 is hit by Order 2 Rule 2 and 3 of CPC. The 1st Defendant placing reliance on the judgment of the Supreme Court reported in 2012 SAR (CIVIL) 837.

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19. Furthermore, the plaintiffs in O.S.No.150 of 2005 (the present plaintiff) filed the present suit in O.S.No.111 of 2006 during the pendency of the previous suit in O.S.No.150 of 2005 without obtaining the leave of the Court at the time of filing of the previous suit in O.S.No.150 of 2005. Hence the second suit in O.S.No.111 of 2006 is not maintainable.

20. It is to state that the plaintiffs in O.S.No.48 of 2003 allowed the said Suit for dismissed for default. As already stated the Counter claim filed by the 1st Defendant was decreed. The counter claim has been made by the 1st Defendant in the said suit only on the basis of the sale deed in question. The learned District Munsif Court, Srivilliputhur has decreed the counter claim and the same is still in force. Therefore, the present suit questioning the validity of the sale deed and the title of the 1st Defendant is hit by principle of res-judicata. Therefore also, the present suit is not maintainable.

21. The present suit is hit by the provisions of Order 9 Rule 9 of C.P.C., also. The order 9 Rule 9 of C.P.C., reads as follows: -

"9. Decree against plaintiff by default bars fresh suit -

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an **order** to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an **order** setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

(2) No **order** shall be made under this rule unless notice of the application has been served on the opposite party."

As already stated, the cause of action for filing of all the suits by the plaintiff's temple is the execution of the sale deed No.494 of 1996 in the



execution proceedings. The suit in O.S.No.48 of 2003 was filed by the Plaintiff's temple on the above said cause of action. The said suit was dismissed for default. No doubt the Counter Claim filed by the 1st Defendant was decreed. The Counter claim is nothing but a cross suit. Since the plaintiff allowed its suit in O.S.No.48 of 2003 for default, the Counter claim filed by the 1st Defendant was adjudicated as per the provisions of C.P.C. At any rate the suit filed by the Plaintiff in O.S.No.48 of 2003 was dismissed for default. Hence, the plaintiff is precluded from filing any subsequent suit including the present suit in O.S.No.111 of 2006 as per Order 9 Rule 9 of C.P.C. For this proposition, the 1st Defendant relies upon the Judgment reported in 1990 (2) MLJ 80.

22.The Appellants / Plaintiffs is guilty of suppression of facts. The plaintiff has filed O.S.No.48 of 2003 and 150 of 2005. Further, he well aware of the compromise proceeding in C.T.O.P.No.2 of 1981. The Plaintiff temple has withdrawn the sum of Rs.1,12,264/- from the Court namely the deposit and the accrued interest made by the 1st Defendant as the sale consideration for the sale deed to be executed in pursuance of the terms of the compromise. The temple accepted the sale deed by their act of filing O.S.No.48 of 2003 wherein they asked for injunction only in respect of property allotted to it in the compromise decree passed in C.T.O.P.No.2 of 1981. All the above said material facts have not been disclosed in the plaint in O.S.No.111 of 2006. It amounts to suppression of facts and playing fraud upon the court. The Appellants / Plaintiffs did not come to the Court with clean hands. On this ground alone, the suit has to be dismissed. For this proposition of law, the 1st Defendant is submitted the Judgment reported in AIR 1994 SC 853 for kind consideration of this Hon'ble Court.

23.While answering the plaintiff during the argument has stated that he withdrew the amount of Rs.1,12,264/- for adjusting the same towards Rent Arrears. It is an atrocious lie. He would not be allowed to withdraw the said deposit amount by the Court, if he pleaded like this at the time of withdrawing the said amount. Further, there is no pleading to that effect in the plaint. Not even a whisper in his evidence. While so without any due regard to the truth, boldly the said answer was given during the argument. The 1st Defendant prays this



Hon'ble Court to dismiss the above said argument made by the Plaintiff.

24.The Plaintiff is estopped by pleading in O.S.No.48 of 2003 and O.S.No.150 of 2005 from questioning the sale deed No.494 of 1996 by filing this suit in O.S.No.111 of 2006.

For the above said reasons, the suit in O.S.No.111 of 2006 is not maintainable and deserves to be dismissed.

25.The Appellants / Plaintiffs has stated that Madras City Tenant Protection Act was not validly extended to the non-residential properties are Srivilliputtur and hence the 1st Respondent / Defendant / Tenant is not entitled to the benefit of the Madras City Tenant Protection Act and the C.T.O.P.No.2 of 1981 ought to have been dismissed and the sale of property on the basis of the illegal notification is bad in law.

It is the contention of the appellants/plaintiffs that the notification extending the applicability of the Act to the non residential properties at Srivilliputtur has not been placed before the legislative assembly. The placing of the notification before the legislative assembly is mandatory. Since that requirement is not complied with, the notification became bad and the 1st respondent/defendant is not entitled to the benefit of Tamil Nadu City Tenant Protection Act and consequently the sale deed executed in favour of the 1st defendant is bad in law.

The very contention of the Appellants/Plaintiffs that the notification has to be placed before the legislative assembly is due to mis-construction of the provisions of the Tamil Nadu City Tenant Protection Act. As per Sub-Section (6) of Section 1 of the Tamil Nadu City Tenant Protection Act, only the notifications issued under Sub Section (2) or Sub Section (4) of Section 1 of the Tamil Nadu City Tenant Protection Act alone shall be laid before the legislature. But the present notification has been issued under Section 2 (1) of the Act which need not be placed before the legislature. The said notification under G.O.No.2435 dated 09.08.1965 has been marked as Ex.A8. The above said proposition can be understood clearly by the conjoined reading of Section 1 (6) and Section 14 with Section 2(1) (i) of



the Tamil Nadu City Tenant Protection Act.

Further the same contention was made by the Appellants/Plaintiffs temple in O.S.No.572 of 1980. That issue has been dealt in detail in the judgment in O.S.No,572 of 1980. That judgment is the complete answer to the above said contention raised by the Plaintiff's Temple. The judgment in O.S.No.572 of 1980 has been marked as Ex.B6 in this suit. Therefore the said point cannot be re-agitated again in this suit.

The other point raised by the Appellants/Plaintiffs for challenging the sale deed No.494 of 1996 is that Tamil Nadu City Tenant Protection Act came into force on 21.0.1923. But the Tamil Nadu Religious and Charitable Endowment Act came into force on 02.12.1959. The Section 34 of the Tamil Nadu Religious and Charitable Endowment Act prohibits sale of property of a temple made without the permission of the Commissioner is null and void. The H.R.& C.E Act is a latter legislation. Therefore the provision of the said act prevail over or superseded the provisions of the old act namely City Tenant Protection Act of 1923. Therefore the sale deed 494 of 1996 is void.

