



Second Appeal No.714 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.714 of 2013
and C.M.P.No.5377 of 2024

1.Lakshmi Ammal
2.Roji Ammal

.... Appellants

-Vs-

Kannu @ Parasurama Gounder (Died)
(R1 Died. His legal heirs are already on
record. Memo and reply memo
recorded vide order dated 23.02.2024)

2.Govindaraji

3.The Superintending Engineer
Tamil Nadu Electricity Board
Tirupattur.

4.The Executive Engineer (OSM)
Tamil Nadu Electricity Board
Vishamangalam.

5.The Junior Engineer (OSM)
Tamil Nadu Electricity Board
Vishamangalam.

6.Rathina Gounder (Died)

7.R.Murugan
(Memo recorded. R6 died. R7 is recorded
as the legal heir of the deceased R6 vide
Court order dated 18.01.2024 made in
SA No.714 of 2013 & MP No.1/2013 by VLNJ)

.... Respondents



Second Appeal No.714 of 2013

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 29.01.2013 made in A.S.No.6 of 2006 on the file of the learned Subordinate Judge, Tirupattur reversing the judgment and decree dated 17.11.2004 made in O.S.No.1293 of 1989 on the file of the learned District Munsif, Tirupattur, Vellore.

For Appellants	: Mr.R.Subramanian
For Respondents	: R1 - died Mr.T.M.Hariharan for Mr.Balaganesh - for R2 Mr.V.Viswanathan-for R3 to R5 R6 - Died Mr.T.P.Prabhakaran - for R7

J U D G M E N T

This appeal raises a very interesting question of law.

2. The present Second Appeal arises out of the judgment and decree dated 29.01.2013 made in A.S.No.6 of 2006 on the file of the learned Subordinate Judge, Tirupattur reversing the judgment and decree dated 17.11.2004 made in O.S.No.1293 of 1989 on the file of the learned District Munsif, Tirupattur.

For the sake of convenience, the parties are referred to as per their rank in the suit.

3. The plaintiff in O.S.No.1293 of 1989 on the file of the District Munsif Court at Tirupattur claimed that they are the daughters of one Kannu @



Second Appeal No.714 of 2013

Parasurama Gounder. According to them, the properties are ancestral properties of one Narayana Gounder, who died intestate. They were inherited by his wife Manikkammal @ Muniammal as his legal heir under the Hindu Succession Act. Kannu Gounder is the son of Mutha Gounder who was the brother of Narayana Gounder. As there were disputes between the wife Muniammal and Kannu Gounder, a Panchayat was held to resolve the dispute. Pursuant to the Panchayat held, a deed of partition was entered into between the parties viz. Manikkammal and Kannu Gounder on 05.02.1953. As per the partition deed, the properties were divided and Kannu Gounder was given only life estate with the vested remainder in favour of "சந்ததிகள் - descendants" of Kannu Gounder. According to the plaintiffs, Kannu Gounder married their mother Pattammal and from the wedlock, both the plaintiffs were born. Kannu Gounder developed friendly relationship with one Poongavanathammal, from whom he begot the second defendant Govindaraji. Poongavanathammal died before Pattammal, wife of the first defendant.

4. The first defendant Kannu Gounder settled some properties in favour of his son, but according to the plaintiffs, since the son was born through the friendly relationship, he does not come under "சந்ததிகள் - descendants", so he is not entitled to any part in the same. The plaintiffs came to know that the first defendant was attempting to alienate the properties which fell to him as life



Second Appeal No.714 of 2013

estate under the partition deed dated 05.02.1953 and therefore they came forth with the aforesaid suit for the relief of restraining the first defendant from alienating the property and defendants 3 to 5 from giving service connection to the well situated in the suit property in S.No.374 of Perambattu Village, Tirupattur Taluk, presently Tirupattur District. It is pertinent to note that the first defendant had alienated the property in favour of one Rathina Gounder, who was impleaded as the sixth defendant. The allegation at the time of impleading was that during the pendency of the suit, the property had been alienated. Curiously enough, the deed of alienation was on 24.10.1963, at least a decade and a half before the suit was presented on 18.12.1989.

