

(1994) 03 MAD CK 0057

In the Madras High Court

Case No : Second Appeals No"s. 1314 and 1315 of 1987

A. Munuswami

APPELLANT

Vs

R. Sethuraman

RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100, 3

Evidence Act, 1872 — Section 43

Transfer of Property Act, 1882 — Section 106, 108, 111, 13

Citation : AIR 1995 Mad 375

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : K. T. Palpandian, for the Appellant; R. Alagar, for A. Sivaji, for the Respondent

Judgement

1. In both the above second appeals, one A. Munuswami is the appellant and one R. Scthuraman is the sole respondent, Two suits were filed on

the file of the II Additional Subordinate Judge, Tiruchira-palli, one by the respondent namely, O.S. No. 93 of 1982 and the other by the appellant

namely, O.S. 213 of 1982. O.S. No. 93 of 1982 is for a declaration that the respondent is the owner of the suit property and for recovery of

possession of the same from the appellant. There was also a claim for rent or damages for use and occupation. O.S. No. 213 of 1982 is for a

permanent injunction to restrain the respondent from interfering with the appellant's possession of the very same property. For the purpose of

convenience I will refer to the parties Munuswami as the appellant and Sethuraman as the respondent. The second appeals have been argued at

length and I am of the opinion that it will be convenient to refer to the pleadings and the documents filed in the case before referring to the

judgments of the Courts below as well as the arguments advanced on behalf of the parties.

2. The respondent's case in O.S. No. 93 of 1982 is as follows:--

An extent of 2 acres comprised in T.S. No. 35/3 Abhisekapuram Village in Tiruchira-palli, originally belonged to the Defence Department. By a sale deed Ex.A-1 dt. 27-5-1939 one Singaravelu Pillai purchased the said property. By a document dt. 2-8-1939 (Ex.A-2) Singaravelu Pillai sold the property to Karpoorasundaram on 27-12-1957. The eastern half of the property of the extent of one acre was sold by Karpoorasundaram to one E. Padmanabhan and others under Ex. A-3. The western extent of one acre was sold by Karpoorasundaram to one Rajeswari Ammal by a document dt. 10-2-1966 under Ex.A-4. Both the western and eastern extents of the said property were purchased by the plaintiff by documents dt. 14-12-1978 and 24-1-1981 respectively under Exs.A-5 and A-6. In all these documents northern boundary is shown as Dindigul Road.

3. When the eastern half was under the possession of E. Padmanabhan and his other co-sharers, certain buildings were put up in the eastern half.

One Kuppanna Gounder was the tenant under the said E. Padmanabhan. The tenant had also put up some construction. The appellant is said to be

one of the three sub-tenants of the said Kuppanna Gounder in the buildings constructed by Kuppanna Gounder. The property in possession of the

appellant is the suit property. Padmanabhan filed an eviction petition under the Tamil Nadu Buildings (Lease and Rent Control) Act, W.R.C.O.P.

No. 335 of 1972 for eviction of Kuppanna Gounder. According to the respondent the suit property now in possession of the appellant formed

part of the eviction proceedings. An order of eviction was made on 31-1-1973. In pursuance of the eviction order, possession was taken from

Kuppanna Gounder through Court on 13-6-1973. The delivery Akthatchi is marked as Ex.A-15 and the same has been attested by the appellant.

Padmanabhan also filed O.S. No. 409 of 1973 for recovery of arrears of rent from Kuppanna Gounder. Kuppanna Gounder has claimed a set off

and the suit was ultimately decreed for a sum of Rs. 16,489.55 on 11-11-1975. Copy of the decree is Ex.A-16 and the written statement of

Kuppanna Gounder is Ex.A-17.

4. The next important averment in the plaint is that the appellant became a

tenant under Padmanabhan on a monthly rent of Rs. 100/- in respect of the suit property. According to the plaint, this suit property is part of the main building having Door No. 4-E. Padmanabhan required vacant possession and issued notice to the appellant. The alleged tenancy was claimed title to the property in himself. It is under these circumstances that the suit was filed for the reliefs above mentioned.

