

(1998) 06 MAD CK 0004
In the Madras High Court

S. Subramaniyan and Co.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 16-06-1998

Acts Referred:

Citation : (1998) 3 LW 31 : (1998) 3 MLJ 526

Hon'ble Judges : K. Sampath, J

Bench : Division Bench

Judgement

K. Sampath, J.—The plaintiff in O.S. No. 541 of 1981 before the District Munsif, Poonamallee is the appellant in the second appeal. It filed the said suit for declaration of title and injunction in respect of the suit property of a total

extent of 2 acres, 53 cents in S.Nos. 167 and 168 in Koyambedu Village, Saidapet taluk on the following averments. The appellant purchased the property from one Chellammal under a registered sale deed dated 25.3.1964. The said

land along with the adjacent land belonging to the same owner had been used as a brick field for over 30 years prior to the date of purchase by the appellant. The top soil to a depth ranging from 6 feet to 10 feet had been removed for

making bricks and in that process, the old field ridges S.No. 167 from 168 as also the ridges of the internal sub-divisions had become obliterated. The appellant had measured the property and arranged for a plan to be annexed to the

sale deed for correct identification. The appellant had constructed some buildings on the land for industrial use and the vacant space had been used as a stockyard for the materials required for the business of the appellant. The whole area

was enclosed by a barbed wire fence put up by the appellant firm on the north, south and east and by a fence put by the neighbour on the west. The appellant came to know that in the re-survey map of S.No. 167 a channel had been

shown as flowing along with the Western and the southern boundaries in an extent of 32 cents and the same had been sub-divided as S.No. 167/3. Though the channel might have been in existence long time back it had not been used for over 50 years and it must be deemed to have been abandoned and the pattadars owning lands on other side of the abandoned channel had converted their lands into brick fields and annexed the channel bed also to their lands with the

approval of the then landholder. The channel had thus gone out of existence long before the village was taken over by the Government in 1952 under the Estates Abolition Act 26 of 1948. The appellant applied to the Revenue authorities

for the grant of patta in respect of 32 cents in S.No. 167/3 on the ground that the classification of the land as channel poramboke and the settlement was an apparent error because the channel had gone out of existence more than 40

years prior to the filing of the suit and the channel had become merged with the patta lands on either side and had been in uninterrupted private possession for more than 40 years by the appellant and its predecessors-in-title openly to the

knowledge of the Government. The appellant thereafter caused a notice to be issued to the respondent Government on 25.10.1976 u/s 80, C.P.C. claiming recognition of its right to the land and issue of patta for the same. The

respondent Government rejected the claim by communication dated 23.5.1977.

2. In April, 1978, the appellant received a notice issued by the Estate Revenue Inspector, Saidapet u/s 7 of the Land Encroachment Act calling upon the appellant to show cause against levy of assessment and penalty for the alleged

unauthorised occupation of 30 cents in S.No. 167/3. A suitable reply was sent by the appellant on 24.4.1978 asserting its title to the land on the ground of uninterrupted private occupation from long before the village was taken over by

the Government and pointing out that any action under the Land Encroachment Act would be illegal when the land had never been reduced to the possession of the respondent Government after the village was taken over under the

Abolition Act. The land had become indistinguishable from the patta land on either side by its top soil having been removed along with the soil of the adjacent lands and used for making bricks by the predecessor-in-title of the appellant.

The respondent Government had not exercised any right over the land nor taken any steps to demarcate it to distinguish it from the adjacent land on either side. It was only after the appellant firm applied for patta of the land that the

authorities seemed to have discovered that in the survey map S.No. 167/3 had been shown as a channel. Instead of taking steps to have the error rectified, the respondent Government was refusing to recognise the private occupation of

the land. The classification of the land as poramboke in the revenue accounts

was incorrect and in the absence of an express injunction from the court, there was danger of the authorities resorting to action under the Land Encroachment Act against the appellant by levying penalty and threatening eviction which would be illegal. The appellant was a bona fide purchaser for value without notice of the property having been a poramboke by any demarcation or otherwise, had secured an indefeasible right by prescription and therefore the appellant was entitled to the declaration and injunction prayed for.

3. The Government resisted the suit inter alia contending as follows : The appellant's vendor Chellammal had no title or possession and therefore the sale deed in favour of the appellant would not convey any right to the appellant. The alleged removal of the earth from the suit property for manufacturing the bricks was not true and in any event it was illegal. The respondent had every right to evict trespassers under the provisions of the Land Encroachment Act and the same had been rightly invoked by them. The plan attached to the plaint was not admitted. The possession of the appellant and its predecessors-in-title for over 40 years was untrue. The rejection for grant of patta was just and proper. The notice u/s 80 was not proper. The appellant's claim had been rightly rejected. The classification was perfectly legal and the same had been done by the settlement authorities. The suit was barred by limitation u/s 14 of the Land Encroachment Act as no suit had been filed from the date of notice issued u/s 7 of the Land Encroachment Act. The suit was liable to be dismissed as the appellant was in illegal occupation. The appellant was not a bona fide purchaser for value. It did not get any right in the suit property. The suit was liable to be dismissed.