5. On service of summons, the first defendant filed a written statement, which was adopted by the second defendant. The partition of the property between Kannu Gounder and Manikkammal on 05.02.1953 was accepted. However, in order to defeat the plea of the plaintiff, the first defendant took a stand that he married only Poongavanathammal from whom the second defendant was born and the plaintiffs are strangers to him. He stated that, he is not aware of any children born to him through Pattammal as there was no relationship between him and Pattammal. He would also take a stand that as a person who was not aware of the worldly affairs, he signed the document dated 05.02.1953 which was executed prior to the Hindu Succession Act and therefore,



Second Appeal No.714 of 2013

Manikkammal would not have a share at all. He would admit that he had executed a gift deed in favour of the second defendant and would state that the plaintiff did not have any right to interfere with the peaceful possession and enjoyment of the properties by the first and second defendants. A specific plea was taken stating that the suit for bare injunction is not maintainable without seeking the relief of declaration.

6. On the amendment application which had been filed and allowed for impleading the sixth defendant, an additional written statement was filed by the first defendant, wherein he stated that he had handed over possession to his son Govindaraji on 03.01.1983. He reiterated the contention that the suit is not maintainable for want of declaration and that he did not know any woman by name of Pattammal nor are the plaintiffs his children.

7. On the basis of these pleadings, the learned trial Judge framed the following issues on 28.08.1990.

1. 01.05.05.1953ல் தேதியிட்ட பாகப்பரிவினை பத்திரம் செல்லத்தக்கதா? மற்றும் 1ம் பிரதிவாதியை கட்டுப்படுகத்தவில்லையா?
2. வழக்குச்சொத்துக்கள் பிரதிவாதிகளின் சுவாதீன அனுபவத்தில் உள்ளதா ?



Second Appeal No.714 of 2013

3. 7ம் பிரதிவாதி பேரில் ஏற்பட்ட 25.05.1994 தேதியிட்ட செட்டில்மெண்ட்

பத்திரம் உண்மையானதா ?

4. விளம்புகை பரிகாரம் கோராததால் இவ்வழக்கு நிலைக்கத்தக்கதா?

5. வழக்கு கால தோஷத்தால் பாதிக்கப்பட்டுள்ளதா ?

6. வழக்கு வரியாக மதிப்பிப்பட்டுள்ளதா மற்றும் செலுத்தியுள்ள நீதிமன்ற

கட்டணம் சரியா ?

8. On behalf of the plaintiff, three witnesses were examined and Exs.A1 to A16 were marked. On the side of the defendants, four witnesses were examined and Exs.B1 to B20 were marked. Though the suit was only for bare injunction, the learned Judge felt charitable enough to grant a declaratory relief against the first defendant and the decree is as follows:

"1ம் பிரதிவாதி அவருக்கு பாத்தியப்பட்ட சொத்துக்கள் பொறுத்து ஏற்படுத்தியுள்ள பாரதீனமோ செல்லத்தக்கவை அல்ல என்று இதன் மூலம் விளம்புகை செய்யப்படுகிறது."

9. Aggrieved by the same, the purchasers of one item of the property preferred A.S.No.14 of 2005. This appeal was presented on 08.02.2005. In the said appeal, all the parties to the suit were made as parties. The appeal was taken up for hearing on 29.08.2005 and the learned Judge confirmed the judgment and decree of the learned District Munsif at Tirupattur. While the



Second Appeal No.714 of 2013

appeal before the learned Subordinate Judge at Tirupattur in A.S.No.14 of 2005 was pending, the defendants 1 and 2 preferred an appeal against the very same decree in O.S.No.1293 of 1989. This appeal from the judgment and decree was filed on 06.06.2005. The appeal was numbered after the disposal of A.S.No.14 of 2005 and was taken up on file as A.S.No.6 of 2006. The learned appellate Judge who dealt with A.S.No.6 of 2006 allowed the appeal and dismissed the suit in O.S.No.1293 of 1989. Against the judgment and decree in A.S.No.14 of 2005, no appeal had been preferred by the defendants 6 and 7 viz., the purchasers from Kannu Gounder.

10. When this Second Appeal came before this Court, the appeal was not admitted but notice regarding admission was ordered on 19.07.2013. Thereafter, the appeal was listed before me.

11. At that stage, Mr.R.Subramanian, learned counsel appearing for the appellants brought to my notice that Kannu Gounder, the first defendant was no more and filed a memo stating that the appellants Lakshmi Ammal and Roji Ammal and the second defendant are the legal heirs. To that effect, a memo was filed before this Court and it was ordered.