5. The contention of the appellant as defendant, was that the suit property never formed part of T.S. No. 35/3, said to have been purchased by

Singaravelu Pillai under Ex.A-1. The suit property is lying on the northern side of the said T.S. No. 35/3. It forms part of poramboke. According

to the appellant, he is a Burma repatriate who occupied the poramboke land during 1964-65. He put up a thatched building by having a brick

work construction. The suit property has a separate assessment bearing Door No. 4-E1 and has electricity supply. Both the property tax

assessment and the electricity supply stand in the name of the appellant. It is further alleged that the Election Petition H.R.C.O.P. No. 335 of 1972,

the Delivery Akthatchi and the suit in O.S. No. 409 of 1973 relate to the property of Kuppanna Gounder which lies south of the suit property

having Door No. 4-E. It is the further case of the appellant that there is an east-west drainage and the property of the respondent lies south of the

drainage. Above all, the case of the tenancy set out in the plaint as if the appellant became a tenant under Padmanabhan on a monthly rent of Rs.

100/- is totally denied as false. The appellant had set out his case from the earliest point of time when Padmanabhan attempted to say that the

appellant was a tenant under him.

6. The case of the appellant as plaintiff in O.S. No. 213 of 1982 is the same as his written statement in O.S. No. 93 of 1982, alleging that as the

respondent was interfering with his possession he had sought for injunction. Similarly, the written statement of the respondent in O.S. No. 213 of

1982 is the same as his plaint case in O.S. No. 93 of 1982. A joint trial was conducted. On a consideration of oral and documentary evidence the

trial court, by a common judgment dismissed the suit in O.S. No. 93 of 1982 and decreed the suit in O.S. No. 213 of 1982 in favour of the

appellant by a common judgment. On appeal however, the lower appellate court has reversed the findings of the trial court and decreed the suit of

the respondents (O.S. No. 93 of 1982) and dismissed the suit of the appellant (O.S. No. 213 of 1982). Before the lower appellate court, certain

additional documents were filed on behalf of respondents and they were marked as Exs.A-24 to A-29.

7. Exs.A-1 to A-6 relating to the entire property of two acres consistently show the northern boundary as Dindigul Road. There is no reference to

any east-west ditch. To this extent the case of the respondent that the property purchased by him extends up to the Dindigul Road, has to be given

credence. Exs.A-12 and A-13 are the extracts from the property tax register of the Tiruchirapalli Municipality in relation to Door No. 4-E.1. The

plaintiff had applied for these documents and they were furnished by the Commissioner of Municipality under Ex.A-11. A perusal of Exs.A-12 and

A-13 shows that in respect of Door No. 4-E.1, the owner of the property is shown as A. Munuswami, the appellant. Ex. A-14, the order of

eviction in H.R.C.O.P. 335 of 1972 described the property as ""the buildings and premises bearing Door No. 4-E plot No. 35/3, Dindigul Road,

Tiruchirapalli."" Ex. A-15 is the Delivery Akthatchi and it also gives the very same description as above. The Akthatchi is attested by the appellant

as ""A. Munuswami, son of Alagu, Petty Kadai, Dindigul Road. Tiruchirapalli."" Ex. A-16 is the copy of the decree in O.S. No. 409 of 1973 and it

is not helpful either way because there is no description of the property. Ex. A-17 is the certified copy of the written statement filed by Kuppanna

Gounder in O.S. No. 409 of 1973. As to how far this document can be relied upon by either side is the subject matter of argument by both

counsel and I will advert to the same at a later stage. Ex.A-18 is a letter written by Padmanabhan on 26-12-1977 wherein for the first time he

claims rental arrears from the appellant. Ex.A-19 is the reply sent by the appellant wherein the appellant has characterised the demand made by

Padmanabhan as motivated and an attempt to annex the property belonging to the appellant. Ex.A-20 is the another letter written on 6-3-1978 by

Padmanabhan addressed to the appellant and Ex.A-21 is the postal acknowledgment. Ex.A-22 is the report of the Commissioner filed in O.S. No.