In fact the applicability of Section 9 of City Tenants Protection Act to the land of Religious Institution has been dealt in the judgment in O.S.No,.572 of 1980 (Ex.B-6) itself in Para.23. Therefore that issue cannot be raised again for the Appellants/Plaintiffs temple.

Further the Appellants/Plaintiffs temple itself by raising the 3rd ground namely since a sale deed executed on 11.01.1996 and the Amendment Act of 2 of 1996 came into force on 11.01.1996 exempting the Religious Institution from the application of the Act and therefore a sale deed dated 11.01.1996 is invalid and by making such plea the plaintiffs temple is candidly accept the applicability of the Act to the land of the Religious Institution but for the Act of 2 of 1996. In other words the plaintiffs temple by relying upon the amendment Act 2 of 1996 accepts the benefits of Section 9 to the tenants of the Religious Institution till the amendment Act 2 of 1996. Thus the Plaintiffs temple accepts that the tenant of a Religious Institution is entitled to the benefits of Section 9 of the City Tenants Protection Act upto the Amendment of Act 2 of 1996 despite Hindu Religious and Endowments Act 22 of 1959. Hence the 2nd ground is also not sustainable and the same has to be rejected.

The 3rd ground to challenge the validity of No.494 of 1996 is that the sale deed was



executed on 11.01.1996 when amendment to the City Tenants Protection Act in Act 2 of 1996 exempting all Religious Institution from the City Tenants Protection Act came into force on 11.01.1996.

As explained in supra the entitlement of the 1st respondent/defendant to the benefit of Section 9 of the City Tenants Protection Act has been decided long prior to 11.01.1996 when the Amendment came into force and in fact the Hon'ble Supreme Court upheld the right of the 1st defendant to purchase the land in the year 1993 itself. It is pertinent to note that the parties namely Landlord and Tenant entered into compromise after the remand order of the Supreme Court in the enquiry for fixing the value of the property allotted to the temple. This compromise has to be recorded as the mode of satisfaction of the decree and this compromise was effected on 08.06.1995 and the sale deed is executed only in the terms of compromise dated 08.06.1995 in C.T.O.P.No.2 of 1981. E.P.No,142 of 1995 filed for execution of the compromise decree. The above said facts clearly established that the sale deed No.494 of 1996 has not been came into existence not in pursuance of execution of a decree passed under Section 9 of the City Tenants Protection Act, but in the execution proceeding of the compromise between the parties. The parties to the compromise are bound by the terms of the compromise. The terms of the compromise is only executed. The compromise is accepted by the temple and hence only it has withdrawn the amount of Rs.1,12,264/- on 09.08.1995 itself. Temple defaulted in complying with the other parts of the compromise and execution proceeding was initiated and the sale deed was executed.

As per the provision of the City Tenants Protection Act proceedings relates to any matter fall in within the scope of the Principle Act has amended by Act 2 of 1996 shall alone be abate. The entire proceeding within the scope of the principal act has already been over by entering into compromise by the parties which has been recorded by the Court on 08.06.1995 itself that is long prior to 11.01.1996. The execution is only with regarding to the terms of the compromise and outside the proceeding relating to any matter within the scope of the Act. Therefore the 3rd ground is also not sustainable and the same is liable to be dismissed.

28.The core contention of the Appellants/ Plaintiffs is that the compromise between the parties to the C.T.O.P.2 of 1981 is illegal and void and



The Appellants / Plaintiffs did not ask for declaring the compromise as null and void in the suit. Without asking such relief, the Appellants / Plaintiffs are not entitled to get declaration of the sale deed No.494 of 1996 as void since the execution of the sale deed is only consequential to the compromise decree. Therefore, the suit is not maintainable.

Further, even assuming without admitting that the compromise between the parties is invalid, still the compromise bind the parties and the parties to the compromise are estopped from challenging the impugned sale deed No.494 of 1996 under law - Vide 1971 (1) SCC 837 and 1992 (1) SCC 31. (Para. 41 to 44)

Yet another strong contention for challenging the validity of the compromise in C.T.O.P.2 of 1981 on the side of the plaintiffs is that the compromise is against the order of the Supreme Court and hence the compromise is not valid.

The Supreme Court has held that the decision of the Court below regarding the entitlement of the benefit of the suit 9 of the C.T.O.P. Act is available to the 1st Respondent / Defendant / Tenant and confirmed the decree of the Court below.

While confirming the order of the High Court, the Hon'ble Supreme Court has remanded the C.T.O.P.No.2 of 1981 to the trial court to re-fix the value of the portion allotted to the plaintiffs. Temple and to direct the appellants / plaintiffs temple to pay the amount of the value of the site allotted to it with interest.

The parties entered into compromise in C.T.O.P.No.2 of 1981 after the remand in respect of the extent of the area of the temple and additional payment to the temple by the tenant. It is more benefit to the temple without disturbing the decree relating to the entitlement of the benefit of the City Tenants Protection Act in favour of the 1st Respondent / Defendant / Tenant. It cannot be said that the compromise is against the order of the Supreme Court at any stretch of imagination.

In fact parties to the suit are entitled to enter into compromise and settle their disputes during the pendency of the suit and after the decree has been passed and even during the execution proceeding. The Code of Civil Procedure provides separate provision for each stage. When law permits a Decree holder and the Judgment Debtor to enter into a compromise for satisfaction of the decree, it cannot be said that the compromise is against the decree and



therefore, it is invalid.

No doubt, Order 23 Rule 4 speaks that Order 23 Rule 3 shall not apply to execution proceedings of a decree or order. The reason is that Order 21 Rule 2 and Section 47 taken together provide a complete procedure for recording compromises arrived at in execution proceedings. There is nothing in the C.P.C., which prevents a Court from enforcing such a compromise (Vide - Commentaries in Mulla C.P.C., under Order 23 Rule 3A and Order 23 Rule 4).

Therefore, the contention of the plaintiffs, that there cannot be any compromise after the verdict of the Supreme Court between the parties is unsustainable and the same has to be rejected, that too when there is no prayer for declaring the compromise as invalid.

For the above said reasons, the suit in O.S.No.111 of 2006 is not maintainable and deserves to be dismissed.