Second Appeal No.714 of 2013

12. Mr.T.M. Hariharan had pointed out that his clients had denied the legal heirship of Lakshmi Ammal and Roji Ammal as the daughters of Kannu Gounder and therefore they ought not to be recognised. The fear of Mr.Hariharan that as the appellants have been recorded as legal representatives, they might claim a right is baseless. I had passed an order stating that the recognition of a legal heir is only for the purpose of representation of the estate and for housekeeping purposes and by the mere fact that they have been recorded as legal representatives would not confer any right or status as the daughters of Kannu Gounder.

13. Similarly, the learned counsel for the respondent No.7 filed a memo stating that the sixth respondent Rathina Gounder had passed away leaving behind his son R.Murugan as his legal representative. This factum too was recorded by this Court and the seventh respondent was recognized as the legal representative of the sixth respondent.

14. The questions of law that had been suggested by Mr.R.Subramanian are as follows:

1. Whether in law has not the lower appellate Court failed to see that the appeal is hit by Res Judicata since the respondents 1 and 2 are also parties to A.S.No.14 of 2005?



WEB COPY



Second Appeal No.714 of 2013

2. Has not the lower appellate Court failed to see that both the appeals have been filed challenging O.S.No.1293 of 1989 and therefore is not the finding that they are not similar, perverse?
3. Has not the lower appellate Court failed to consider the import of Ex.A2, A3, A13 to A15 which has resulted in perverse finding?
4. Is not the lower appellate Court wrong in holding that the suit for injunction is not maintainable?
5. Whether in law has not the lower appellate court omitted to see that D1 claims title under Ex.A1 and in that document 1st defendant's right is circumscribed, any alienation / encumbrance would be void and not binding on the plaintiff?

15. I admitted the appeal on the first question of law. I frame another question of law viz.,

"Whether the appeal in A.S.No.6 of 2006 is hit by the doctrine of merger, since the appeal in A.S.No.14 of 2005 had been dismissed?"

16. The appeal was heard on the above substantial questions of law. As they are inextricably mixed with one another, the questions of law are heard together and are disposed of by this judgment.



WEB COPY

17. Mr.R.Subramanian would argue that on the date of disposal of the appeal viz., on 24.08.2005, the respondents 1 and 2 were aware of their appeal having been presented on 06.06.2005. Yet, they took a chance and were watching as to what would transpire in the other appeal and after the other appeal has gone against them, they numbered the subsequent appeal and were successful in the same. He would state that such an attitude is abuse of process of law and therefore A.S.No.6 of 2006 ought to have been dismissed by the learned appellate Judge.

18. He would then draw my attention to the judgment and decree of the Subordinate Court, Tirupattur in A.S.No.14 of 2005 and would point out the fact that dismissal of the appeal results in merger of the judgment in O.S.No.1293 of 1989 on the file of the District Munsif Court at Tirupattur with the judgment of the appellate Court. Since there is a merger, nothing remained for the learned Subordinate Judge in A.S.No.6 of 2006 to deal with the matter and he ought to have dismissed the appeal suit as barred by *res judicata*. He would further submit that the parties having understood the case and argued the matter before the Subordinate Judge in A.S.No.14 of 2005, the same is binding on all, including the Subordinate Judge and therefore, even on that score the appeal should have been dismissed.



Second Appeal No.714 of 2013

19. When I pointed out that the suit is only for a bare injunction, whereas the trial Court had granted declaratory relief as well as had went on to declare the status of the plaintiffs, Mr.R.Subramanian would contend that in a suit for injunction, the Court are incidentally permitted to go into the questions of title and status.

20. Rebutting this argument, Mr.T.M.Hariharan submitted that the appeal in A.S.No.14 of 2005 was by the purchasers viz., the sixth defendant and settlor from the sixth defendant, the seventh defendant with respect to one item of the suit schedule mentioned properties and therefore there is no question of any merger. His argument seems to be that the purchaser derives title from the vendor and the factum that the purchaser's appeal was dismissed, there is no question of merger affecting the right of the vendor when he files appeal against all the properties. He would state that there is no abuse of process because their appeal was pending on 06.06.2005 and despite the same the learned first appellate Court, without waiting for the numbering of the appeal which was delayed due to the mistake in the decreetal copy, had proceeded further and heard A.S.No.14 of 2005. He would state that the paternity having been denied, the parties should have brought forth a suit for declaration of their status as well as should have sought for a partition and their suit for bare injunction is not maintainable.