409 of 1973 and Ex.A-23 is the sketch drawn by the Commissioner in that case. A perusal of Ex.A-23, the Commissioner report in O.S. No. 409

of 1973 clearly shows the suit property as lying between the Dindigul Road and the east-west ditch. The respondent had examined himself and

three other witnesses including the said Padmanabhan as well as the Commissioner who prepared Exs.A-22 and A-23. The appellant filed the

copy of the judgment in O.S. No. 409 of 1973 (Ex.B-1) and portions of the said judgment have been marked as Exs.B-2 to B-4. Exs.B-5 to B-

13 are receipts for payment of taxes. Exs- B.14 to B.18 are documents which had come into existence after the dispute. Ex.A.19 is the copy of

decree in O.S. No. 409 of 1973 which is the same as Ex.A.16.

8. There were as many as four Commissioner's plan and reports, to which 1 will make a reference at a later stage. It will be convenient to notice

the manner in which the courts below have considered the evidence and decided the issues before advertng to the arguments of the respective

counsel. The trial Court proceeds on the footing that the eviction order Ex.A.14, the Delivery Akthatchi Ex.A.15 described the property which

was the subject matter of such proceedings as ""Building and premises bearing Door No. 4-E"". Taking this description along with the evidence of

P.W. 2, Padmanabhan who has practically given up the case of the respondent by making several vital admissions. The trial Court holds that the

suit property 4.E.I. did not form part of Exhibits A. 14 and A.15. For instance, he says that when he purchased the property the suit portion was

vacant. He further says that he constructed the property called ""Ram Bhavan"" and at that time, the appellant's construction was not in existence. In

the year 1971, appellant constructed the building in the suit property. He admits that the appellant was not made a party in the eviction

proceedings, though he was in possession of the suit buildings. At the time of his sale to the respondent, he admits that the suit building No. 4-E 1

was in existence. To quote his evidence, ""that is the property where Munu-swami lived. That is north of the ditch. These lands are not poramboke.

We filed application for patta. We could not get it"". The fact that P.W.2 applied for patta would indicate that the lands covered by Door No. 4-E.

1 were poramboke lands. The recording of the evidence that these lands are not poramboke is out of sequence. Whatever that may be, the fact

remains the witness, who deposed on behalf of the respondents, had not supported the respondent. The trial Court has referred to Exs. B.2, B.3

and B.4 which are portions of Padmanabhan's evidence in O.S. No. 409 of 1973. In Ex.B.2 Padmanabhan says that the ditch is the northern

boundary of the suit property, (O.S. No. 409 of 1973). In Ex.B.3, he says, referring to the three shops abutting the road which is the present suit property,

the defendant had encroached upon the poramboke land north of the suit property and has constructed building. The defendant has an agent

called Munuswami." In Ex.B.4 he says, "We have no connection with the building put up by the defendant in the poramboke on the northern side

of the ditch". It is to be remembered that Padmanabhan is the predecessor in title of the respondent. His evidence in O.S. No. 409 of 1973 which

related to a property on the southern side of the ditch would make it clear that those proceedings did not relate to the suit property, which is on the

northern side of the ditch. So far as these findings of the trial Court are concerned, I am of the opinion that they were based on the evidence. But

the trial Court proceeded to refer to the copy of the judgment in O.S. No. 409 of 1973 marked as Ex.B.1 and has also profusely quoted from the

said judgment. He also proceeds to say that the copy of plaint in O.S. No. 409 of 1973 had not been filed by the respondent and therefore, it was

not possible to say that whether the present suit property was also comprised in O.S. No. 409 of 1973. It is in this view of the matter that the trial

Court rejects the evidence of P.W. 4, the Commissioner who proved the documents Ex. A.23 and A.24 which were the plan and report filed by