29. Above all, the persons who are representing the God should not act unfair. The Trustees of the temple got more extent of property than granted in the decree. They have withdrawn the amount deposited in the Court as value of the entire property including the portion allotted to them with accrued interest as per the terms of the compromise. That apart they received extra huge amount of Rs.2 lakhs also. They have accepted the compromise and the validity of the sale deed No.494 of 1996 dated 11.01.1996 and filed a Suit in O.S.No.48 of 2003 wherein categorically accepted all the terms of the compromise and the execution of the sale deed and suffered a decree in the Counter Claim in O.S.No.48 of 2003 with respect of the property involved in the sale deed No.494 of 1996 and filed a subsequent suit in O.S.No.150 of 2005 accepting the validity of the sale deed in favour of the 1st Defendant and thereafter, even without withdrawing the same filing the present suit in O.S.No.111 of 2006 to declare the sale deed No.494 of 1996 is most unfair and unjust on the part of the person representing the 1st plaintiff's Temple.

The present suit in O.S.No.111 of 2006 filed by the Appellants / Plaintiffs is most unsustainable both morally and legally.

It is therefore prayed that this Hon'ble Court may be pleased to dismiss the Appeal Suit in A.S.No.71 of 2020 on the file of this Hon'ble Court and thus render justice. "



20. On the basis of the above submissions, the points for consideration have to be analysed.

21. From the perusal of the materials placed before this Court, it is noted that the present plaintiffs filed a Suit for eviction in O.S.No.572 of 1980 and the respondents / defendants filed an Original Petition in that Suit under Section 9 of MCTP Act. The Suit was dismissed and the Original Petition was allowed in favour of the tenant and a direction was given to the plaintiffs to sell the land to the tenant. Immediately, after the order passed by the Court on 16.09.1981 in O.S.No.572 of 1980, on 23.02.1982, a sum of Rs.34,440/- was deposited by the tenant in the Court on 23.02.1982. The appellants / plaintiffs filed an appeal in A.S.No.36 of 1982 against the decree and judgment passed in O.S.No.572 of 1980 and CMA No.11 of 1982 against the order passed in CTOP No.2 of 1981 and the same were dismissed on 16.11.1987. Against which, the appellants/plaintiffs preferred a Civil Revision Petition in CRP No.702 of 1988. On 21.09.1993, this Court while confirming the decree, remanded the matter to the Trial Court to provide passage to the Peedam and fix the market value as on the date of revision order viz., 21.09.1993.

22. The respondents / defendants preferred an appeal before the Hon'ble Supreme Court in SLP No.21884 of 1993 against the order passed in CRP No.702 of 1988 dated 21.09.1993. The Hon'ble Supreme Court modified the order passed by the High Court and remanded the matter back to the District Munsif Court on 24.10.1994 with a direction to work out the price in proportion to the area covered by Peedam and path leading to it and adjust the sale price already paid by the tenant and to return the balance to the tenant with 15% interest per annum till repayment. The Review Application filed by the present appellants in R.A.No.16 of 1995 was also dismissed on 18.01.1995 by the Hon'ble Supreme Court.

23. Thereafter, the parties have measured the property and allotted respective portions to each of the parties and arrived at a compromise on 16.02.1995. As per the compromise, the land allotted to the tenant was shown as first schedule and the land allotted to the temple was shown as second schedule and it was agreed that the amount deposited by the tenant can be withdrawn by the temple with accrued interest and the parties are entitled to enjoyment of their respective lands, which were given to their possession. In addition to that, a sum of Rs.2,00,000/- was agreed to be paid by the tenant to the first appellant / temple in addition to the decreed amount. In addition to that, it was agreed that the landlord shall execute the sale deed within one month, failing which, the tenant is entitled to execute the same through Court by filing execution petition. On 27.03.1995, a petition was filed by both the parties to record the compromise. The same was taken on file on 01.06.1995. Due to Advocates' boycott, the compromise could be recorded only on



08.06.1995. The compromise was recorded by the Court and a compromise decree was passed in C.T.O.P.No.2 of 1981. Thus, the proceedings under C.T.O.P.No.2 of 1981 came to an end.

24.The compromise decree dated 08.06.1995 passed in C.T.O.P.No.2 of 1981 reads as under:

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"8.6.95 :- உய்யவாதிகளும் அவர்கள் தரப்பு வழக்குரைப்பர்களும் ஆஜர். இந்த ராஜினாமா வாசித்து காண்பிக்கப்பட்டது. இருதரப்பினரும் சரி என்று ஒப்புக் கொண்டனர். ராஜினாமா ஒப்புக் கொள்ளப்பட்டு ஏற்றுக் கொள்ளப்பட்டது."

25.Now, it has to be seen as to whether the decree is executed or satisfied in full. On 09.08.1995, the first appellant who is represented by the second appellant / second plaintiff himself withdrew a sum of Rs.1,12,264/- from the Court deposit with accrued interest. It is the condition that after withdrawal of the amount within one month, the sale deed should have been executed. But the first appellant has not executed the sale deed and hence, the respondents filed an execution petition in E.P.No.142 of 1995 to execute the sale deed. When the execution petition came up for hearing on 15.12.1995, it was posted to 21.12.1995 for deposit of charges and production of fair sale deed. On 21.12.1995, the Court has posted the matter to verify the records and adjourned the matter to 03.01.1996. On 03.01.1996, the matter was further adjourned to 23.01.1996 to execute the sale deed. In the meanwhile, on 11.01.1996, the sale deed was executed by the Court. On 18.01.1996, the sale deed was registered.

26.The above facts are admitted and borne out by records.

27.Thus, the final order passed by the Hon'ble Supreme Court in SLP No.21884 of 1993 on the merits of the matter satisfied the issue which is covered by the Principal Act, which reads as under:

"ORDER

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the judgment and order of a Learned Single Judge of the High Court of Madras dated 21.9.1993 passed in C.R.P.No.702 of 1988.

The appellant herein was a tenant in occupation of the demised premises. Claiming the benefits of the provision of Section 9 of the Tamil Nadu City Tenants Protection Act, he laid claim to purchase the demised property. The Learned District Munsiff, before whom claim was laid, held the appellant entitled to the benefits of the provision, covered to above. He also held that the entire



demised property was necessary for the enjoyment of the tenant. He fixed the value of the same at Rs.34,440/- directing the deposit of the amount within a period of six months from the date of the order. The order statedly has been complied with by the appellant and the payment of Rs.34,440/- stand deposited within time. The respondent took up the matter in appeal before the court of Sub-ordinate Judge unsuccessfully inasmuch as of the orders of the District Munsiff were confirmed. It is in revision before the High Court that the orders were upset on the basis that a portion of the demised property enveloping a "peedam" was not necessary for the appellant for beneficial enjoyment of the demised promises. On such finding and in order to provide a path to the "peedam" the matter was remitted back to the District Munsiff as also to re-assess the price reckonable at the average market value of three years immediately, preceding the date of the order of the High Court, i.e., 21.9.1993.