Second Appeal No.714 of 2013

WEB COPY

21. The narration of the aforesaid facts would go to show that the defendant had denied two aspects of the case.

- (i) The right of the plaintiffs to the property as சந்ததிகள் - descendants and the paternity of the plaintiffs.
- (ii) The extreme defence taken by the first defendant is that he does not know of a person by name Pattammal and therefore the children born to Pattammal are not his children.

22. At that stage itself, he had taken a defence that suit for mere injunction is not maintainable, however for reasons best known, the plaintiffs decided to press the claim that on the basis of the suit they had already filed, instead of making an amendment seeking declaration or filing a suit for partition.

23. Therefore, in the light of the order that I am going to pass, I necessarily will have to deal with these objections of the defendants. More about it later.

24. Insofar as the serious objection of Mr.R.Subramanian that the learned appellate Judge who dealt with the matter in A.S.No.6 of 2006 should have



Second Appeal No.714 of 2013

dismissed the appeal by merely recording the verdict that has been rendered in A.S.No.14 of 2005 is concerned, It is based entirely on the principle of doctrine of merger.

"Merger" and its applicability

25. Before analyzing the nature and extent of the doctrine of merger, it is necessary to understand the meaning of the term "merger". The term merger was defined by the Supreme Court in the case of **Kunhayammed Vs. State of Kerala, (2006) 6 SCC 359**, as follows:

" 42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality (See Corpus Juris Secundum, Vol.LVII, pp.1067-1068)."

26. The doctrine of merger is a principle that had been developed in common law jurisprudence for the purpose of holding that at any given point there is only one decree which is capable of execution. It means that the decree of the lower forum merges with the decree of the higher forum and what is put



Second Appeal No.714 of 2013

into execution is only the decree of the appellate forum. This principle is useful in matters which deal with limitation for the purpose of execution. If a suit is decreed and an appeal is preferred therefrom is kept pending, unfortunately for more than the period of limitation for the purpose of execution of decree, this doctrine helps the decree holder to state that what is being executed is the decree of the appellate Court with which the decree of trial Court has merged.

The doctrine of merger and statutory right of appeal

27.Therefore, with this merger of the trial court judgment with the appellate court judgment, the time to execute the decree commences from the date on which the appellate court passes the decree. The concept of merger is that the decree of the trial court vanishes and what is available for the parties to agitate is the decree of the higher forum. As pointed out above, it is a common law principle which had been developed to decide on which decree is operable. It does not deal with the rights of a party to file an appeal **nor can it** affect the right of the party to agitate his rights independently. These aspects are governed by the Statutes that deal with the right of appeal. In this case, it is Section 96 of the Code of Civil Procedure, 1908.

28. Let us take the case which is at hand. The prayer in the suit was as against the first defendant. However, the trial Court very graciously granted a



Second Appeal No.714 of 2013

decree for declaration though the suit was filed for bare injunction. Such a grant is not an incidental one. If the appeal that had been filed by the first defendant alone to get rid of the decree obtained against him had been tried first and disposed of, certainly the appeal filed by the purchasers from the first defendant would have been barred. This is because, the first defendant claims a larger right than the sixth defendant. What Mr.R.Subramanian wants me to apply is the reverse. That is to say, the appeal filed by the sixth defendant, purchaser of a portion of the suit schedule property, should be held as barring the right of the first defendant who has a larger right. I am afraid I am not in agreement with this proposition.

29. The principle of merger would apply if the subject matter before the lower court was the same subject matter considered by the appellate forum. That is not the situation in the present case. The subject matter which concerned A.S.No.14 of 2005 was item No.4 of the suit schedule properties, whereas the appeal before the Subordinate Judge in A.S.No.6 of 2006 included all the items of the suit schedule mentioned properties. Therefore, I conclude that there is no merger on account of the disposal of A.S.No.14 of 2005 with respect to the entertaining of the appeal in A.S.No.6 of 2006.