4. The trial court framed the necessary issues and on the basis of the oral and documentary evidence held that the appellant had not established its case and that the action initiated by the respondent under the Land Encroachment Act was in order, that the suit was barred by Section 14 of the Land Encroachment Act, that the appellant had not made the revenue authority as a party in the proceedings and sent the notice u/s 80 to them and therefore there was no valid notice

u/s 80, C.P.C. and the appellant was not entitled to any relief. So holding, the trial court dismissed the suit by its judgment and decree dated 11.11.1982. The appellant's appeal in A.S. No. 36 of 1983 was also dismissed by the learned

Subordinate Judge, Chengleput by his judgment and decree dated 1.11.1983. Aggrieved, the present second appeal has been filed. At the time of admission, the following substantial question of law was framed for decision in the second appeal.

Whether the Government, having allowed the suit property to remain in private occupation and not having taken any action to take possession u/s 3(d) of the Abolition Act, can resort to the Land Encroachment Act to evict the plaintiff.

5. In his argument Mr. S. Gopalratnam, learned senior counsel for Mr. R.L. Ramani for the appellant gave top priority to criticising the courts below for concluding that the appellant had not proved his case they themselves having

effectively blocked all attempts by the appellant to let in evidence, to get an Advocate Commissioner appointed to report about the physical features and subsequently to challenge the orders of such refusals by them before this Court. The

learned senior counsel furnished a list of dates and events and submitted that this is a text book example where there has been failure and miscarriage of justice. The appellant has also taken out applications for reception of additional

evidence in view of the particular criticism by the lower appellate court that the appellant had not proved its case that the channel ceased to exist more than 40 years prior to the suit that Ex.A-2 included the suit property and that the

appellant had prescribed for title by adverse possession.

6. The learned senior counsel also made his submissions on the available materials. It was submitted that the courts below had proceeded on an erroneous footing in thinking that there was any discrepancy with reference to the extent of

the land claimed by the plaintiff/appellant in S.No. 167/3. They had failed to see that the property conveyed under Exs. A-3 to A-6 being identical with the same extent, the boundaries given in Ex.A-6 made it clear that it was a compact

block which must have included the suit channel also. It was a well established principle of law that when there were discrepancies in the survey numbers and boundaries had been given, in fixing the property, the boundaries should

prevail. The extent of 2.53 acres was got released from the mortgagee under Ex. A-1 and purchased by the appellant on the same date under Ex.A-2 delineated in the plan attached to Ex.A-1 and the plan left no doubt that 2.53 acres

included the suit property. If only the lower appellate Court had adverted to the recitals in Exs.A-3 to A-6 it would not have made a mistake in observing that Exs.A-1 and A-2 did not refer to the property in question. The learned senior

counsel drew my attention to the specific averments in the plaint in paragraphs 3 and 7 and the same not having been controverted in the written statement filed by the Government it must be deemed that the plaint averments had been

accepted. Under Ex. A-3 the then land holder shrotriendard namely Rao Bahadur Gatta Venkatapathy Naidu had conveyed the kudivaram rights over the entire property including the channel bed to Kamakshi Ammal and in view of the

ruling in Vadivelu Mudaliar Vs. The State of Madras by Collector of Madras, , he was competent to grant patta in respect of an abandoned channel bed. The learned senior counsel further submitted that the lower appellate Court had

clearly overlooked the admission by D.W.1 that the channel bed had become indistinguishable due to the removal of the soil for making bricks and in view of the decision in Sivasubramaniam v. Secretary of State ILR 9 Mad. 285, the

removal of earths admitted by the defence witness was prima facie evidence of adverse enjoyment.

7. The learned Government Pleader arguing contra submitted that the suit property was in S.No. 167/3 and the same did not find a place in the plaint schedule. The plaintiff had not purchased 167/3 at all. The learned Government

Pleader also referred to the oral evidence on behalf of the plaintiff to the effect that 167/3 did not belong to Chellammal. The learned Government Pleader also submitted that the plaintiff/appellant had not established adverse possession.

8. To start with, I may immediately say that the observation of the learned Subordinate Judge in paragraph 10 of his judgment that it had been rightly pointed out by the learned District Munsif that in the sale deeds, the existence of the

channel was mentioned."" is not correct. I am satisfied on a perusal of the exhibits that the said exhibits do include the suit property. The suit property is within stated boundaries and we can safely conclude that the sale deed in favour of

the appellant includes the suit property. The next question is as regards the existence or otherwise of the channel. It is in this connection that the dates and events furnished on behalf of the appellant become relevant.