The grievance of the appellant is not to the reduction of the areas sought to be purchased. Rather, the appellant's learned counsel straightway concedes that the property representing the "peedam" and a path necessary to approach it, as ordered by the High Court may be taken away. With regard to the fresh assessment of the price it was on the premise urged that the entitlement of the appellant stood established on the date of the order of the District Munsiff itself and not afresh on the date of the order of the High Court. This contention of the appellant's learned counsel is unanswerable by the respondent's learned counsel. It would have been different had the appellant lost his claim in the court of the District Munsiff on the finding that he is not entitled to purchase the property. The condition precedent under the provision is that first entitlement must be established and thereafter the price is to be fixed. Here, the entitlement of the appellant stood established in all the three courts and it was only to what extent in measure that the dispute centered around. There was thus no occasion for the High Court to have ordered fresh fixation of price reckonable at the average market value of the three preceding years from the date of its judgment.

Therefore, for what has been said above, we have to partially allow the appeal inasmuch as the District Munsiff would now, on the case remitted to him, be required to work out in proportion what was



the price which would need deduction on the subtraction of the area covered by the "peedam" and the path leading to it, on retrieval out from the entitlement of the appellant. On such reckoning, the price already paid by the appellant, if already taken away by the respondent, shall be returned to the appellant with 15% interest per annum till repayment. This is the end result of this appeal. There shall be no order as to costs."

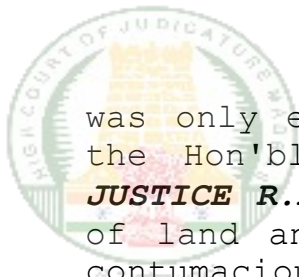
Therefore, what was remitted to Trial Court was to work out the price in proportion to the land allotted to the tenant and the landlord to return the excess amount withdrawn by them with 15% interest. From this, it can be inferred that the entitlement of the parties over the land had conclusively decided from the date of the above order by the Hon'ble Supreme Court and what remained was the execution or satisfaction of the decree.

28.After the remand, the parties arrived at a compromise on 16.02.1995 and a further sum of Rs.2,00,000/- was paid by landlord. The land was apportioned by linear measurements. The tenant was put in possession of the land sold to him and the landlord was put in possession of the remaining land allotted to it pursuant to the order passed by the Hon'ble Supreme Court. The landlord had withdrawn the amount from the deposit on 09.08.1995 in terms of the compromise decree made by the tenant towards sale consideration from the Suit account. The main allegation of the learned counsel for the appellant is that the Trial Court had erroneously decided the Suit on the issue of *res-judicata* rather than deciding the issue of validity of the decree and its execution in view of Act 2 of 1996 at the first instance. Therefore, this Court has taken up the relevant points for consideration and to decide the other points later.

POINT NO.2

29.Now that the learned counsel appearing for appellant / landlord would contend that the City Tenants Protection Act was not validly extended to Srivilliputtur and the judgment and decree passed in O.S.No.572 of 1980 and O.P.No.2 of 1981 are invalid and *per incuriam*. The decree and judgment having been confirmed by the High Court and Supreme Court, is it open to him to agitate the same by way of a fresh proceeding. The answer is two pronged. All the orders of the Supreme Court under Article 141 of the Constitution of India binding on all Courts. The Supreme Court being the highest Court, its order is binding on all and it is enforceable under Article 142 of the Constitution of India.

30.As such, there is no doubt that in the issue of benefits flowing out of Section 9 of MCTP Act, the *lis* has reached its finality between the parties and it binding on them. What remained



was only execution or satisfaction of the decree. The judgment of the Hon'ble Supreme Court in **STATE OF GUJARAT AND ANOTHER VS. JUSTICE R.A.MEHTA (RETIRED) AND OTHERS [2013 (3) SCC 1]** is the law of land and it cannot be called *per incuriam* and in fact, it is contumacious to raise the issue before a Court subordinate to it.

WEB COPY "Binding effect of the judgment

61. There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding, particularly when the same is that of a coordinate Bench or of a larger Bench. It is also correct to state that even if a particular issue has not been agitated earlier or a particular arrangement was advanced but was not considered the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not lose its authority "merely because it was badly argued, inadequately considered or fallaciously reasoned". The case must be considered taking note of the ratio decidendi of the same i.e., the general reasons or the general grounds upon which the decision of the court is based, or on the test or abstract from the specific peculiarities of the particular case which finally gives rise to the decision. (Vide *Somawanti v. State of Punjab*, *Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur*, *Ambika Prasad Mishra v. State of U.P.*, SCC p.723, para 6 and *Director of Settlements v. M.R.Apparao*). "

31. Further, it is an afterthought and too late in the day to raise such issue. The first opportunity was available to the appellant to take out a ground that the order was without jurisdiction as the Act was not validly extended to Srivilliputtur when the decree of the trial Court was challenged before this Court. Again he had the opportunity to canvas this point before the High Court and Hon'ble Supreme Court, which he failed to avail. The Hon'ble Supreme Court being the highest Court of the land, the orders which received the seal of approval from it can be modified or varied or distinguished only by it and not by any other Court. But the appellant has chosen to fight the case on merits, rather than on technicalities now raised. Once the appellant had chosen to submit to the jurisdiction of the Court, and contested the matter on merits and suffered a decree, it is not open to him to turn around and contend that the decree is a nullity on the grounds of technicalities. That too, after having acted upon it and after having received and enjoyed the benefits more than he is entitled in terms of original decree as well as compromise decree. The rationale laid down by this Court in **MOTURI SESHAYYA AND OTHERS VS. SRI RAJAH**



VENKATADRI APPA ROW [31 MLJ 219 : AIR 1917 MAD 950] will squarely apply to this case. The relevant portion of the said judgment is extracted hereunder:

"Having invited the Court to render a decision on merits, it will be most inequitable if the party is allowed to fall back upon a technical plea and oppose an action of the other party when such plea was wholly available to him even at the very inception of the action and which plea he failed to put forward and instead chosen to hazard a decision on merits".

