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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.04.2022

PRONOUNCING ORDERS ON : 18.04.2022

CORAM:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

SECOND APPEAL NOS.47/2013 AND 294/2016

S.A.No.47/2013:-

1. S.K.KRISHNAN (DECEASED)
S/O. KUPPUSAMY NAICKER AT NO.9
PILLAR KOIL, 3RD STRET, EKKATTUTHANGAL
MADRAS-97.
2. K.SAROJA
3. K.RAVI VERMA
4. K.PARTHIBAN
5. K.VINAYAGAM
6. S.JOTHILAKSHMI
W/O.SHANMUGASUNDARAM NO.2-B
BALASUBRAMANIAN STREET, PRITHIVAKKAM,
AMBATTUR, CHENNAI-97.

APLTS 2 TO 6 BROUGHT ON RECORD
AS LRS OF THE DECEASED SOLE APLT.
VIDE ORDER OF COURT DATED 11/01/2018
MADE IN CMP.NO.22314 TO 22316/2017
IN SA.NO.47/2013 (DKKJ)

... Appellants

Vs

1. AMBAL TRADERS
BY PARTNER M.ARUMUGAM
2. E.ACUTHA REDDY (DECEASED)
S/O ELLIAH REDDIAR
3. VIJAYALAKSHMI (died)
W/O M.KRISHNAMOORTHY ATNO.



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4. KRISHNAVENI
5. MENAKA
6. D. SHANTHI
7. D. SRIDHAR
8. T. NATESAN
9. T. RAJENDARAN
10. MRS. K. PUSHPA
11. K. THANGAMANI
12. K. VENKATESAN
13. MRS. BHAVANI
14. MRS. RANI
15. MRS. MANIMALA
16. MRS. KAVITHA
17. V. PACHAYAPPAN
18. V. ELUMALAI
19. V. KUMARAN
20. V. ANBU SELVI
21. K. MAHALAKSHMI
22. A. DHANALAKSHMI
23. A. J. GOPAL
24. A. JAYARAMAN (died)
25. A. LOGANATHAN
26. A. MAHESWARI
27. SUSEELA JAYARAMAN
28. DHARMESH KUMAR



29. HARINI A.J.

30. HARSHINI A J

31. UMA G

32. VEERA RAGHAVAN K

33. REVATHI M

34. S.KALAVATHI

35. S.NIRMALA

36. K.MAGESH

R2 Died

RR 21 TO 26 BROUGHT ON RECORD AS LRS OF THE
DECEASED R2 VIZ. E.ACHUTHA REDDY VIDE ORDER
OF COURT DATED 14/03/2019 MADE IN
CMP.NO.4506 TO 4508/2018

R24 died

RR 27 to 30 brought on record as LRS of the deceased
R24 viz., A.Jayaraman vide order of this Court dated
04.01.2022 made in CMP.No.9545 of 2021

R32 died

RR31 to 36 brought on record as LRS of the deceased
R3 viz., M.VijayaLakshmi vide order of this Court
dated 04.01.2022 made in CMP.No.16497 of 2021

... Respondents

Prayer in S.A.No.47/2013: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Additional District & Sessions Judge, Fast Track Court No.IV, Chennai-I confirmed in A.S.No.256 of 2008 dated 22.03.2012 and Judgement and Decree of XIV Assistant City Civil Court, Chennai - 104 in O.S.No.8909 of 1979 dated 10.12.2007.

S.A.No.294/2016:-

1. T.NATESAN

T.Kannan (died)

T.Elumalai (died)



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2. T.RAJENDRAN
3. MRS.K.PUSHPA
4. K.THANGAMANI
5. K.VENKATESH
6. MRS.BHAVANI
7. MRS.RANI
8. MRS.MANIMALA
9. MRS.KAVITHA

... Appellants

Vs

ELLIAH REDDIAR (DIED)

1. AMBAL TRADERS BY PARTNER M.ARUMUGAM

CHAKRAPANI (DIED)

2. E.ACHUTHA REDDY (DECEASED)

E.DAMODARA REDDY (DIED)

3. VIJAYALAKSHMI (DIED)

4. KRISHNAVENI

5. MENAKA

GOVINDAMMAL (DIED)

6. D.SHANTHI

7. D.SRIDHAR

M.VARADAN (DECEASED)

8. S.K.KRISHNAN - DIED

9. V.PACHAIYAPPAN

10. V.ELUMALAI



11. V.VIJAYAKUMAR
12. V.ANBUSELVI
13. K.MAHALAKSHMI
14. A.DHANALAKSHMI
15. A.J.GOPAL
16. A.JAYARAMAN (DIED)
17. A.LOGANATHAN
18. A.MAHESWARI
19. K.SAROJA
20. K.RAVI
21. K.PARTHIBAN
22. K.VINAYAKAM
23. JOTHILAKSHMI
24. SUSHILA JAYARAMAN
25. A.J.DARMESH KUMAR
26. A.J.HARINI
27. A.J.HARSHINI
28. S.NIRMALA
29. G.UMA
30. REVATHI MOHAN
31. S.KALAVATHY
32. K.VEERARAGHAVAN
33. K.MAGESH

..Respondents

*R2 died

RR 13 to 18 brought on record as Lrs of the deceased R2 vide Court order dt.14.3.2016 made in MP.1/2015 in SA SR 65107/2012



*R8 died

RR19 to 23 brought on record as Lrs of the deceased R8 vide Court order dt.23/06/2021 made in CMPs 8406,8407& 8409/2021 in SA 294/2016 CSNJ.