9. The list of dates and events as given by the learned senior counsel is set out below.

4.2.1980 - Plaint presented in Sub-Court, Chengleput.

20.6.1980- -do-filed-15.7.1980 - first hearing date.

21.8.1980 - Memo of appearance by Government
Pleader for defendant.

19.5.1980 - Written statement (not filed)

22.10.1980- -do-

24.11.1980- -do-

2.12.1980 - Written statement filed

21.1.1981 - For trial adjourned.

17.2.1981 - -do-

6.3.1981 - -do-

7.3.1981 - Tamil Nadu Act 34 of 1980 amending T.N. Civil Court Act, 1873 came into force. 8.4.1981 -G.O.Ms, dated 23.3.1981 O.S. No. 120 of 1980 transferred to D.M.C. as O.S. No. 541 of 1981.

29.6.1981 - Posted in D.M.C. for trial adjourned

18.8.1981 - B.N.R., adjourned

14.10.1981 - Judge on C.L. adjourned

5.12.1981 -Adjourned.

18.2.1982- -do-

16.4.1982 - B.N.R. adjourned

24.7.1982-Listed 12.10.1982

12.10.1982 - Adjourned at request 16.10.1982

16.10.1982 - Adjourned to 20.10.1982

20.10.1982 - P.W.1 examined in part, adjourned

21.10.1.982 - P.W.1 examined further adjourned

3.11.1982 -P.W.1 examined

3.11.1982 - Plaintiff's application I.A. No. 2075 of 1982 for issue of commission for local inspection.

4.11.1982 - I.A. No. 2075 of 1982 dismissed; adjourned for defence evidence.

4.11.1982 - Emergent batta paid by plaintiff for three witnesses to be examined on 6.11.1982 (witnesses being former Village Officers who had already deposed in O.S. No. 120 of 1980, D.M.C, Poonamallee, later O.S. No. 541 of 1981, D.M.C, Tiruvallur.

6.11.1982 - I.A. No. 2092 of 1982 with a request to reopen the case for that purpose - rejected.

6.11.1982 - D.W.1 examined; adjourned

8.11.1982-D.W.1 completed.

8.11.1982 - Plaintiff filed I.A. No. 2116 of 1982 asking for adjournment of trial saying that it was seeking to canvass orders in the two I.As. viz., I.A. Nos. 2075 of 1982 and 2092 of 1982.

8.11.1982 - The court dismissed this I.A. also

11.11.1982 - Judgment

2.4.1983 - A.S. No. 36 of 1983 presented in Sub-Court, Chengleput.

2.4.1983 - I.A. No. 351 of 1983 for appointment of Commissioner.

- Counter in above.

1.11.1983-1.A. No. 351 of 1983 held liable to be dismissed (see judgment in appeal paragraph 16).

10. It would be seen from the above that the trial court dismissed the application for appointment of Commissioner on wholly untenable ground. The learned District Munsif has stated as follows :

Since the Government is the defendant in this suit, necessary. Government plans can be produced at the time of evidence. Hence, the petition is rejected as unnecessary, since P.W.1 has already been examined"". The trial court completely

overlooked that the very case of the appellant was that the channel had been obliterated a long time ago and the plan if any produced by the Government could not relate to the then state of affairs alleged by the appellant. The then state

of affairs could be ascertained only by the visit of an Advocate-Commissioner to make a local inspection and submit a report showing the physical features of the suit land and its surroundings and such acts as could be ascertained by

inspection and enquiry which would be relevant for a determination of the question at issue in the suit. I am clearly of the view that the trial court was wrong in rejecting the application. Again, for the purpose of elucidating the exact state

of affairs through witnesses the appellant had filed an emergent batta for summoning three witnesses on 4.11.1982. The witnesses sought to be examined were former village officers who had already deposed in O.S. No. 120 of 1980

D.M.C, Poonamallee later O.S. No. 541 of 1981, D.M.C, Tiruvallur and the appellant's vendor's son. The appellant also filed an application in I.A. No. 2092 of 1982 with a request to re-open the case for examining all the said three

witnesses. However, on a curious reasoning that the suit was part heard and P.W.1 had been examined in full, the trial court held that the petition was liable to be rejected. Thereafter on 8.11.1982 the appellant filed application I.A. No.

2116 of 1982 seeking adjournment of trial saving that it was seeking to canvass the correctness of the orders before the High Court. The trial court by its order dated 8.11.1982 rejected the application on the ground that the suit was

posted for arguments. The judgment was pronounced in the suit on 11.11.1982.