32. In the instant case, the decree and judgment is dated 16.09.1981 and it was acted upon by him on 08.06.1995 and the claim in so far the temple was satisfied on 08.06.1995. After a period of twelve years, it is not open to reopen and re-litigate the issue by way of a fresh proceeding. Even now, it can be raised only before the Hon'ble Supreme Court and not before any other Court. As observed above, it is highly contumacious to contend the judgment is *per incuriam* and not to act upon it after having acted upon it before two decades. Hence, the finding of the trial Court on issue 1 to 3 is very much legal and based on sound reasons.

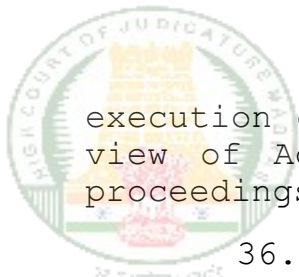
33. The second line of attack of the appellant is that MCTP Act came into force on 21.02.1923 and HR & CE Act came into force on 02.12.1959. Section 34 of HR & CE Act prohibits sale of the temple without express consent of the Commissioner of HR & CE and hence the sale is null and void. Section 9 of the MCTP Act is no exemption and hence sale is void in view of Section 34 of the HR & CE Act. It is again reiterated that the sale was upheld by the Hon'ble Supreme Court. The provisions were fell within the consideration of the superior Courts and after considering the impact of the Act only the judgment was passed. As per Article 142 of the Constitution of India, all the decrees of the Hon'ble Supreme Court is enforceable. Thus, the judgment of the Hon'ble Supreme Court in **STATE OF GUJARAT AND ANOTHER VS. JUSTICE R.A.MEHTA (RETIRED) AND OTHERS [2013 (3) SCC 1]** would prevail upon the administrative sanctions.

34. Even after the judgment, HR & CE is still continuing to manage the temple. The HR & CE Department itself has acted upon the judgment and appointed the second plaintiff as Trustee of the temple as it exists today. The second plaintiff is the same person who has withdrawn the money from the Court deposit, deposited towards satisfaction of the decree passed in the year 1982. Having accepted the judgment and validity of the sale and allowing it to reach its finality, cannot reopen the issue after two decades.

POINT NO.3

35. The core issue vociferously contended by the learned counsel for the appellants is that the satisfaction recorded by the

<https://hcservices.courts.gov.in/hcservices/>



execution court is a nullity and registration shall be cancelled in view of Act 2 of 1996 came into effect from 11.01.1996 and all proceedings shall stand abated.

36.It has to be seen as to whether the proceedings between the parties herein stood abated.

37.At the risk of repetition, the facts admitted remains that on 16.09.1981 the benefits of Section 9 of MCTP Act was granted in favour of the tenant. The tenant deposited the amount in Court on 23.02.1982. The decree was confirmed in appeal on 16.11.1987 in A.S.Nos.36 of 1982 and A.S.No.11 of 1982. This Court remanded the matter back to the trial Court in CRP No.702 of 1988 on 21.09.1993. On appeal against the order in Civil Revision Petition, it was further modified by the Hon'ble Supreme Court in SLP No.21884 of 1993 dated 24.10.1994 and the matter was remitted back to trial Court for further proceedings. The parties entered into a compromise on 16.02.1995 and the same was recorded by the trial Court on 08.06.1995 and a compromise decree was passed.

38.First of all, it has to be seen as to what is the effect of compromise decree?. It can be gainfully said that the legal battle between the parties got over. There cannot be any further dispute with regard to the subject matter of the concerned proceeding, unless the validity of the compromise decree is questioned. As such, on 08.06.1995, the dispute with regard to the benefits under Section 9 of MCTP Act granted by the decree dated 16.09.1981 had come to an end. In other words, the judicial proceedings between the parties herein came to an end by way of the compromise decree. It is pertinent to note that the compromise decree has not been challenged till date and it still remains in force.

This Court in M.Srinivasan judgment

Yet it has to be ascertained as to whether it complies with the requirement of proviso to Section 3 of the Act 2 of 1996.

39.Section 3 of the Act 2 of 1996 reads as under:

"Section 3 : Certain pending proceedings to abate: Every Proceedings instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court of other authority or officer on the date of publication of this Act in the TN government Gazette shall in so far as the proceedings related to any matter falling within the scope of the principal Act, as amended by this Act in respect of such land abate and **all rights and privileges which may have occurred to that tenant** in respect of any such land



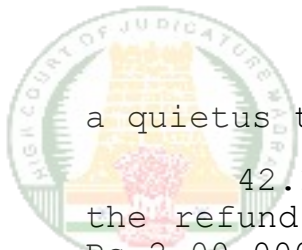
and subsisting immediately **before the said date** shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act as amended **by this Act cease and determine and shall not be enforceable.**

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Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date".

40.The main provision speaks about the pending proceedings as on the date of the Act came into force. Every proceedings instituted by a tenant in respect of any land owned by (in this case) temple and pending, shall, in so far as the proceedings relates to any matter falling with the scope of the Principal Act, as amended, shall abate and all rights accrued on the tenant shall cease and determine and shall not be enforceable.

41.According to the appellants, the sale deed was not executed and hence the proceedings between the parties shall be construed as pending in view of the judgment of the Hon'ble Supreme Court in **S.BAGIRATHI AMMAL VS. PALANI ROMAN CATHOLIC MISSION [2007 (5) CTC 881]**. It can be presumed to be pending till either of the parties are fighting or resisting for their entitlement. Particularly, the claim of the tenant is yet to be granted or that the grant of benefit is still resisted by the landlord on the date of enactment. In the instant case, admittedly, the judicial proceedings were conclusively decided by the Hon'ble Supreme Court. To be more specific, it came to an end when the compromise decree was recorded before the Trial Court on 08.06.1995 and the money was withdrawn on 09.08.1995 by the appellant/ temple. The case relied on by the appellant is entirely different from the facts and circumstances of the present appeal under consideration. But, in the judgment cited, the religious institution was contesting the case with regard to its status as religious institution and the proceeding was pending before the Court. The institution opposed the execution of the sale deed before the trial / execution court and the sale deed was executed on 28.10.1996. But, in the instant case, they grant of benefits were confirmed by the Hon'ble Supreme Court on 24.10.1994 and the trial court was directed to work out the extent to be allotted to landlord and refund of excess amount payable to the tenant. Thus, the proceeding relating to the matter falling within the scope of the Principal Act had concluded. Even assuming it construed as to possession of respective portions of land to the parties and payment of decree amount is concerned, it was settled between the parties and a compromise memo was executed and recorded before Court as on 08.06.1995 before the Act 2 of 1996 came into force on 11.01.1996. Hence, the proceedings at any stretch of imagination cannot be said to be pending with regard to any matter falling under the Principal Act. The compromise decree gives



a quietus to the legal battle between the landlord and tenant.