P.W.4, as Commissioner in O.S. No. 409 of 1973. P.W.4 has stated in his evidence that the Door No. 4-E.1, which was found in one of the

three shops, which formed the present suit property had been shown as "E F G H" in Ex. A.23. The suit property in O.S. No. 409 of 1973 has

been shown as "A B C D" in Ex.A.23. A reference to Ex.A.23 shows that the portion of "E F G H" is within the larger area "A B C D" which was

the suit property, in O.S. No. 409 of 1973. The trial Court has sought to reject this evidence. For this purpose he relies on the finding in Ex.B. 1

that there was no positive proof that the defendant in that suit, Kuppanna Gounder, had put up the construction in the poramboke with the consent

of the plaintiff (Padmanabhan). It was also stated that the Padmanabhan did not claim any right in the construction put up by the said Kuppanna

Gounder in the poram-boke land. I am of the opinion that the trial Court was not justified in relying on Ex.1 for this purpose. This is because under

S. 43 of the Evidence Act such judgments are irrelevant unless the existence of such judgment is fact in issue. Nor does the said judgment Ex.B.1

come within the purview of Ss. 40, 41, 42 of the Evidence Act.

9. The next aspect of the case dealt with by the trial Court relates to the question whether the suit property lies within a Government poramboke.

The trial Court proceeds to reject Ex.C.7 on the ground that the entire plan had been drawn on the basis of a single survey stone. He has also

proceeded on the basis as to whether the suit property was comprised in a poramboke or not. In my opinion, this approach itself is not correct

because the issue before the trial Court was whether the suit property was comprised in the documents of title relied on by the respondent. He

says in his evidence that the suit property is not an encroachment on the Dindigui road and that the road is indicated by Survey stones. The

conclusions of the trial Court that the suit property lies in a poramboke is in my opinion an unnecessary finding on the pleadings put forward before

the Court. The trial Court has then recorded a finding that the appellant never became a tenant under the said Padamabhan in respect of the suit

property. For this purpose also, the trial Court has relied on Ex.B.I. The trial Court has also rendered a finding that the appellant had not

prescribed title to the suit property.

10. Coming now to the judgment of the lower appellate Court, learned Judge first refers to the fact that Exs. A.1 to A.6 categorically say that the

property dealt with under these documents were south of the Dindigui Road. According to the learned Judge, if the ditch was the northern

boundary, the same would have been referred to in the documents. This is no doubt, a very strong circumstance in favour of the respondent. He

then refers to an application in I.A. No. 31 of 1987 filed by the respondent seeking to produce certain additional evidence. He discusses the

documents filed in I.A. No. 31 of 1987 one by one and says that those documents categorically establish that the suit property is in T.S. No. 3/2

(old T.S. No. 35/3). According to the tower appellate Judge, those documents are absolutely necessary for proving the case of the respondent

and therefore, he was allowing I.A. No. 31 of 1987. It is seen from the records that the final orders in I.A. No. 31 of 1987 has been passed only

along with the judgment in two appeals before him. In other words, learned

lower appellate Judge after allowing I.A. No. 31 of 1987, did not give opportunity to the parties to mark the documents in a manner known to law. Those documents were simply marked as Exs. A.24 to A.29, without proof. So far as Exs. A.24 and A.25 are concerned, it is argued that their admissibility cannot be disputed because they are only the Town Survey Field Register and a plan. It is not disputed before me that Exs. A.26 to A.29 cannot be marked without adducing oral evidence. But Mr. Atagar for the respondent seeks to sustain the judgment of the lower appellate Court without reference to Exs. A.26 to A.29. But it cannot be disputed that the lower appellate Court has strongly relied on the additional documents Exs. A.24 to A.29 for the purpose of coming to the important conclusion that the Door No. 4E comprises of the present suit property also. What is more, having relied on the additional documents for coming to such a conclusion, the lower appellate Court criticise the trial Court for not correctly appreciating the documents and coming to a contrary conclusion. I have no doubt in my mind, that this finding of the lower appellate Court, relying on the additional documents, is clearly vitiated and contrary to the procedure prescribed by O. 41, R. 27, Civil P. C.