*R16 died

RR24 to 27 brought on record as Lrs of the deceased R16 viz., Jayaraman R3 died vide Court order dt.4/1/2022 made in CMP.9546 and 17370/2021 in SA.294/2016.

*R3 died

RR28 to 33 brought on record as Lrs of the deceased R3 viz. Vijayalakshmi vide Court order dated 4/1/2022 made in CMP.9546 and 17370/2021 in SA.294/2016 (MGRJ).

Prayer in S.A.No.294/2016 : Second Appeal filed Under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree in O.S.No.8909 of 1979 on the file of XIV Asst.City Civil Court, Chennai dated 10.12.2007 and confirmed in A.S.No.256 of 2008 and 274 of 2008 on the file of Additional District Sessions Judge & Fast Track Court IV, Chennai dated 22.3.2012 to allow the Second Appeal.

For Appellants

In S.A.No.47/2013 : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.M.Thangadurai

In S.A.No.294/2016 : Mr.P.Seshadri

For Respondents

in S.A.No.47/2013 : Mr.A.L.Somayaji
Senior Counsel
for M/s.M.R.Radhakrishnan for R1

M/s.P.Subba Reddy
for R4 and R5

Mr.M.V.Venkataseshan
for R 17 to R20

Mr.M.Vaidhyanathan
for R6,7,21,22,23,25 to 30



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in S.A.No.294/2016 : Mr.A.L.Somayaji
Senior Counsel
for M/s.M.R.Radhakrishnan for R1

M/s.P.Subba Reddy
for R4 to R6

Mr.M.Vaidhyanathan
for R6,7,13,14,15,17,18,
24,25,26,27

COMMON JUDGMENT

The 2nd defendant was the appellant in S.A No. 47 of 2013. After his demise, his legal representatives have been brought on record as appellants 2 to 6. The 3rd defendant and the legal representatives of the 4th and 5th defendants are the appellants in S.A.No. 294 of 2016. Both the Second Appeals challenges the judgement and decree passed in AS No. 256 of 2008 and AS No. 274 of 2008 by the Additional District and Sessions Judge (FTC No. IV), Chennai, dated 22-3-2012, confirming, the judgement and decree passed in OS No.8909 of 1979 by the XIV Assistant City Civil judge at Chennai, dated 10-12-2007.

2.This case has a chequered history. However, the entire facts/dispute among the parties was dealt with elaborately by this Court in the earlier round in SA.No.1661 of 1989 and other connected Second Appeals, by judgement dated 24-12-1999. This Court remanded the matter back to the file of the trial Court by giving some indications regarding the scope of remand in the judgement itself. Hence, there will be no requirement for this Court to once again deal with the facts of the case elaborately and it will suffice to test the judgement and decree rendered by both the Courts below and see if it comes within the scope of remand and ensure that the findings of both the Courts below do not suffer from any perversity.

3.Instead of narrating the facts of the case all over again, it will be more beneficial to extract from the earlier judgement the narration of facts and the manner in which the matter came up before this Court in the earlier round of Second Appeals:

a. Let us take up S.A. No. 757/90, It arises out of O.S.No. 8119/79. It is for permanent injunction restraining the defendants Chinnaraju Reddiar and Ambal Traders from interfering with the plaintiff's possession and enjoyment of the suit property in S.No. 88 at ¹ Ekkaduthangal, Madras more fully set



out in the schedule to the plaint. However, the plaint was subsequently amended by adding a prayer for a declaration that the plaintiffs were the absolute owners of the said, land. The averments as set out in the plaint are as under :

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b. The suit property originally belonged to one Pachaiyappa Naicker who sold the same to his wife Poongavanam Ammal by a registered sale deed dated 31-9-1930. After the death of Poongavanam Ammal her daughters, the plaintiffs in the suit as her only legal representatives surviving, inherited the property. Originally pachalappa Naicker and subsequent to him, his wife Poongavanam Ammal and after her death, the plaintiffs were in absolute possession and enjoyment of the property. Patta also stood in the name of the first plaintiff. The suit property was part of a larger extent of 2 acres 58 cents in S. No. 88. The first defendant had entered into an agreement with he second defendant to lay out and sell the land on 27-3-1975 and was making attempts to dispossess the plaintiffs and dispose of the suit property to third parties and put them in possession. The plaintiffs prevented the same. On 10-10-1979 the second defendant made an attempt to commit trespass and lay out the land by putting up boundary stones dividing the lands into several plots. The Plaintiffs remonstrated and prevented the same. Since the defendants had money and muscle at their command and might at anytime dispossess the plaintiffs by taking law into their own hands, the suit was necessitated.

c. The suit was resisted by the defendants by filing a written statement and an additional written statement. The substance of the defence of the defendants is as follows:

The plaintiffs had neither title nor possession. The value of the suit property even according to the Urban Land Tax Authorities was Rs. 4,000/- per ground even In 1971 and therefore the City Civil Court had no pecuniary jurisdiction to entertain the suit. The first defendant was the absolute owner of the property. His father Kannaih Reddiar purchased the property among other items of properties in Court auction in 1926. Ever since he was in possession and enjoyment and after the first defendant had been in absolute possession and enjoyment. The plaintiffs, their mother or father were never in possession after 1926. After 1926 Pachalyappa Naicker had no further interest in the suit property and the alleged sale deed dated 31-9-1930 by Pachalyappa Naicker in favour of Poongavanam Ammal was sham and nominal. In any event, it was invalid and not binding on the



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defendants. The suit property had been in the absolute possession and enjoyment of the first defendants father and first defendant from 1926 and in any event, the first defendant had prescribed for title by adverse possession. Pursuant to the agreement dated 27.3.1975 by. the first defendant in favour of the second defendant, the latter had i sold portions of the property to various third parties. All those third parties had constructed pucca buildings and had obtained electricity connections the Tamil Nadu Electricity Board. The patta for the suit property was in favour of the first defendant and he had been paying the urban land tax. The trespass alleged was not true. There was no cause of action for the suit. The schedule and boundaries given for the suit property were false, wrong and imaginary.

d. On the above pleadings the learned XV Assistant City Civil Judge framed the following issues:

(1) Whether by virtue of the purchase by the first defendant's father the first defendant had become the owner of the property?

(2) Whether the sale deed dated 31.1.1930 in favour of the mother of the plaintiffs was fraudulently brought about?

(3) Whether the plaintiffs were entitled to permanent injunction?

(4) Whether the plaintiffs were entitled to any other relief?

e. Natesan, son of the second plaintiff, was examined as P.W.I and one Dhanapal Naicker, a nephew of Pachaiyappa Naicker, was examined as P.W. 2. Exs. A-1 to A-9 were marked on the side of the plaintiffs. The first defendant was examined as D.W.1 and the partner of the second defendant was examined as P.W.2. Exs. B-1 to B-25 were marked on the side of the defendants.

f. On the basis of the oral and documentary evidence the learned XV Assistant City Civil Judge found that the plaintiffs had not established their case of title and possession, that the sale deed in favour of the mother of the plaintiffs was a fraudulently brought about document, that it had come into existence after the sale of the suit property in execution of the decree in [O.S.No. 627/23](#) on the file of the



District Munsif's Court, Chingleput, and that the first defendant had become the owner of the property by virtue of the purchase by the father in court auction. So holding, by his judgement and decree dated 9.9.1987 the learned judge dismissed the suit with, costs.

g. The plaintiffs filed appeal in A.S. No. 383/88 before the VI Additional City Civil Judge, Madras, who by his judgement and decree dated 13.4.1989 confirmed the decision of the trial Court and dismissed the appeal. Aggrieved, the present Second Appeal has been filed. Pending the Second Appeal, the first appellant who was the first plaintiff in the suit O.S. No.8119/79 died and the second appellant who was the second plaintiff in the said suit, was recorded as legal representative pursuant to the order dated 9.1.1996 in [C.M.P.No. 9300/93](#).

h. Let us not notice the facts leading to the other three second appeals.

i. They all arise out of O.S. No.8909/79 that suit was filed by three persons Elliah Rediar, Ambal Traders by its partner Arumugham and one Chakrapani against six defendants M. Varadhan, S.K.Krishnan, T. Natesan, T. Kannan, T. Elumalai and T. Rajendran. The original prayer was for injunction. However, the prayer for declaration was also added pursuant to the order in the amendment application [I.A.No. 20800/80](#). The averments as disclosed by the amended plaint are as under:

The first plaintiff, Elliah Reddiar was the absolute owner of an extent of 1 acre 87 cents in S.No. 76, [T.S.No. 87](#) and Block No. 1 in Ekkaduthangal Village, Mambalam - Saldapet Taluk, Madras-87, the property being his ancestral property, Elliah Reddjar and his predecessors had been in possession and enjoyment for many decades. Elliah Reddiar had entered into an agreement for sale with the second plaintiff Ambal Traders on 27.3.1975 agreeing to sell all the said land to Ambal Traders or its nominees. As per the terms of the agreement Elllah Reddiar agreed to allow Ambal Traders to plot out the said land and obtain lay out and sell the same to any intending buyers. He also agreed to receive the sale consideration for each of the plots either from Ambal Traders or from Its nominees. On the same day Elliah Reddiar had also delivered possession of the land to Ambal Traders. Ambal Traders plotted out the came and entered into lease-cum-sale agreement with third parties. One such third party was Chakrapani, the third plaintiff in the suit being the allottee of Plot No. 40, He had agreed