11. After the dismissal of the suit, the appellant, filed appeal A.S. No. 36 of 1983 before the Subordinate Judge's Court, Chengleput on 2.4.1983. Along with the

appeal, the appellant filed application I.A. No. 351 of 1983 for the appointment of an Advocate-Commissioner by the appellate court. Objections were also filed in the application by the respondent. The learned Subordinate Judge while disposing of the appeal rejected the application stating that in view of the earlier order of the learned District Munsif in I.A. No. 2075 of 1982 dismissing the application for the appointment of an Advocate-Commissioner, the application before it, was not maintainable. The learned Subordinate Judge further stated that even otherwise the report of the Commissioner would not show that the property belonged to the appellant, and that the physical features would not be of any help.

12. I have absolutely no hesitation in holding that the courts below clearly erred in refusing to give sufficient opportunity to the appellant to substantiate its case on the issues involved.

13. The learned Senior Counsel referred to a judgment of this Court in H.T. Vira Reddi Vs. Kistamma, and relied on the following passage :

Mere strictures on the appellant for not having expressly mentioned about the curious circumstances of the birth of a child after the respondent left him in November 1957 would tantamount to mincing matters. It is an accepted canon of law as stated by Brown L.J. in *Gropoor v. Smith* (1884) 26 Ch.D. 700. "Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy.

In *Robinson v. Unicos Property Corporation* (1962)2 All E.R. 24, it has been stated that "punishing of mistakes is of course not administration of justice." It has been held in *J.J.R. Manohar Lal v. National Building Material Supply,*

Gurgaon AIR 1969 S.C. 1627 : (1965)1 S.C.C. 869 : (1970)1 S.C.J. 129 : (1969)1 S.C.W.R. 758, that a party cannot be refused relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of

procedure." I do not find that the appellant had made any mistake. The comment made by the lower appellate court is that the suit had been filed in 1980 and the application for the appointment of an Advocate-Commissioner had been

taken out only at the time of the trial and therefore the trial court was justified in dismissing the application and this, to say the least is unjust. The lower appellate court has also made a further comment that the appellant had not chosen to

file any revision against the order. In this connection, the lower appellate court clearly overlooked that the appellant had sought adjournment of trial before the trial court by taking out an application in I.A. No. 2116 of 1982 saying that it

was seeking to take the matter by a revision to the High Court and the same was

dismissed. The lower appellate court was clearly at fault in putting the blame on the revision petitioner in not seeking to canvass the correctness of the order

passed by the trial court in the application for the appointment of an Advocate-Commissioner. As an appellate court, it had ample powers to consider the case for the appointment of the Advocate-Commissioner and had clearly erred in

rejecting the application as not maintainable. Equally fallacious is its observation that the report of the Commissioner would not show that the property belonged to the appellant and that the physical features would not be of any help in the

appellate stage. There has been denial of justice to the appellant at the hands of both the Courts below. It is worthwhile to refer to *Maxwell v : Keun and Ors.* (1982)1 K.B. 645, relied on by the learned senior counsel. In that case, it

was held as follows :

It is obvious that there must not be any attempt to interfere with the discretion of the learned Judge in reference to the trial. It is most important that we should uphold that discretion. But *Sackville West v. Attorney General*, 128 L. T.

Journal 265, to which our attention has been called, gives an illustration that, although it is only on very rare occasions that the discretion of a learned Judge will be interfered with, yet that there may be such occasions. It is a decision of

the Court of Appeal, and therefore one which is binding upon this Court. The statement is made in the judgment, which is a judgment of Cozens-Hardy M.R. and Moulton and Buckley, JJ., that ""although it could not be said that under no

circumstances would the Court of Appeal be justified in interfering with the discretion of the learned Judge in a Court below as to the proper mode and time of trying an action, yet it would only be in the most extraordinary circumstances

that an application to review the decision of the learned Judge as to the conduct of the business in his own court could succeed; that the only case in which the Court of Appeal would so interfere would be if satisfied that the decision was

such that, notwithstanding any exercise by the learned Judge of the power of control which he would have over the action when it came on for trial, justice did not result, and he had failed to see that such would be the effect of his

decision.

It is further observed in the same decision as follows :

The result of this seems to me to be that in the exercise of a proper judicial discretion no judge ought to make such an order as would defeat the rights of a party and destroy them altogether, unless he is satisfied that he has been guilty of

such conduct that justice can only properly be done to the other party by coming

to that conclusion. I am very far from being satisfied that is so in this case; on the other hand, I am quite satisfied that very substantial injustice would be done to the plaintiff by refusing the application that this case should be postponed, and that is the result of the present order.

I am satisfied that grave injustice had resulted in the present case by the refusal of the trial court to have an Advocate-Commissioner appointed and to allow the application to examine witnesses to prove the appellant's case.

14. In *Walker v. Walker* (1967)¹ All E.R. 412, the conduct of the proceedings in the court below was impugned. The appellate court found that the adjournment prayed for had resulted in serious injustice to the party, in that, his side of

the case had not been heard and that an adjournment would not have prejudiced the other side. The appellate court was entitled to review the exercise of discretion by the lower court. In that case, a re-hearing of the suit was ordered.