42. In terms of the compromise, the tenant not only given up the refund of excess amount due to him but also paid an amount of Rs.2,00,000/- as agreed by him to settle the issue. It is also imperative to note that in terms of the compromise, the present appellant / Trustee of the first appellant temple had withdrawn a sum of Rs.1,12,264 /- from the Court deposit with accrued interest on 09.08.1995 which means the compromise decree was acted upon. It is also relevant to note that the cause of action for the suit in O.S.No.48 of 2003 was the compromise decree and the said compromise decree was marked as Ex.B5. Therefore, the compromise decree signifies the conclusion of the proceedings between parties and admittedly, it was acted upon. In that view of the matter, the proceedings are concluded.

43. Now, it is only remains to find out as to whether proviso to Section 3 of Act 2 of 1996 has been satisfied. The proviso reads as under:

"Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date".

44. The proviso speaks about two situations one is the execution of the decree and the second is the satisfaction of the decree in full before 11.01.1996. It is beneficial to note the introduction of Order XXIII Rule 3 CPC in this aspect, which reads as under:

"Order XXIII Rule 3 CPC

3. Compromise of suit

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise ¹[in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall **order** such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith ²[so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

³[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall



decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

45. As noted earlier, the compromise decree in compliance with the Hon'ble Supreme Court order, put respective parties in their respective portions with linear measurements. Possession of respective parties can be evidenced from the averment in O.S.No.48 of 2003 and O.S.No.150 of 2005 and the schedule. In fact, the competent court in the counter claim made by the defendant in O.S.No.48 of 2003 granted relief of injunction to defined portions of land in possession of parties as per compromise decree. Therefore, the issue of putting the parties to the respective portions of land stood satisfied on 08.06.1995. In so far as payment of sale amount as decreed by the trial Court is concerned, the amount was deposited much earlier than the Supreme Court order dated 24.10.1994. The Hon'ble Supreme Court directed refund of excess amount with 15% interest to the defendant. It is also important to note that the second appellant herein withdrawn the amount on behalf of the first appellant as its Trustee on 09.08.1995. Thus, deposit of money and its receipt as admitted by the parties, particularly by the second appellant in his oral evidence satisfied the decree. Hence, it can be inferred that the decree in respect of the landlord stood fully satisfied when he was put in possession of the land retained by him on 16.02.1995 and when he withdrew the money from Court deposit as on 09.08.1995 itself i.e., before the Act 2 of 1996 came into force on 11.01.1996.

46. In the judgment in **KUSHESHWAR PRASAD SINGH VS. STATE OF BIHAR AND OTHERS [APPEAL (CIVIL) NO.7351 OF 2000 DECIDED ON 19.03.2007]** the Hon'ble Supreme Court held thus:

".....The appellant is right in contending that final statement ought to have been issued immediately or in any case within 'reasonable time'. The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final statement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well-founded. The appellant is also right in contending before this Court that the power under Section 32B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the



Act and insertion of Section 32B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of its own default in failure to act in accordance with law and initiate fresh proceedings.

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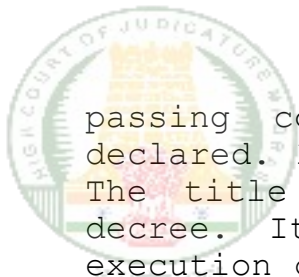
In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mrutunjay Pani & Another v. Narmada Bala Sasmal & Another*, AIR 1961 SC 1353, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*' (No party can take undue advantage of his own wrong).

In *Union of India & Ors. v. Major General Madan Lal Yadav (Retd.)*, (1996) 4 SCC 127, the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court referred to *Broom's Legal Maxims* (10th Edn.) p. 191 wherein it was stated;

"it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure".

It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong".

<https://hcservices.ecourts.gov.in/hcservices/> 47. In so far as the defendant is concerned, on the date of



passing compromise decree, his entitlement to the land stood declared. He was entrusted with possession with defined boundaries. The title in its literal sense was conveyed by the compromise decree. It only remained to evidence the proper conveyance by execution of sale deed. The defendant paid all charges towards stamp duty, registration charges and expenses for execution of sale deed on 03.01.1996. The sale deed was executed on 11.01.1996. Thus, the decree was satisfied in so far as the defendant is concerned. Registration of a sale deed in the facts and circumstances of the case is concerned is only a ministerial act and it will not affect the satisfaction of the decree. Therefore, the judgment of S.BAGIRATHI Ammal's case (cited supra) which deals with execution will not apply to the facts and circumstances of this case.

POINT NO.1

48.Whether the Suit is maintainable or not or barred by law ?

(1) Bar of Suit

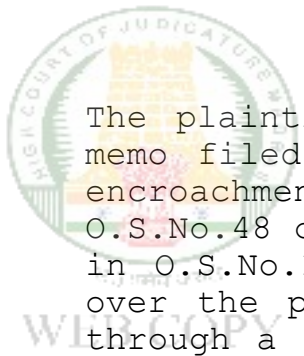
(a) SARFAESI Act

One of the prayer in the Suit is for recovery of possession. Admittedly, the land was handed over to the defendant as early as 08.06.1995 and he has been in enjoyment and possession of the same as its title holder. This land was mortgaged in favour of the second respondent by way of a registered mortgage deed for securing loan. The property was declared as a Non-Performing Asset and recovery action was initiated by the second respondent, and possession was taken as per the provisions of SARFAESI Act. The property was brought to auction and at that stage, the relief of recovery of possession draws importance. It is well settled that in view of Section 34 of SARFAESI Act, Suit is barred in respect of recovery action taken under the SARFAESI Act by the bank. The Hon'ble Supreme Court in has held as under:

As per the dictum of the Hon'ble Supreme Court, the Suit is not maintainable before the Civil Court.

b) ORDER II RULE 2 CPC:-

49.It is admitted fact that a previous Suit for injunction was laid in O.S.No.48 of 2003 by one of the representatives of the community owning the temple on behalf of the temple to protect its possession with definite boundaries. The Suit was dismissed for default and no action was taken to restore the same. The cause of action for the Suit was based on the compromise decree passed on 08.06.1995. Curiously, there was a counter claim by the defendant with respect to the land sold to him with definite boundaries. Injunction was granted in favour of the defendant. After that the present second plaintiff filed a Suit in O.S.No.150 of 2005 for declaration of the Suit property as Trust property, permanent injunction for removal of encroached portion in the Suit property.