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to purchase the said plot for Rs. 6,165 under a lease-cum-sale agreement dated 5.11.1975. The plaintiffs were in lawful possession and enjoyment of the suit plot among other items In T.S.No. 87.Chakrapanl had also put up construction in the sald plot and completed the same in August, 1979. The suit property and other properties belonging.to Ellian Reddiar were originally a leasehold inam, which was abolished under the Leaehold. Inam Abolition Act (Act 27 of 1963) and Elliah Reddiar was granted patta for the said land among other items of lands by the Assistant Settlement Officer, Chingleput, In 1968 in S. No. 76 of an extent of 1.87 acres in which the suit property was a part. S.No. 76 was correlated to T.S. No. 87 in the Survey and Settlement proceedings by the Settlement Authorities. Eliah Reddiar had been assessed for payment of Urban Land tax under the Urban Land Tax Act. The defendants had no manner of right, title or interest and they had no justification to interfere with the peaceful possession and enjoyment of the plaintiffs. From September, 1979 the defendants had been attempting to interfere with the plaintiffs possession and enjoyment and the plaintiffs had been resisting the same. They had also filed complaints before police and the complaints had no effect. The defendants had illegally caused considerable damage to the building and the well of the third plaintiff Chakrapani twice and he had lost to the tune of Rs. 4,500/-. The plaintiffs would be suing separately for damages. The suit therefore came to be filed for the reliefs already mentioned.

j. Defendants 1 and 2 made common cause initially and filed a written statement denying the averments in the plaint. The various proceedings referred to in the plaint did not relate to the suit property at all. The receipts for payment of Urban Land Tax were dated September, 1979 and had been obtained for the purpose of suit filed in November, 1979. The receipt dated 6.9.1979 preceded the demand notice dated 18.9.1979. The Interlineations and additions therein were tell-tale, the documents were not genuine documents and did not correlate with S.No.76 for which patta had been granted as alleged for the present T.S.No. 87 of the suit property. The extents differed and no boundaries were given in the plaint to identify the suit property T.S.No.87. The suit property was quite different from the property to which the document filed related. The suit property had not beer identified. The agreements between Elliah Reddiar and Ambal Traders or Chakrapani were spurious documents brought into existence for the purpose of the suit. No lay out



can be laid or plan made or building put up without the sanction of the planning Authorities concerned and no such sanction had been mentioned or given and no document granting sanction for the lay out and building had been filed with the plan. No building as alleged had been put up. Chakrapani was not living in the suit property. Defendants, who were the owners of the suit property, had been in possession and enjoyment for a very long time and had put up a building about 15 feet X 10 feet with thatched roof even before the coming into force of the Leasehold Inam Abolition Act, 1963. The roof had been damaged by rain and cyclone and defendants 1 and 2 were intending to reroof the building either with thatch or other cheaper low cost material. The thatched, building had been used by the defendants during punja cultivation operations for storing hay and tethering cattle. Except this thatched building in the enjoyment of defendants 1 and 2, there were no other habitable building at all in the area. The said site along with the surrounding area comprised in paimash No.44 originally belonged to the grandfather of defendants 1 and 2, one Pachaiyappa Naicker. In a Court auction sale in O.S.No. 627/23 certain portions of this paimash no. were purchased by one Kanniah Reddiar, the father of Elliah Reddiar, the first plaintiff, The rest of the portions remained in the possession and enjoyment of Pachaiyappa Naicker himself. Out of this, Pachaiyappa Naicker sold 83 cents to Poongavanam Ammal, grandmother of these defendants. who were her heirs along with the other defendants. The suit property, which was a part of the 83 cents sold to Poongavanam Ammal, was in the possession and enjoyment of defendants 1 and 2. There was therefore no question of any trespass into the suit land as alleged. There were no police complaints made. There was no question of any damage alleged to have been caused to the plaintiffs.

k. An additional written statement was filed by the first defendant Varadhan besides reiterating what had been stated in the original written statement, the additional written statement went on to say further as follows:

Pachaiyappa Naicker had three wives, namely Ellammal. Chinnakolandai and Poongavanam. Through Ellammal he had three sons Thoppiah Naicker, Venkatesa Naicker and Muniswamy naicker and a daughter Muthammal. First defendant Varadhan is a son of the. third son Munuswamy. Chinnakolandai Ammal, the second wife of Pachaiyappa Naicker had two daughters Mangathammal and Muniammal. Mangathammal had no issue. Defendants 3 to 6 were the sons of Varadhammal. Poongavanam died in 1941 without any issua. The first defendant was the only reversioner entitled to the property of Poongavanam.



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The suit property formed part of the property which belonged to Poongavanam and therefore the plaintiffs and defendants 2 to 6 could not claim any right in the suit property. The second defendant Krishnan was not a reversioner to Poongavanam and he would not be entitled to any rights in the property. Only this defendant was the owner of 83 cents in paimash No. 44 of which the suit property was a plot. Amba Traders, the second plaintiff was not a registered partnership firm and therefore the suit filed by it was not maintainable. That the entire property of 1.87 acres was in S.No. 76 was in dispute. The present suit confining itself to declaration with regard to plot No. 40 was not maintainable.