15. It has been held in *T.M. Natarajan v. Subbaraya Mudaliar* (1989)¹ L.W. 298, that where sufficient reasons are given for not abiding by procedure laid down in Order 18, Rule 3, C.P.C., the court could allow reopening of the suit

and letting in evidence before terminating of the suit. In *J. Samuel Vs. S. Mathisa Pandian and 2 others*, , wherein a revision against the dismissal of the petition filed u/s 151 to reopen trial in the suit for letting in additional evidence A.

Ramamurthi, J., held that mere quoting of a wrong provision was not a bar to maintain the petition and an opportunity had to be given to the party adduce documentary evidence for effective adjudication of disputes between the parties

and in the interests of justice.

16. In the above circumstances, the present applications taken out by the appellant for reception of additional evidence assume importance. Order 41, Rule 27, C.R.C. enjoins that the appellate court may allow such evidence or

document to be produced or witness to be examined, if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted and the appellate court required any document to be

produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. It has been held in *State of U.P. Vs. Manbodhan Lal Srivastava*, , *Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva*

Reddy and Others, and *Sarada (Smt) and Others Vs. Manikkoth Kombra Rajendran*, , that the appellate court could receive additional evidence of the same was required to render fair justice between the parties.

17. In the present case, I have already referred to the impropriety on the part of the courts below in refusing to have an Advocate-Commissioner appointed and also in refusing to permit the appellant to summon witnesses and examine

them to substantiate its case. The refusal by the courts below to admit the documents which ought to have been admitted entitles this Court to entertain the application under Order 41, Rule 27, C.R.C. I am clearly of the view that the learned senior counsel is perfectly justified in taking exception to the refusal by the courts below to admit evidence.

18. There are two applications taken out in this Court C.M.R. No. 2646 of 1998 is for the reception of xerox copies of documents as additional evidence. C.M.R. No. 4802 of 1998 is for the reception of certified copies of certain

documents. The xerox copies of the documents sought to be filed are :

1. Order dated 12.6.1974 passed by the Revenue Divisional Officer, Saidapet.
2. Order passed by the District Revenue Officer dated. 17.10.1975.
3. Order dated 26.7.1976 passed by the Commissioner for Land Revenue and Settlement of Estates.
4. Evidence of Balanathan Pillai in O.S. No. 880 of 1967.
5. Evidence of Gopalakrishna Pillai in O.S. No. 880 of 1967.
6. Patta No. 1290.

In C.M.P. No. 4802 of 1998 the following documents are sought to be filed :

1. Copy of plaint in O.S. No. 880 of 1967 D.M.C., Poonamallee.
2. Certified copy of deposition of Balanathan Pillai as P.W.3 in O.S. No. 880 of 1967, D.M.C., Poonamallee.
3. Certified copy of the Judgment of D.M.C., Tiruvallur dated 30.4.1977 in O.S. No. 91 of 1974.
4. Original of certificate of entry in death register in form ""x"" bearing No. 016890 issued on 29.6.1989 by Sub-Registrar, Koyambedu as regards the death on 25.9.1974 of Balanathan Pillai and 5. Patta issued to petitioner on 4.1.1985

as regards a part the property acquired by it adjacent to the suit property.

19. It is alleged in the affidavit filed in support of C.M.P. No. 2646 of 1998 as follows : The appellant applied to the Revenue authorities for the grant of patta in respect of 33 rents in S.No. 167/3 in their occupation, on the ground that

the classification of the land as channel poramboke and the settlement was an apparent error because the channel had gone out of existence more than 40 years prior to the suit and it had become merged with the patta lands on either side

and had been in uninterrupted possession for more than 40 years by the appellant and its predecessors in title openly to the knowledge of the

Government. However those applications made to the District authorities and to the Board of

Revenue were rejected without proper consideration. On or before 22.11.1996, the appellant applied to the Collector of Chengleput District for grant of patta to them for 32 cents of land in its possession in S.No. 167/3 Koyambedu

village outside the provisions of Tamil Nadu Act 26 of 1948. The said District Revenue Officer of Kancheepuram transferred the proceedings to the Revenue Divisional Officer, Saidapet for disposal. The Revenue Divisional Officer,

Saidapet by order dated 12.6.1974 rejected the claim of the appellant. At that time, the Government of Tamil Nadu passed G.O.Ms. No. 1300, Rev Department, dated 30.4.1971 regarding grant of patta to persons in continuous

possession and enjoyment of land in estates taken over under the Tamilnadu Act 26 of 1948. In the said Government Order, the Government had made it clear that where there was a rival claim for the grant of patta in respect of the

same land, the authorities concerned might direct the parties to obtain the declaration from the civil court that they had been in continuous possession and enjoyment of the lands. In O.S. No. 880 of 1967 Balanathan Pillai who was aged

about 76 years at that time and who was the Karnam of Koyambedu village gave evidence as P.W.3 on the side of the plaintiff therein and he had clearly stated that there was a channel and that it was not used at the present time and that

it was classified as poramboke in the revenue records. Similarly, one Gopalakrishna Pillai who was the Village Munsif in 1941-42, gave evidence as P.W.6 in the suit that the channel was not in use, that there was no water after 1941-42.