Procedural Infraction

30. The proper procedure that the lower court should have followed is



Second Appeal No.714 of 2013

taking up both A.S.Nos.14 of 2005 and A.S.No.6 of 2006 and to dispose of the same by a common judgment. As rightly pointed out by Mr.T.M.Hariharan, this principle has been laid down by in **Commissioner of Sales Tax, Uttar Pradesh -vs- Vijai International Udyog [1984 (4) SCC 543]**. In para 4, the Supreme Court was pleased to hold as follows:

“ 4. On the facts of the case, we do not accept the view of the High Court that the doctrine of merger applied. Both the assessee and the Commissioner had a statutory right of appeal to the Tribunal against the decision of the Assistant Commissioner and in exercise of that right two separate appeals had been filed. On account of the mistake of the Tribunal in not clubbing the two appeals the statutory right of appeal of one party could not be negated. It is a well-settled proposition of law that no party should suffer on account of the mistake of the Court or the Tribunal. That apart in a situation like this, the doctrine of merger has no application and the High Court was in error in throwing out the Commissioner's appeal by applying the doctrine of merger.”

31. This judgment would make it clear that the statutory right under Section 96 of the CPC which is available to the first defendant cannot be nixed on account of the fact the sixth defendant who is a purchaser from him has filed an appeal and failed. It would be an abuse of process of law if no independent right was available to the first defendant and yet he filed an appeal and prosecuted



the same.

WEB COPY

Meaning of the term "person aggrieved" vis-a-vis the right to appeal

32. Each and every defendant in a suit against whom decree is passed or against whose predecessor a decree has been passed, has a right to maintain an appeal if he is a 'person aggrieved' (**K. Ponnalagu Ammal vs The State Of Madras (AIR 1953 MAD 485)**). This position of law was also approved by the Supreme Court in the case of **V.N.Krishna Murthy -vs- Ravi Kumar, (2020) 9 SCC 501**. The principle being, a person is treated as a 'person aggrieved' for the purpose of filing an appeal if he would be bound by the judgment and decree, that has been passed in a suit in which he/she has been not made a party.

33. This is why I held above, if the appeal filed by the first defendant had been dismissed it would bar the sixth and seventh defendants from pursuing an appeal, since their predecessor-in-title would have filed an appeal agitating his rights and lost before the Courts. However, the fact that the purchaser had filed an appeal and lost the suit does not take away the right of the vendor to agitate his rights independently. Even on this score, I would come to the conclusion that



Second Appeal No.714 of 2013

the second first appeal filed by the aggrieved person is not barred by law.

WEB COPY

The repugnancy of comon law and statutory legislation

34. Another aspect I have to remember is where a common law doctrine is pitted against the statutory legislations of the Parliament or State Legislature, the Constitution demands that I apply the public policy that is declared by the Legislature rather than the common law doctrine developed by the English Courts. If it is possible to harmoniously construe the legislation with the doctrine, that option should be preferred, but the doctrine cannot be given an overriding effect over the Statute. So, the doctrine developed by the common law Courts must give way to the public policy declared by the Legislature. Therefore, the argument of Mr.R.Subramanian that the second first appeal preferred by the first defendant is barred and the present Second Appeal should be allowed on that ground stands rejected.

Incidental - What it is?

35. Now turning to the point on what is incidental, I referred to the normal meaning of the word 'incidental' in Oxford English Dictionary. Incidental to something means 'happening in connection with something else, but not as important as it, or as not intended'.



Second Appeal No.714 of 2013

36. The principle that the Court can incidentally touch upon the title in a suit for injunction cannot be compared to the present situation. In a suit for injunction which is based on title, the court necessarily will look into the allegation that the plaintiff or defendant has title to the property. If it comes to the conclusion that apart from possession claimed by a party, he also has title to the same, such a finding is considered incidentally. The Supreme Court in the case of **State of Tamil Nadu -vs- Binny Limited (1980 Supp SCC 686)**, of course in a different context, held as follows:

" A thing is incidental to another if it merely appertains to something else as primary."

37. If I were to accept Mr.R.Subramanian's argument that a legal status of a person is incidental in a suit for injunction, I feel I will be doing violence to the words of Section 34 of the Specific Relief Act. The Section demands where a person's legal status or a right has been denied, that person must sue for declaration of his status. May be in a suit for partition, paternity is an issue which could be incidental, but certainly not in a suit for permanent injunction. Therefore, the grant of declaratory decree in a suit for injunction is certainly not incidental. This is because the party must have specifically sought for declaration.