1. Defendants 3 to 6 filed a common written statement stating as follows:

The suit property belonged to Poongavanam. Defendants 3 to 6 being children of the second daughter Varadhammal and the other co owner Mangathammal not having any issue, were the absolute owners of the land. When the second plaintiff and one Chinnaraju Reddiar attempted to interfere with the possession of Mangathammal and Varadhammal in October, 1979, they filed a suit in O.S.No. 8:19/79 for permanent injunction and the said suit was still pending. The suit was filed in respect of lands measuring 83 cents in T.S.No. 88 and in the written statement filed by Ambal Traders, it had laid claim over the said property as in the present suit. It had laid claim in respect of both T.S.Nos. 87 and 88. The property, was in the possession of Mangathammal and Varadhammal. Both were paying kist and urban land tax in respect of T.S.No. 88. It was only Ambal Traders and one Chinnaraju Reddiar, who attempted to interfere with the possession of the lands. The suit had not been properly valued and there was no cause of action. The suit was liable to be dismissed.

m. On the basis of the above pleadings, the following issues were framed for trial by the learned XV Assistant City Civil Judge:

- (1) Whether the City civil court, Madras, has territorial jurisdiction to entertain the suit?
- (2) Who is in possession of the suit property?
- (3) Whether the plaintiffs had right in the suit property and if so from whom did they get the right?



- (4) Whether the suit is barred by limitation?
(5) What other reliefs the plaintiffs are entitled to?

n. The plaintiffs examined P.Ws. 1 to 5 and marked documents Exs. A-1 to A-23. On the side of the defendants the first and the second defendants had examined themselves as D.W-1, DW-2 and documents exhibits B-1 to B-8 were marked. There was also a Commissioner appointed and his report and plan were respectively marked as exhibits C-1 and C-2.

o. Pending suit, the first plaintiff died and his legal representatives came on record as plaintiffs 4 to 9. On the basis of the oral and documentary evidence, the learned Judge held that the plaintiffs did not have right in the suit property nor did they have possession, that the suit was not barred by limitation and that the Court had jurisdiction to try the suit. So holding by his judgement and decree dated 12.10.1987 the learned Judge dismissed the suit.

p. On appeal by defendants 2 to 8 in A.S. No.158/88, the learned VI Additional City Civil Judge, Madras, by his judgement and decree dated 13.4.1989, reversed the decision of the trial Court, allowed the appeal and decreed the suit as prayed for. As against this, the first defendant in the suit, Varadhan, has failed S.A.No. 1661/89, defendants 3 to 6 Natesan, Kannan, Elumalai and Rajendran have filed S.A.No.776/30 and the second defendant Krishnan has filed S.A.No.1147/90. The second appellant Kannan in S.A.No.776/90 died on 19.7.1993. His legal representatives have been impleaded as appellants 5 to 8. The fourth respondent Damodara Reddiar in S.A.No. 776/90 died on 7.8.1992. His legal representatives have been joined as the other respondents.

4. Based on the above facts, this Court framed the following substantial questions of law in those appeals:

- (1) Whether the lower appellate Court omitted to appreciate and apply the principle that patta has got only evidentiary value and it is not a document an title as such to conclude the issue ? and
2) Whether there has been a misconstruction and an omission to construe the material evidence on record by the courts below?

5. This Court after a comprehensive discussion of the entire facts, rendered its findings and answered the substantial questions of law at paragraph nos. 55 and 56 as follows:



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55: In view of the above discussion, the substantial questions of law framed in S.A. Nos. 1661/89, 776/90 and 1147/90 are answered as follows:

The lower Appellate Court is clearly wrong in concluding on the basis of the patta issued by the Settlement Authorities that the plaintiffs in O.S. No. 8909/79 had title to the suit properties. On question of law No. 2, it is held that there has been a misconstruction and omission to construe the material evidence on record while the lower Appellate court reversed the judgement and decree of the trial court.

56. So far as S.A.No. 757/90 is concerned, it is held that there has been misconstruction and omission to construe the material evidence on record by the Courts below.

6.This Court felt that a solution must be given to the parties by properly identifying the properties. This was not able to be achieved by this court completely during the earlier round. Hence, the scope of remand was captured at paragraph no. 58 of the judgement as follows:

58. I am therefore of the view that there must be an Advocate Commissioner appointed, who has to take the assistance of a Surveyor to locate the properties in the two suits on ground on the basis of the documents filed in the suits. All the second appeals are allowed and both the suits are remanded to the trial Court, namely, the XV Assistant City Civil Judge will appoint an Advocate Commissioner immediately on receipt of a copy of the judgement and the records after notice to parties with a direction to the Advocate Commissioner to take the assistance of a Surveyor to locate the properties covered by the suits on ground. For the purpose of locating the properties, apart from the documents already filed in the 1 suits, other documents and records which may be available in the Survey and Revenue Departments may also be pressed into service.

7.While dealing with the above second appeals, there was a connected Writ Petition which was also posted along with the second appeals in W.P. No. 8315 of 1993. This Writ petition was filed by the 4th plaintiff in OS No. 8909 of 1979 and the 1st defendant in OS No. 8119 of 1979 challenging the proceedings of the assistant settlement officer under Act 27 of 1963, dated 16-3-1993 and for a consequential direction to restrain the authorities from proceeding further under the Act. Insofar as



this writ petition is concerned, this Court held that it will await the decision in the suits which were remanded back to the trial Court.