In the said suit, the appellant herein was the defendant.

20. The Revenue Divisional Officer, Saidapet made an order on 12.6.1974 rejecting the claim without considering whether the appellant and its predecessors-in-title were in continuous possession and enjoyment. The Revenue Divisional

Officer particularly found that in the portion of S.No. 167/3, there was no channel on ground at present. The Revenue Divisional Officer had misdirected himself to say that the area under occupation of the appellant was measured on

ground as 2.53 acres and that this extent was exclusive of the portion of the channel claimed by the appellant. The Revenue Divisional Officer clearly overlooked that under the sale deed dated 25.2.1964 what had been sold to the

appellant was a compact block of land within specified boundaries. Apart from that he had also stated that the appellant did not produce any record to show that the land in question was in the continuous possession and enjoyment of the

appellants predecessors in title. Having found that there was no channel on ground at that time, the Revenue Divisional Officer was wrong in expecting documentary proof of possession by the appellant. Against the order of the Revenue

Divisional Officer, the appellant preferred an appeal before the District Revenue Officer, Kancheepuram and the District Revenue Officer required the appellant to produce documentary evidence to prove that the land in question was

ryoti land prior to the settlement of the village. In so doing, the District Revenue Officer clearly overlooked the terms of G.O.Ms. No. 1300, dated 30.4.1971. The appeal was dismissed by the District Revenue Officer on 17.10.1975.

The District Revenue Officer also ignored the affidavit of the previous owner B.C. Munirathna Naidu. A further appeal to the Commissioner for Land Revenue and Settlement of Estates was also dismissed. The orders of the Revenue

Divisional Officer, District Revenue Officer, Commissioner for Land Revenue and Settlement Estates, the evidence of Balanathan Pillai and Gopalakrishna Pillai are all necessary to prove the claim of the appellant.

21. I am satisfied that an opportunity had been denied to the appellant to prove its case by calling the necessary witnesses and by production of necessary documents. This is eminently a fit case where the applications have to be allowed in the interests of justice. It is also pertinent to note that the respondent though given sufficient time did not choose to file any counter opposing the applications. Both the applications C.M.P. Nos. 2646 and 4802 of 1998 will stand

allowed and the documents will be marked as Exs.A-18 to A-28.

22. It is now represented by the learned Senior Counsel that both the witnesses examined in O.S. No. 880 of 1967 are dead and the certified copies of their depositions have to be taken on file and relied on for the purpose of the

disposal of the case. The learned senior counsel relied on a Bench Judgment of this Court in Raghubhushana Tirthaswami and Anr. v. Vidiavaridhi Tirthaswami and Anr. AIR 1917 Mad. 809 : 34 Ind.Cas. 875 and contended that

depositions of Balanathan Pillai and Gopalakrishna Pillai are admissible in the present case. The learned senior counsel also relied on the judgments of the Andhra High Court reported in Mazhar Ali v. Gulam Murthujah AIR 1958 A.P. 8

and of the Calcutta High Court reported in Pranballav Saha and Another Vs. Sm. Tulsibala Dassi and Another, in support of the proposition that the depositions by Balanathan Pillai and Gopalakrishna Pillai in the earlier suit should be

received in evidence. In State of Bihar Vs. Radha Krishna Singh and Others, , the Supreme Court dealing with the scope of Section 32(5) of the Evidence Act stated as follows :

Statements, declarations or depositions, etc., would not be admissible if they are post litem motam, because in such cases the element of bias and concoction is not eliminated. However, statements or declarations before persons of

competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature. The admissibility of such declaration is, however, considerably weakened if it pertains not to public rights but to purely private rights.

The certified copy of the Judgment of D.M.C., Tiruvellore dated 30.4.1977 in O.S. No. 91 of 1974 is also sought to be filed as additional evidence in the present case. Dealing with the admissibility of judgments in prior suits not inter

partes, the Supreme Court in the same judgment stated as follows : A judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings is admissible in all cases where such judgments

are inter partes or not. But a judgment in personam which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and that was the decree passed and the properties which were

the subject matter of the suit. The Supreme Court has summarised the principles as follows :

1. A judgment in rem, e.g., Judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter partes or not.
2. Judgments in personam not inter partes are not at all admissible in evidence except for the three purposes mentioned above.
3. On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the Judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.
4. The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.
5. Statements, declarations or depositions, etc., would not be admissible if they are post litem motem

In a recent judgment in Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, , the Supreme Court has held following Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, , that Judgment not inter partes is admissible in

evidence u/s 13 of the Evidence Act as evidence of an assertion of a right to property in dispute.