Second Appeal No.714 of 2013

"Santhathis"

38. It is pertinent to note that the word ""சந்ததிகள் - descendants" as used in the document dated 05.02.1953 cannot be given a restricted view. This is because the idea of writing the said document was to prevent Kannu Gounder from claiming right over the properties of his paternal uncle Narayana Gounder other than life estate and to ensure the property went to his heirs. The document ensured that he will have the life estate. The vested remainder would go to his heirs. The lower appellate Court while deciding the issue will also take into consideration the view expressed by this Court in **Raja of Ramnad -vs- Sundarapandiasamy Thevar (27 MLJ 694)** and the Supreme Court in **Angurbala Mullick -vs- Debabrata Mullick (AIR 1951 SC 293)** and **"Kamalam and Others -vs- Sivaprakasa Pillai (2005 (9) SCC 602).**

Decision:

39. Having reached this conclusion, I cannot dismiss the appeal and put both the parties in jeopardy. Both sides will claim victory in this litigious game because the plaintiff will have a decree in A.S.No.14 of 2005 and first and second defendants will have a decree in A.S.No.6 of 2006. This would result in utter



Second Appeal No.714 of 2013

confusion and will not help in resolving the situation. I feel the solution in these kind of cases would be to exercise the suo-motu power vested in me under Article 227 of the Constitution of India and set aside the judgment and decree of the learned Subordinate Judge, Tirupattur in A.S.No.14 of 2005 dated 29.08.2005 and restore the appeal on its file. At the same time, I should also set aside the judgment and decree in A.S.No.6 of 2006 on the file of the Subordinate Judge at Tirupattur dated 29.01.2013 and remand it for fresh disposal. Therefore, I would allow the present Second Appeal and set aside the judgment and decree in A.S.No.6 of 2006 dated 29.01.2013 on the file of the Subordinate Judge, Tirupattur and restore the appeal on to the file of the learned Subordinate Judge. At the same time, I am setting aside the judgment and decree in A.S.No.14 of 2005 on the file of the learned Subordinate Judge at Tirupattur dated 29.08.2005 and restoring that appeal also on to the file of the learned Subordinate Judge.

40. Needless to add, in order to avoid any further confusion as that has prevailed on account of the two conflicting judgments that have been passed by two Subordinate Judges, the learned Subordinate Judges at Tirupattur, the appeals in A.S.No.14 of 2005 and A.S.No.6 of 2006 will now be clubbed together and disposed of by a common judgment.



Second Appeal No.714 of 2013

41. Pending the appeal, as pointed out earlier, Kannu Gounder had passed away which constrained the appellants to move CMP No.5377 of 2024 seeking for amendment of the plaint to amend it to a suit for partition. Since I have allowed the appeal and have remanded the matter to the lower appellate court for a fresh disposal, this CMP is closed with liberty to the appellants herein, who would be the respondents in the appeal, to move an application for amending the plaint. I should necessarily state here that it is also open to the plaintiffs to seek for a relief of declaration of their status and for title since Kannu Gounder has passed away pending the appeal. The cause of action for such a claim arises with every denial and therefore it would not be barred by limitation. Reserving the liberty to the plaintiffs to amend the plaint, the present petition filed in C.M.P.No.5877 of 2024 stands closed.

42. In fine, S.A.No.714 of 2013 is allowed. The judgment and decree of the Court of the Subordinate Judge at Tirupattur in A.S.No.6 of 2006 dated 29.01.2013 is set aside. Similarly, in exercise of the superintending powers vested in me under Article 227 of the Constitution of India, the judgment and decree in A.S.No.14 of 2005 on the file of the Subordinate Judge at Tirupattur dated 29.08.2005 is set aside. The appeals shall stand restored on to the file of the learned Subordinate Judge, Tirupattur. The plaintiffs are granted liberty to move an application for amendment of the plaint to seek such appropriate relief



Second Appeal No.714 of 2013

as they may be advised. If the application is allowed, it is open to the defendants to take all the available defences to such amended plaint by filing an additional written statement. Both the parties agree that they shall appear before the learned Subordinate Judge, Tirupattur on 24.04.2024.

43. The substantial questions of law are answered in the above terms and the appeal stands allowed. As parties have already been litigating before this Court for nearly three decades, I am not inclined to impose costs.

22.03.2024

KST

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

Note to Office :

1.Issue order copy on 10.04.2024

**2.Decree to be provided at the earliest,
in any event before 17.04.2024**

To

1. The Subordinate Judge, Tirupattur.
2. The District Munsif, Tirupattur.



WEB COPY



Second Appeal No.714 of 2013

V.LAKSHMINARAYANAN, J.

KST

S.A.No.714 of 2013

22.03.2024