8. Upon remand, OS No. 8119 of 1979 was withdrawn on 20-11-2007. The trial Court entertained the written statement of defendants 7 to 13 in OS.No. 8909 of 1979. That apart, Exhibits A24 to A30 were marked on the side of the plaintiffs and exhibits B9 to B11 were marked on the side of the defendants. That apart, the Advocate Commissioner was examined as CW-1 and C3 to C6 were marked. The surveyor was examined as PW-6. DW-2 was recalled for further chief examination and he was also cross-examined. Similarly, PW-2 was recalled for further chief examination and he was also cross examined. DW-3 was examined on the side of the defendants and he was also subjected to cross examination. These were the developments that took place after the matter was remanded back to the file of the trial Court. These additional materials were considered along with the materials that were already available at the time of remand.

9. The trial Court, upon its understanding of the scope of remand, appreciated the oral and documentary evidence and decreed the suit as prayed for through judgement and decree dated 10-12-2007.

10. Aggrieved by the same, the 2nd defendant filed an appeal in AS No. 256 of 2008 and defendants 3, 5 to 13 filed AS No. 274 of 2008. The lower Appellate Court on re-appreciation of the oral and documentary evidence and upon considering the findings of the trial Court, was pleased to dismiss both the appeals through a common judgement dated 22-3-2012. Aggrieved by the same, these Second Appeals have been filed before this Court.

11. When the second appeals were admitted, the following substantial questions of law were framed by this Court:

1. Whether the Courts below are right in holding that the remand made by the Hon'ble High Court was an open remand not a specific remand for identification of the property alone?

2. Whether the Judgment and decree of Appellate Court is right in holding that the entirety of the lands comprised in Survey No.76 corresponding to T.S.No.88 belongs to the plaintiff Chinnaraja Reddiar?

3. Is not the Judgment and decree of the Courts below are liable to be set aside on the ground that the Judgment and Decree of the Hon'ble High Court, in S.A.No.1661 of 1989 is a bar of resjudicata and that



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the Judgment and decree of the Hon'ble High Court has become final and binding on both the parties?

4. Whether the Judgment of Appellate Court E correct in holding that the entirety of the suit property belonged to Chinniah Reddiar when in fact, the Hon'ble High Court, in paragraph 54 of the Judgment had clear drawn the rectified schedule of the property belonging to both parties and the same is binding on both the parties?

5. Whether the Courts below are right in deciding the entirety of the suit without reference to the specific order of remand of the Hon'ble High Court directing only for the purpose of identifying the location of the respective extents as reflected in the rectified schedule in para-54 of the Judgment?

12. This Court heard Mr. T.R. Rajagopalan, learned Senior Counsel, Mr. P. Seshadri, learned counsel, on the side of the appellants and Mr. A.L. Somayaji, learned Senior Counsel for the respondents. All the other counsels appearing on behalf of the other respondents, apart from the ones represented by the Senior Counsel, adopted the arguments of the learned Senior Counsel. This Court also carefully went through the earlier judgement passed by this Court in the earlier round of second appeals and the findings of both the Courts below after the case was remanded. This Court also carefully went through the oral and documentary evidence available on record.

13. The main thrust of the argument revolved around the scope of remand made by this court in the earlier second appeals. According to the appellants, this Court had already rendered its findings on the right and title over the properties and the matter was remanded only for the purpose of correct identification of the property. In short, according to the learned counsel appearing on behalf of the appellants, this Court had only directed to identify plot no.40 and see if it falls within 1.45 acres that was claimed by the appellants or it falls within 41½ cents which was purchased and belonged to Ellaiah Reddiar. The learned counsel for the appellants submitted that the earlier findings rendered by this Court in the second appeal has become final and binding on the parties and the contrary findings rendered by both the Courts below are unsustainable and is liable to be interfered by this Court. It was further contended that both the Courts below mis-construed as if it was an open remand and whereas the remand was made only for the specific purpose of identifying the suit property namely plot no.40.



14. Per contra, it was contended on the side of the respondents that it was an open remand where the trial Court was directed to render its findings by collecting further materials and decide the right, entitlement and identity of the plaintiff's with respect to plot no. 40. It was further contended that the entire dispute revolved around TS. No.87 (Old survey no. 76) measuring an extent of 1.87 acres and the title to this property was rightly traced in favour of Ellaiah Reddiar and plot no. 40 was identified by the advocate commissioner in TS. No. 87 by relying upon exhibits A5, A6 and A11 and the suit property was found to be a part of boundary thottam. It was further contended that the Government had recognized the said Ellaiah Reddiar as the occupant of old survey no. 76 measuring an extent of 1.87 acres. It was therefore submitted that the findings rendered on appreciation of the oral and documentary evidence available on record does not require the interference of this Court in these Second Appeals.

15. If this Court is able to arrive at a clear understanding as to the scope of the earlier remand, the dispute in these Second Appeals can be resolved after answering the substantial questions of law framed by this Court for consideration.