23. It was argued for the plaintiff/respondent in that case that the judgment in the earlier suit rendered in favour of the defendant in that suit, namely, the appellant before the Supreme Court, Tirumala Tirupathi Devasthanams that the plaintiff was not a party and hence any finding as to the title of the appellant given therein was not admissible as evidence against the plaintiff in that suit. Rejecting the said contention, the Supreme Court in paragraph 9 of its Judgment stated, as follows :

In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, , speaking on behalf of a Bench of three learned

Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter partes is admissible in evidence u/s 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than

those falling under Sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjea, J. (as he then was) speaking on behalf of a Bench of four learned Judges in *Sital Das Vs. Sant*

Ram and Others, , held that a previous judgment not inter partes, was admissible in evidence u/s 13 of the Evidence Act as a "transaction" in which a right to property was "asserted" and "recognised". In fact, much earlier, Lord Lindley

held in the Privy Council in *Dinamoni v. Brajmohini* ILR (1902) Cal. 190, that a previous judgment not inter partes was admissible in evidence u/s 13 to show who the parties were, what the lands in dispute were and who was declared

entitled to retain them. The criticism of the judgment in *Dinamoni v. Brajmohini* and *Ram Ranjan Chakerbati v. Ram Narain Singh* 1895 ILR 22 Cal. 533 (P.C.) by Sir John Woodroffe in his commentary on the Evidence Act (1931, P.

181) was not accepted by Lord Blanesburgh in AIR 1934 157 (Privy Council) . Thus, in my view, the judgment in the previous case though not between the same parties in the present suit, would be receivable in evidence. In the

previous suit which was between the present plaintiff as defendant and M/s. Kutty Flush Doors and Furniture Company (P) Ltd., as plaintiff, the prayer was for declaration of the title of the Kutty Flush Doors to the suit property and for a

permanent injunction restraining the present plaintiff, its agent, servants etc., from interfering in any manner whatever with the possession and enjoyment of Kutty Flush Doors or in the alternative for possession of the suit property. If it

should become necessary on account of the execution of the order u/s 145 of the Criminal Procedure Code. The property subject matter of the said suit was dry land of an extent of 23 cents in S.No. 16773 classified as Channel

poramboke of Koyambedu village of Saidapet Sub Registration District of Chengleput District. The suit was dismissed by the learned District Munsif, Tiruvellore by his judgment and decree dated 30.4.1977. The learned District Munsif

found that the suit property was part of the land sold to the present plaintiff by Chellammal. The learned District Munsif further observed as follows : ""It is also seen from the entire evidence on record that there is a poramboke channel in

between the purchased property of plaintiff's and defendant's During the course of time the said channel has been in continuous, uninterrupted possession and enjoyment of the defendant's predecessors-in-title. As such the defendant's

vendor had sold the property along with their land to the defendant under Ex.B-2. After the purchase, the defendant has been in possession and enjoyment of the suit land."" The learned District Munsif further observed as follows : ""They

physical features, the level of the land and its surrounding facts and circumstances clearly would go to show that the suit property has been in possession and enjoyment of the defendant before them it had been in possession of their

predecessor-in-title. There is nothing in the evidence to show that the plaintiff has ever enjoyed the suit property prior to the dispute arose between the parties. On the other hand, defendants have substantiated its claim over the suit property.

24. There is nothing on record to show whether there was any appeal against the judgment and decree. But from the fact that the respondent Government has chosen to issue notice only to the present applicant, it would be clear that the

plaintiff in the earlier suit, namely, Kutty Flush Doors are no longer in the scene and it is only the present appellant who is staking its claim with regard to the suit property. It is also seen that from the original of certificate of entry in death register in form "X" dated 29.6.1989 that Balanathan Pillai died on 25.9.1974.

25. Thus, I am of the view that the certified copies of the depositions of Balanathan Pillai and Gopalakrishna Pillai could be received as additional evidence. They were both working as Village Officers and they were in the know of things.

They knew as to what was the nature of the property in respect of which they were giving evidence. Balanathan Pillai in particular has stated in 1973 that the present suit property ceased to be channel poramboke for more than 30 years.

Balanathan has stated as follows in his cross-examination in the prior suit.

This is what Gopalakrishna Pillai has stated in his deposition before the District Munsif, Poonamallee in O.S. No. 880 of 1967.