The plaintiff claimed the property allotted to them in compromise memo filed in E.P.No.142 of 1995 in C.T.O.P.No.2 of 1981 and the encroachment over the same. The filing of injunction Suit in O.S.No.48 of 2003 on behalf of the temple was also pleaded in plaint in O.S.No.150 of 2005. While the Suit for removal of encroachment over the property allotted in C.T.O.P.No.2 of 1981 and possession through a compromise decree was pending in O.S.No.150 of 2005, the present Suit has been filed. The present Suit is barred for two reasons. As per Rule 2 of Order II CPC, every Suit shall include the whole of the claim. As per sub-rule (2) where a plaintiff omits to sue in respect of any portion of his claim, he shall not afterwards sue in respect of the portion so entitled or relinquished and the previous Suit was withdrawn unconditionally without any leave to sue for the relinquished right.

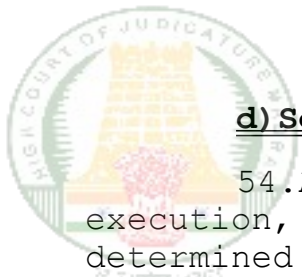
50. In the instant case, two Suits were filed viz., O.S.No.48 of 2003 and O.S.No.150 of 2005 before filing the present Suit. In both the Suits, the prayer to declare the sale deed as a nullity was not made. But, on the other hand, the cause of action was based on the compromised settlement that had taken place in E.P.No.142 of 195 in C.T.O.P.No.2 of 1981. Hence, after having acquiesced with the compromise and sale deed for over ten years, the same person, in the capacity of Trustee cannot file a Suit for the relinquished prayer. Thus, the Suit is hit by Order II Rule 2 CPC.

c) Order XXIII Rule 3 CPC:-

51. Where by a lawful agreement, the Suit has been wholly adjusted through a written agreement, wherein the defendant satisfies the plaintiff in respect of the subject matter of the Suit either wholly or in part, such satisfaction shall be recorded and a decree shall be passed. Explanation to the section specifies that any compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful.

52. In the instant case, the parties are competent to enter into a compromise and at that point of time, it was legal, neither void nor voidable and hence, it was recorded by the Court and a compromise decree was passed. In fact, the said compromise was the cause of action for filing the Suits in O.S.No.48 of 2003 and O.S.No.150 of 2005. Hence, it is no doubt that it was legal as admitted by the conduct of both parties. At any stretch of imagination, it cannot be held void. If it is considered as voidable, it has to pass the test of judicial scrutiny. In that event, against a compromise decree, there cannot be any further proceeding be it a Suit or an appeal.

53. Rule 3A expressly bars the Suit to set aside a compromise which is very much lawful. But the plaintiffs indirectly and impliedly seek for a relief to set the compromise decree at naught by clever drafting. The present Suit is clearly barred under Order XXIII Rule 3A CPC.



d) Section 47 CPC:-

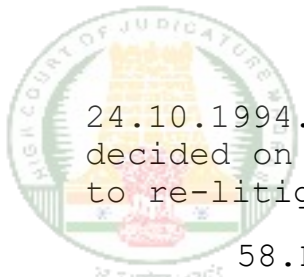
54. All questions arising between the parties relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate Suit. Explanation II to the above provision defines (a) a purchaser of the property at a sale in execution of a decree shall be deemed to be a party to the Suit, in which the decree is passed and (b) all questions relating to delivery of possession shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree.

55. In the instant case, the Hon'ble Supreme Court confirmed the decree of sale in favour of the defendant on 24.10.1994. In terms of the order, parties to the Suit entered into a compromise on 16.02.1995. The said compromise was recorded by the Court on 08.06.1995. A compromise decree was also passed in terms of compromised settlement. The subject matter of the Suit was wholly adjusted to the satisfaction of the parties. The defendant had fully satisfied the plaintiff and it is evidenced by the schedule to the compromise and the Suit schedules in O.S.No.48 of 2003 and O.S.No.150 of 2005. Pursuant to the compromise, the plaintiff had withdrawn the sale price from Court deposit with accrued interest. When the amount was deposited by the defendant, the respective portions with linear measurements and definite boundaries were taken possession by respective parties and the satisfaction to the decree had already been recorded, there cannot be any separate Suit questioning the execution, discharge or satisfaction of a decree. There is a specific bar to the same under Section 47 CPC.

56. The present Suit questioning the execution of sale deed pursuant to the decree that too a compromise decree and the satisfaction of a decree is clearly barred by law.

e) Res-judicata:-

57. The predominant arguments of the learned counsel for the appellants is based on non-extension of the MCTP Act to Srivilliputtur. The sale of temple properties without consent of the Commissioner of HR & CE under Section 34 of HR & CE Act is void ab-initio are concerned, it was the subject matter of the original proceedings in O.S.No.572 of 1980 and O.P.No.2 of 1981. The issues which were available to be raised, but not raised amounts to constructive res-judicata between the same parties. Any order passed by the Hon'ble Supreme Court even if it is badly worded, the judgment of the Hon'ble Supreme Court in **STATE OF GUJARAJ AND ANOTHER VS. JUSTICE R.A.MEHTA (RETIRED) AND OTHERS [2013 (3) SCC 1]** is binding on the parties and it cannot be questioned by any of the parties before any Court other than the Highest Court which passed the order. As discussed elsewhere in the order, the plaintiff can question the same only before the Hon'ble Supreme Court which gave it a final order of approval by its order in SLP No.21884 of 1993 dated



24.10.1994. Raising the very same issue which was conclusively decided on merits between the same parties by repeated suits amounts to re-litigation and is barred by principles of *res-judicata*.

58. Further, with respect to the same issue two Suits in O.S.No.48 of 2003 and O.S.No.150 of 2005 were already filed. In so far as O.S.No.48 of 2003 is concerned, it was left to be dismissed for default. But in the very same Suit, a counter claim was filed and it was decreed. The decree and judgment in O.S.No.48 of 2003 will operate as *res-judicata* as a fresh Suit is barred under Order IX Rule 9 CPC.

59. In so far as O.S.No.150 of 2005 is concerned, during its pendency, the very same Trustee Murugesan as second plaintiff filed the present Suit in O.S.No.111 of 2006 without getting leave of the Court. Further, O.S.No.150 of 2005 was withdrawn unconditionally on the pretext that the second plaintiff Murugesan has become old. Since leave not obtained from the Court to file a fresh Suit, the present Suit is barred by *res-judicata*.