16. During the earlier round of litigation, this Court individually dealt with two distinct properties. Insofar as OS.No. 8119 of 1979 is concerned, it dealt with survey no. 88, measuring an extent of 0.83 cents out of the total extent of 2.58 acres at Ekkatuthangal village. The discussion pertaining to this property starts from paragraph no.23 of the earlier judgement and it ends at paragraph no. 47. Insofar as this property is concerned, this Court categorically held that Pachiyappan Naicker had the right to deal with this property and his sale deed dated 30-1-1930 in favour of his junior wife Poongavanam and the sale deed dated 30-1-1930 in favour of his daughter-in-law Alamelu Ammal was upheld and consequently this Court held that Pachiyappan Naicker and his successors in interest have the absolute right in the property. The finding rendered by both the Courts below were held to be unsustainable. Insofar as this property was concerned, the scope of the remand was only to see if plot no. 40 falls within the 0.83 cents in survey no. 88 (old survey no.77) at Ekkatuthangal Village.

17. With regard to OS.No. 8909 of 1979, the same dealt with old survey no. 76 measuring an extent of 1.87 acres at Ekkatuthangal village. The discussion pertaining to this property is found from paragraphs 48 and it goes up to paragraph no.53. While dealing with this property, this Court did not render any findings on the right and title over the property and at paragraph 53 of the judgement, it specifically speaks about



resolving the dispute on title pertaining to old survey no. 76 measuring an extent of 1.87 acres.

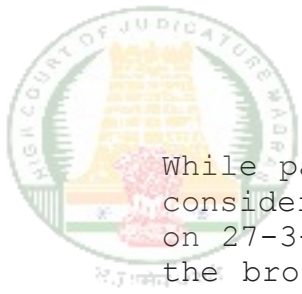
18. This Court found that there was a problem in both the title as well as the identity of the property in old survey no. 76 which measured an extent of 1.87 acres. Therefore, the scope of remand insofar as this property is concerned, was to render a finding both on the title and identification of plot no. 40 within 1.87 acres covered under old survey no. 76.

19. After the remand, OS No. 8119 of 1979 was withdrawn and what was decided by both the Courts below pertained to the right, title and identity of the property in OS. No. 8909 of 1979. Incidentally, the Advocate Commissioner also took into consideration the property covered in OS. No. 8119 of 1979 to ascertain if plot no. 40 falls within that property.

20. In view of the above discussion, this Court holds that the scope of remand for the property covered in O.S. No. 8909 of 1979 was an open remand and this Court had directed the trial Court to go into the title of the property as well as to identify the suit property viz., plot no. 40. Insofar as the property covered in O.S. No. 8119 of 1979, the remand confined itself only to the identification of the property since this Court gave a finding on the right and title over the property covered in this suit. The first substantial question of law is answered accordingly.

21. Both the Courts below went into the right and title of the property in old survey no. 76, measuring an extent of 1.87 acres. On appreciating the oral and documentary evidence, it was found that this property was described as boundary thottam even in the settlement deed executed in the year 1923. Both the Courts also found that in Exhibit A1 sale certificate, the 3rd item under the description lot no. 3 pertained to boundary thottam and this has been conveyed to the father of Ellaiah Reddiar in the Court auction. Both the Courts below, also took into consideration Exhibit B1 and Exhibit B2 which were the sale deeds executed by Pachiyappan Naicker in favour of his junior wife and daughter-in-law and while describing the property, it has been clearly mentioned as next to boundary thottam. Thus, both the Courts below came to a conclusion that this boundary thottam was not covered under Exhibit B1 and B2 and it was not conveyed.

22. Both the Courts below also took into consideration Exhibit A4 which was the order passed by the settlement officer wherein in the year 1968, the property in old survey number 76 was settled in favour of Ellaiah Reddiar under Act 27 of 1963.



While passing this order, the concerned authority also took into consideration the will executed by the father of Ellaiah Reddiar on 27-3-1947, marked as Exhibit A2 and also the oral evidence of the brother of Ellaiah Reddiar and a clear finding was rendered to the effect that a part of old survey number 76 was purchased and the other part came along with survey number 167 under the will. Thus, the right and title for 1.87 acres was traced under Exhibit A1 sale certificate to an extent of 1.45 1/2 acres in favour of the father of Elliah Reddiar and for the balance 41 1/2 cents, it was traced through Exhibit B6 sale deed.

23.Both the Courts below also took into consideration exhibit A5 which was the notification issued by the Government for acquiring the property. While doing so, Ellaiah Reddiar was recognized as the owner of old survey no.76 measuring an extent of 1.87 acres. Both the Courts below also took into consideration Exhibits A7, A8 and A10 which were the notices sent by the authorities to Ellaiah Reddiar for collection of urban land tax pertaining to the property in old survey no.76. The Courts below also took note of the inconsistent stand taken by the defendants. The 1st defendant had stated in his evidence that the property in old survey no. 76 does not form part of the 83 cents conveyed by Pachaiyaapan Naicker. However, the 2nd defendant takes a stand in the written statement that it forms part of the suit property. However, during evidence, when he was examined as DW-2, he takes a stand that it does not form part of the land conveyed by Pachiyappan Naicker. That apart the 2nd defendant also filed a suit in O.S No. 4389 of 1996 wherein he sought for declaration of title for 1.45 ½ acres in old survey no. 76 and this suit was abandoned after remand on 8-9-2003. In the light of these facts, both the Courts found that the defendants did not really assert their rights at any point of time with respect to the property in old survey no. 76. They were also not able to explain as to where the suit property in plot no. 40 lies.