26. Section 32 Clause 4 of the Evidence Act makes the statements of relevant facts made by persons who are dead admissible in evidence if such statements give the opinions of such persons as to the existence of any public right or

custom or matter of public or general interest. A fact in issue is always a relevant fact and statements relating to facts and issue cannot be excluded from the operation of Section 32(4). If they were to be excluded much valuable evidence

hitherto considered admissible would be unavailable as will be apparent from the illustrations to Section 32 and also to the definitions of facts and issues and relevant facts. In the previous suit filed by Kutty Flush Doors and Furniture

Company Limited v. Subramnaian and Company, O.S. No. 80 of 1967 Balanathan was examined as P.W.6. The suit was transferred to the file of the District Munsif's Court, Tiruvallur and re-numbered as O.S. No. 91 of 1974. In that

suit, the appellant was the defendant. The appellant's vendor's son was examined as D.W.1. That suit was for a declaration and a permanent injunction. The description of the property was as follows : Dry land of an extent of 32 cents in

S.No. 167/3 classified as channel poramboke of Koyambedu village of Saidapet Sub Registration District of Chengleput District. It was specifically contended that the suit property belonged to the plaintiff therein and the appellant herein

attempted to interfere with the possession and enjoyment with the plaintiff therein. The possessory title also was set up and sought to be declared alleging interior possession of the plaintiff. The suit was dismissed on 30.4.1977. It was

found in that suit that the physical features, the level of the land and its surrounding facts and circumstances clearly would go to show that the suit property had been in the possession and enjoyment of the defendant before them it had

been in possession of their predecessor-in-title. It was also found that there was nothing in the evidence to whom that the plaintiff in that suit had had ever enjoyed the suit property prior to the dispute between the parties that on the other

hand, defendants had substantiated its claim over the suit property. It was found as follows in that suit. ""That fact that the property in question has been classified as channel poramboke in the revenue account can scarcely admit of any

doubt and is also not seriously disputed either. It is however equally beyond doubt on the evidence on record both oral and documentary that the plaintiff property was and should have been in possession and enjoyment of the

defendant's predecessor-in-title and the defendant has been in possession and enjoyment of the suit property subsequent to defendant's purchase of the same. Reading of Ex.B-2 would clearly prove that the disputed property is a part of

the land sold under the deed. It is also seen from the entire evidence on record that there is a poramboke channel in between the purchased property of plaintiff's and defendant's. During the course of time the said channel has been in

continuous, uninterrupted possession and enjoyment of the defendant's predecessor-in-title. As such the defendant's vendor had sold the property along with their land to the defendant under Ex.B-2. After the purchase, the defendant has been in possession and enjoyment of the suit land.

27. Thus, the materials already on record and the documents now received in evidence clearly show that the appellant and before the appellant its predecessors-in-title had been in possession and enjoyment of the suit property for well

over 30 years. It is also conceded by the Department that the appellant was in possession. It has been held by the Supreme Court in AL. VR. ST. Veerappa Chettiar Vs. State of Madras and Another, as follows :

If a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn. The presumption of future continuance is noticed in illus. (d) to

Section 114. In appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate illustration. The rule that the presumption

of continuance may operate retrospectively has been recognised both in India. This is rule of evidence by which one can presume the continuity of things backwards. The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surround circumstances.

Relying on this, the learned senior counsel wanted the court to infer that the possession of the appellant should be presumed both backwards and forwards particularly having regard to the admission made by the Department though its

witness D.W.1. The learned senior counsel in this connection referred to the judgments reported in Sivasubramaniam v. Secretary of State ILR 9 Mad. 285 and Anangamanjari Chowdhrani and Ors. v. Tripura Sundari Chowdharani and

Ors. ILR 14 Cal. 740. The learned senior counsel also relied on the judgment already referred to, namely, Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, and submitted that the title of the plaintiff/appellant had not been

extinguished and was subsisting as of today in respect of the suit property. The respondent who as dispossessed long ago would not be able to recover possession and the appellant could remain and retain its possession. There is

force in

the contention raised by the learned senior counsel and the same deserves acceptance it should therefore be held on the basis of the materials already on record and the additional evidence produced before this Court that the right of the

appellant to the suit property cannot be disputed. The mere fact that the appellant had applied for grant of patta and which had also been commented upon by the lower appellate court would not cut at the root of the case of adverse

possession set up by the appellant. As rightly contended by the learned senior counsel all that the appellant had admitted was that he came to know that it had been wrongly classified as poramboke and that the appellant's application for

patta was on the basis that the land having become merged with patta land and in uninterrupted private possession for over 40 years the appellant was entitled to patta under the Abolition Act. The above discussions obliges me to

interfere in second appeal. The second appeal will stand allowed and the substantial question of law raised is answered in favour of the appellant. The decision of the courts below dismissing the suit is set aside. The suit O.S. No. 541 of

1981 on the file of the District Munsif's Court, Poonamallee will stand decreed as prayed for. There will be no order as to costs in the second appeal.