11. The next aspect of the lower appellate Court's judgment relates to the consideration of Exs. A. 14 to A. 17. In particular, he refers to the written statement of Kuppanna Gounder in O.S. No. 409 of 1973 and comes to the conclusion that the present suit property was the exact property built by Kuppanna Gounder. In other words, the plea of Kuppanna Gounder as contained in his written statement Ex. A.17 is taken as gospel truth to hold against the appellant herein. The lower appellate Court has failed to remember that the appellant is not a person who is claiming title or possession under the said Kuppanna Gounder. He also refers to the judgment Ex.B.1 and the findings therein to hold that the present suit property comprising of three shops were included in the property bearing Door No. 4-E and the same had been leased out to Kuppanna Gounder. I have already held that the judgment Ex.B. 1 cannot be relied on except for the purpose of S. 43 of the Evidence Act and the lower appellate Court is not right in holding against the appellant on the basis of Ex.B. 1.

12. The lower appellate Court then proceeds to get over the candid admission of

Padamanabhan in his evidence. Even for this purpose, the lower appellate Court has totally relied on the judgment Ex.B.1 for coming to the conclusion that the evidence of Padma-nabhan is false. It is rather strange that the lower appellate Court should make a special pleading on behalf of the respondent for coming to the conclusion that his own witness is speaking falsely against the case of the respondent. For this purpose, the lower appellate Court Judge has referred to the doctrine of estoppel and relies on the additional documents Exs. B.27 to B.29, to hold that the suit property is only in patta land and not in poromboke. Therefore, according to him, the evidence of Padmanabhan is false. This approach is clearly contrary to law.

13. Learned lower appellate Court Judge then refers to Door Nos. 4-E and 4.E.1 and says that Door No. 4-E. 1 came into existence only in the year 1979-80 and prior to that the suit property was comprised in Door No. 4-E. Even for this purpose the lower appellate Court has relied on Ex.B.1, judgment in O.S. No. 409 of 1973. This finding of the lower appellate Court is again not based on any legal evidence. On the question of the appellant's tenancy under Padmanabhan, the trial Court had rendered a finding that there is absolutely no evidence. The lower appellate Court seems to rely on Exs. A. 18 to A.21 for holding that the appellant indeed became a tenant under Padmanabhan. On the other hand, Exs. A. 18 to A.21 are only notices and reply and do not prove anything. Padmanabhan had asserted for the first time, under Ex. A.18 dt. 26-12-1977 that the appellant was a tenant under him. The reply of the appellant dt. 30-12-1977 is very revealing. Even on a careful reading of Ex.A.19 would show that the plea of tenancy could not be true. The lower appellate Court then concludes that the appellant is in possession of a property belonging to the respondent and he had no right to do so. He therefore, concludes that the appellant is liable to be evicted.

14. It will now be convenient to refer to the arguments advanced on behalf of the appellant and the respondent. According to Mr. K. T. Palpandian for the appellant, the marking of the additional documents Exhibits A.24 to A.29 is illegal and contrary to the Civil P. C. and the Evidence Act. According to him, Exs. B.24 and B.25 do not have probative value. I have already referred to this aspect of the case and I am of

the opinion that this argument has to be upheld. The next argument is that Ex.B. 1 is not inter partes and therefore cannot be relied on for any

purpose. He also argues that Ex.A. 17 written statement cannot be relied on the gospel truth and the averments therein do not have any evidentiary

value in this suit. He also argues that Ex. A. 16. copy of decree in O.S. No. 409 of 1973 cannot be relied upon because the plaint O.S. No. 409

of 1973 had not been filed. For this purpose reliance is placed on a decision in AIR 1937 69 (Privy Council) . This judgment is also relevant for

the purpose of the probative value of Ex.B. 1, judgment in O.S. No. 409 of 1973. The following passage is apposite:--

The admissibility of the decree of 1916 is the next question. Whether based upon sound general principle or merely supported by reasons of

convenience, the rule that so far as regards the truth of the matter decided a judgment is not admissible evidence against one who is a stranger to

the suit has long been accepted as a general rule in English law. Exceptions there are, but the general rule is not in doubt.