SUPPRESSION OF FACTS:-

60. In the judgment in ***S.J.S.BUSINESS ENTERPRISES (P) LTD., VS. STATE OF BIHAR AND OTHERS [2004 (7) SCC 166]*** the Hon'ble Supreme Court has held thus:

"13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken. Thus when the liability to Income Tax was questioned by an applicant on the ground of her non- residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact the suppression of which dis entitled her from the relief claimed. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court.



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Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order."

61. The filing of the present Suit is based on a three specific grounds. One jurisdiction of District Munsif Court, Srivilliputtur to try a Suit under MCTP Act, when it was not validly extended. The impact of Section 34 of HR & CE Act and Amendment to MCTP Act by Act 2 of 1996. But nowhere in the plaint it is averred that the parties have reached a compromise settlement and a compromise decree was passed recording satisfaction of the decree. The filing of O.S.No.48 of 2003 filed on behalf of the temple taking cause of action from the compromise and properties identified with linear measurements and definite boundaries to the satisfaction of the plaintiff were all suppressed. Further, filing of O.S.No.150 of 2005 on the same subject matter, and on the same cause of action was also suppressed. Apart from that pendency of O.S.No.150 of 2005 at the time of filing the present Suit in O.S.No.111 of 2006 has also been suppressed. The material suppression made by the plaintiff will disentail him from maintaining the present Suit. The plaintiff has approached this Court with unclean hands and attempts to re-litigate the issue settled by the Hon'ble Supreme Court. Therefore, the present Suit is bad for suppression of facts and it is a clear abuse of process of law. As held by the Hon'ble Supreme Court in **T.ARIVANANDAM VS. SATYAPAL [AIR 1977 SC 2421]** it shall be nipped at the bud. The relevant portion of the said judgment is extracted hereunder:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge



is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

LIMITATION:-

62. In **MD. NOORUL HODA VS. BIBI RAIFUNNISA AND OTHERS [1996 (7) SCC 767]** the Hon'ble Supreme Court held thus:

"6. The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground, it is true that Art. 59 would be applicable if a person affected is a party to a decree or instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or



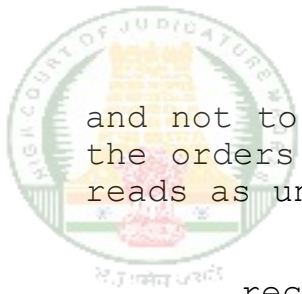
contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him. "

63.The relief sought for by the plaintiff is based on Section 31 of the Specific Relief Act, 1963, which reads as follows: -

"31.When cancellation may be ordered.-(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled."

64.The relevant article under Limitation Act to cancel or set aside an instrument is Article 59, which specifies three years period from the date the instrument first become known to him. It is obvious that litigation was going on from 1980 and the parties entered into compromise on 16.02.1995 and it was recorded by the court on 08.06.1995. The second plaintiff in the capacity of the Trustee of the first plaintiff withdrew the sale amount from Court deposit on 09.11.1995. Thus, latest by 09.11.1995, the compromise decree came to the knowledge of the plaintiffs. Even then the sale deed was executed on 11.01.1996 and registered on 18.01.1996. From the year 1996, three years period lapses on 18.01.1999. Therefore, the Suit should have been filed before 1999. But the present Suit was filed on 2006 which is after a lapse of 10 years. There is no explanation by the plaintiff that they are exempted from the period of limitation. Hence, the Suit is hopelessly barred by limitation.

65.Even assuming that Section 109 of HR & CE Act is applicable to plaintiff's temple, the mandate is applicable only with respect to possession of immovable properties belonging to it



and not to test the validity of the instrument executed pursuant to the orders of the Hon'ble Supreme Court. Section 109 of HR & CE Act reads as under:

"109. Central Act 36 of 1963 not to apply for recovery of properties of religious institution.— Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property."

Therefore, the plaintiff cannot get the benefit of Section 109 of HR & CE Act, without getting the relief of declaration, which is hit by law of limitation as recovery of possession is only a consequential relief.

66.A contention was raised by the appellant that the judgment of the Hon'ble Supreme Court was re-written. The direction of the Hon'ble Supreme Court was to refund the money with 15% interest, but in the execution petition the respondent allegedly paid Rs.2,00,000/- and the Ex-MLA changed the area allotted by the High Court and approved by Supreme Court, thus the judgment of the Supreme Court was re-written. Hence the execution proceedings is fraud on Court and got abated and ceased to exist in view of Act 2 of 1996. At the outset, the compromised settlement between the parties had taken place before the introduction of Act 2 of 1996 and hence, it has nothing to do with the consequences of the Act. Secondly, the appellant Trustees of the temple were the parties to the compromise. It is binding on the temple and the Trustees. Till date, though serious doubt on the integrity of the then Trustees was raised, the compromise decree was not challenged. But curiously it was acted upon and Suits were filed taking cause of action or right over the land on the terms of compromise decree. Further, when the parties mutually agree for the purpose of enjoying the property conveniently, they are at liberty to negotiate between themselves and adjust, give up and satisfy themselves with part or whole of their claim with regard to the subject matter of the Suit. In a negotiated settlement, they can rope in the other differences in respect of disputes between them not only with respect to the *lis*, but also its execution, discharge and satisfaction and even outside the scope of the Suit. Section 89 CPC introduced such mechanism of dispute resolution to settle all the disputes and differences between the parties to achieve harmony, quietus to litigation and to maintain future relationship. Therefore, it cannot be said that the decree was re-written and that it shall be applied rigidly. The approach of the parties as well as Courts shall be more of pragmatic and meaningful rather than being unrealistic, rigid and non-pragmatic. But in the instant case, the parties have not deviated from the subject matter of the Suit, but an additional amount was paid towards the satisfaction of the decree and worked out the



convenient enjoyment and possession of the subject matter of the Suit. Therefore, as long as the decree is satisfied in so far as the plaintiff is concerned and that he was not deprived of any entitlement as ordered by the Courts, he cannot complain that the direction of the Hon'ble Supreme Court was re-written. The plaintiff had agreed to the compromised settlement, acted upon it and fully satisfied with the decree. As long as the compromise decree remains intact and remain in force, the party to such compromise cannot revolt against it. Hence, this argument of the appellant is of no avail.

67. In fine, the judgment and decree passed in O.S.No.111 of 2006 dated 10.01.2020 by the learned Additional District Judge, Srivilliputtur stands confirmed and the Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

TK

To

The Additional District Judge
Srivilliputtur.

Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-39926[F] dated 22/12/2021)

+2 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-39739[F] dated 21/12/2021)

AS (MD) NO.71 OF 2020
21 / 12 / 2021

KM(CO)

KB(17.05.2022) 53P 7C