24.In the considered view of this Court, the findings rendered by both the Courts below on the right and title of Ellaiah Reddiar over the property in old survey no. 76 measuring an extent of 1.87 acres, was based on appreciation of oral and documentary evidence. This Court does not find any perversity in those findings and it is not liable to be interfered in these Second Appeals. This Court while rendering the judgement in earlier round of litigation did not give any finding on the right and title over the property in old survey no. 76. Therefore, both the Courts rightly rendered findings on the right and title over the suit property and it is not barred by res judicata. Both the Courts below rightly identified old survey no. 76 to the new RS.No. 87. The second and third



substantial questions of law are answered accordingly.

25. Insofar as the identity of the property is concerned, the Advocate Commissioner who was appointed by the Court took the help of the surveyor and he was able to identify the land comprised in RS.No.87 (old survey no.76) measuring an extent of 1.87 acres. This measurement also tallied with exhibits A4, A5, A6 and A11. The Advocate Commissioner also took into consideration exhibit B17 which was marked in the other suit in OS.No.8119 of 1979. The Advocate Commissioner was not able to specifically identify plot no.40 in RS.No.87, however, since Ellaiah Reddiar was found to be the owner of the entire extent of 1.87 acres in RS.No. 87 (old survey no. 76) and plot no. 40 also falls within 1.87 acres, he was identified to be the owner of plot no.40.

26. In the considered view of this Court, even though plot no. 40 was not able to be specifically identified, it was found to form part of RS.No. 87 measuring an extent of 1.87 acres. The entire extent was owned by Ellaiah Reddiar. Therefore, on identity of plot no.40, both the Courts were perfectly right in recognizing the right of Ellaiah Reddiar with respect to plot no. 40. To come to this conclusion, both the Courts took into consideration the evidence of the Advocate Commissioner, surveyor and Exhibits C3 to C6. The factual findings rendered by both the Courts below does not suffer from any perversity.

27. The learned counsel for the appellants vehemently contended that this Court had given a specific finding at paragraph no. 54 of the judgement and had specifically given rectified schedule of the respective properties belonging to the parties and therefore, without going into the right and title of the properties, the Courts below ought to have merely identified the suit property. This Court does not find any substance in this submission. In the considered view of this Court, what is found at paragraph no.54 of the earlier judgement passed in the second appeal is not a finding and it is only an extraction of the order of the settlement officer marked as exhibit B10. In fact, it is a word-to-word translation along with the schedule from exhibit B10. This exhibit B10 order is already a subject matter of challenge in the writ petition. This order virtually reviews an earlier order which was passed almost 40 years before and which had become final. Therefore, what is stated in paragraph no.54 of the earlier judgement does not really come to the aid of the appellants. This Court did not direct the identity of the suit property from the rectified schedule which was nothing but the reproduction of exhibit B10. The fourth and fifth substantial questions of law are answered accordingly.



28. The learned counsel for the appellants also brought to the notice of this Court the demise of the 3rd plaintiff Chakrabani and no steps being taken to implead his legal representatives. Therefore, it was contended that the relief sought for in the suit no longer survives. In the considered view of this Court, this submission also deserves to be rejected. The said Chakrabani is not the owner of the suit property and only a lease cum sale agreement has been entered into with him. Therefore, his demise will not have any impact in deciding the suit. The right and title over the property has already been held in favour of Ellaiah Reddiar and on his demise, it will automatically enure in favour of his legal representatives. Similarly, the withdrawal of the suit in OS.No. 8119 of 1979 also does not have any impact in deciding this case since the property covered in that suit was different and the right and title over that property was already decided by this Court in the judgement rendered in the Second Appeals before remand. That suit had relevance only with respect to the identity of the property and it was found that plot no.40 did not form part of survey no. 88.

29. The above discussion leads to the only conclusion that there are no grounds to interfere with the judgement and decree passed by both the Courts below. The findings rendered by both the Courts below does not suffer from any perversity. Thus, all the substantial questions of law are answered against the appellants.

30. In the result, both the Second Appeals are dismissed with costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The XIV Asst. City Civil Court,
Chennai.
2. The Additional District Sessions Judge
& Fast Track Court IV, Chennai.



3. The Section Officer
V.R.Section
High Court, Madras.

+2ccs to M/s.M.Thangadurai, Advocate, S.R.No.26069 & 26070

+2ccs to Mr.P.Seshadri, Advocate, S.R.No.25912 & 25913

+2ccs to Mr.M.V.Venkataseshan, Advocate, S.R.No.26035 & 26036

+2ccs to M/s.P.Subba Reddy, Advocate, S.R.No.26588 & 26589

+4ccs to M/s.M.R.Radhakrishnan, Advocate, S.R.No.26121 & 26122

Second Appeal Nos.47/2013 and 294/2016

SPD (CO)

RLP (29/04/2022)