After referring to Section 43 of the Evidence Act, Privy Council proceeds to say.

On the other hand apart from all discussion whether a judgment is or is not a "transaction" within the meaning of S. 13, Evidence Act, ((1880)

ILR 6 Cal 171 and (1901) 29 Ind App 24) the judgment of 1916, together with the plaint which preceded it and the stops in execution which

followed, are evidence of an assertion by the Raj of the right which it claims to have acquired in 1903 and are thus admissible evidence of the right.

There are undoubtedly cases (i) which a judgment is evidence of weight even against third parties.

I have already applied the ratio of this judgment while commenting on the findings of the courts below. The next argument of the learned Counsel

for the appellant is that the lower appellate Court is not right in saying that the appellant had not produced any document to prove his case. In

particular, he refers to the Tax receipts Exs. B.4 to B. 13 and the receipts for payment of Licence fee. He rightly points out that the plea of tenancy

as put forward by the respondent is not at all supported by any evidence. In this aspect also I have already referred to the findings and I accept the

argument of Mr. Palpandian. It was next contended that the suit is bad for the failure to issue notice under S. 111(g) of the Transfer of Property

Act. I am of the opinion that this contention does not arise out of the pleadings. According to the plaint, the appellant was a tenant under

Padmanabhan and after the respondent purchased the property, the case is that the appellant was continuing as a month to month tenant, and a

notice under S. 106 had been issued as per Ex. A. 16. It is the case of the appellant that he was never a tenant either under Padmanabhan or the

respondent. Therefore, it is not a case of forfeiture of lease under S. 111(g) of the Transfer of Property Act. If it is not a case of forfeiture, there is

no question of any notice under S. 111(g) of the Transfer of Property Act, being issued by the respondent. This contention is therefore, rejected.

15. Mr. R. Alagar, learned Counsel appearing for the respondent, contended that O.S. No. 409 of 1973 was filed only for the recovery of arrears

of rent from Kuppanna Gounder. In a suit for arrears of rent, there is no need to describe the property by appending a schedule to the plaint. He

therefore, argues that the failure to file the copy of plaint in O.S. No. 409 of 1973 will not in any way deprive the respondent from making use of

the judgment and decree in O.S. No. 409 of 1973 at least for the purpose of S. 13 of the Evidence Act. He therefore, says that even as per the

judgment in AIR 1937 69 (Privy Council) , the said documents Exs.A. 16 and B.1 can be relied upon and the judgment of the lower appellate

Court is correct. I have already held that a judgment and decree can be relied upon only for the purpose of proving the existence of any right and

for this purpose any transaction by which the right was created, claimed or recognised, can be adduced in evidence. Certainly it is not the judgment

in O.S. No. 409 of 1973 which gives the right to the respondent. That suit was only for recovery of arrears of rent. The right if any, claimed by the

respondent relates to his title to the property and as to whether the suit property formed part of his documents of title. This aspect of the case has

not been kept in mind by either of the courts below. The mere filing of plans by a Commissioner appointed in the suit will not prove the case of

either party. One other argument of Mr. Alagar is that if a lessee puts up a construction, it would become part of the land of lessor. For this

purpose, he refers to S. 108, Cl. (d) of the Transfer of Property Act. For more than one reason this argument cannot be accounted. First of all the

Section refers to an accession to the property and it is subject to any contract between the parties. In this case, apart from the fact that Kuppanna

Gounder's written statement cannot be taken as evidence in this case. There is also evidence to show that Kuppanna Gounder had set out an

agreement in respect of the additional construction in the poramboke land. Further, there was no such a plea in the plaint. He also relies on Exs.

C.2, C.4 and C.7 to suggest that the new T.S. No. 3/2 comprises of the suit property as well. The argument, is, that even if a Commission is

reissued, it does not mean that the earlier reports should not be looked into. According to Mr. K. T. Pal-pandian, this will depend upon the

manner in which the commission was reissued. I have already referred to the argument of the respondent regarding the appellant's tenancy under

Padmanabhan. I have held that such a tenancy has not been established at all on the available evidence.

16. A consideration of the evidence, judgment of the courts below and the arguments of the respective counsel leaves me with the impression that

both the courts have committed errors of law in appreciating the pleadings and the evidence adduced in the case. The courts below must

remember that the plea of the respondent/ plaintiff is that the suit property is comprised in his documents of title, that the appellant became a tenant

under his predecessor-in-title, and that he had terminated such a tenancy and therefore, he is entitled to declaration of title and possession, The

plea of the appellant/defendant is that he occupied a poramboke land in the year 1964-65, put up constructions thereon and he has been assessed

to property tax from the year 1979 onwards, and that the electricity service connection stands in his name and therefore, he is not liable to be

ejected from the place. It is with reference to these pleadings that the courts below must look into the evidence. Certain vital aspects of the oral

evidence has been ignored by both the courts below. The respondent as P.W. 1, has stated that the suit property is shown as poramboke

(Military) in the Municipal records. What is more, he has stated that there is a ditch south of the suit property and that ditch is the place where the

property of the respondent begins towards south. He also admits that he sought for transfer of the registry in respect of Door No.4-E.I in his name

and that the Municipality has not so far passed orders. He also admits that in Ex.A.6, the property bearing Door No. 4-E. 1 is not included. I have

already adverted to the evidence of Padmanabhan. I do not know why the courts below have not adverted to the oral evidence properly especially

when there are vital admissions. I am of the opinion that if the courts below, who are the final authorities on the question of appreciation of

evidence and findings of fact, fail in their duty and do not advert to such vital evidence, be it oral or documentary, the same would lead to the

conclusion that they have committed errors on substantial questions of law. That apart, in this case, I have referred to the fact that the courts below

and particularly, the lower appellate Court has relied on inadmissible documentary evidence for holding against the appellant. Above all, the courts

below must remember that if the respondent fails to prove his title or even to prove the tenancy of the appellant, his suit is liable to be dismissed.

So far as the suit of the appellant is concerned, he has only to establish his possession independently of any other party. Lastly, the lower appellate

Court has certainly erred in marking Exs. A.24 to A.29 without having them proved by oral evidence. It is not certainly a case where the appellant

agreed for marking of those documents. The lower appellate Court has also not given the reasons as required under O.41, R. 27(aa) of the Civil P.

C. Merely, because certain documents are necessary for proving the case of one or other of the party, the documents cannot be received at the

appellate stage. In any event, the additional documents have not been proved in the manner known to law.

17. Inasmuch as I am remanding the case, I am of the opinion that the respondent must be given an opportunity to prove the documents marked as

Exs. A.24 to A.29 by examining the necessary witnesses. I would have remanded the case back to the lower appellate Court if that was the only

reason on which I am inclined to set aside the judgments of the courts below. I have already referred to the fact that both the courts below now

committed several errors of law especially with reference to the probative value of certain documents and therefore, it is but proper that the

judgments of the courts below, namely, judgments in O.S. No. 93 of 1982 and 213 of 1982 on the file of the Subordinate Judge, Tiruchirapalli and

A.S. No. 209 of 1985 and 252 of 1986 on the file of 1st Additional District Judge, Tiruchirapalli are set aside and the matter remitted back to the

trial Court for fresh disposal.

18. Accordingly, the Second Appeals are allowed and the judgments of the both the courts below in both the suits are set aside. Both the suits are

remitted back to the trial court for fresh disposal. It is open to the parties to adduce fresh evidence. The trial court is directed to consider the entire evidence in the light of the observations made in this judgment and render a decision. The trial court is directed to give priority to those cases and dispose of the same as early as possible. The Court-fee paid on the Memorandum of Appeals is directed to be refunded to the appellant. No costs.

19. Appeal allowed.