

(2008) 11 MAD CK 0156

In the Madras High Court

Case No : Second Appeal No's. 1748 of 1996, 113 of 1997, C.M.P. No's. 17362 of 1996 and 1268 of 1997

Thiruvaduthurai Adheenam Gurumaha Sannithanam
Seervalseer Siva-prakasa Pandara Sannadhi, Hereditary
Trustee and Hugdar of Tiruchendur Arulmigu
Subramaniaswami Thirukovil Santhil Thirupani Kattalai

APPELLANT

Vs

K. Manickam and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35
Evidence Act, 1872 — Section 114
Limitation Act, 1963 — Article 135

Citation : (2008) 11 MAD CK 0156

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : V.K. Vijayaraghavan for C. Rajakumar, for the Appellant; S. Kanniah, for Respondents 1 to 5 in S.A. No. 1748/1996, R.S. Ramanathan, for respondents 1 to 3 in S.A. No. 113/1997 and Paramasivam, Addl. Govt. Pleader for 4th Respondent in S.A. No. 113/1997, for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.—These second appeals have been filed against the common judgment passed in Appeal Suit Nos. 281 of 1994 and 282 of 1994 by the District Court, Tuticorin, wherein the judgments and decrees passed in Original Suit Nos. 181 of 1992 and 274 of 1992 by the District Munsif Court, Srivaikundam, are set aside.

2. The respondents 1 to 3 in Second Appeal No. 113 of 1997 as plaintiffs have filed Original Suit No. 181 of 1992 on the file of the trial Court, for the reliefs of declaration and perpetual injunction, wherein the present appellant has been shown as first defendant.

3. It is averred in the plaint that the suit property is situate in Survey No. 241/1,

measuring two acres and the same belongs to the Government. The plaintiffs and others have encroached the same prior to twenty five years and constructed houses. At the time of construction, the first defendant has not raised any objection. The plaintiffs and others have constructed their houses thinking that the suit property belongs to the Government. During September 1989, the first defendant and his henchmen have stated that in the year 1968, a suit has been instituted against the plaintiffs and the same has been decreed in favour of the first defendant and the first defendant has demanded ground rent from the plaintiffs and others, and further it has been represented that the first defendant has obtained necessary order so as to demolish the houses of the plaintiffs and others. The plaintiffs and others have accepted the title of the first defendant and executed the rent deeds in favour of the first defendant and the same are nothing but sham and nominal. The plaintiffs and others have put their signatures without knowing the contents of rent deeds. On 10.03.1992, the Special Thasildar has issued a notice and thereby directed the plaintiff and others to appear for enquiry. The first defendant has raised his objection. The rent deeds executed by the plaintiffs and others have not come into force. Under the said circumstances, the present suit has been instituted for the reliefs sought for in the plaint.

4. It is averred in the written statement filed by the first defendant that the suit property is absolute property of the first defendant. It is false to say that the plaintiffs and others have executed rent deeds under threat or coercion. It is also equally false to say that the rent deeds executed by them are sham and nominal. The first defendant has already instituted Original Suit No. 549 of 1968 for the reliefs of declaration and recovery of possession, wherein the State Government has also been shown as one of the defendants and the same has been decreed in favour of the first defendant. Against the judgment and decree passed by the trial Court, the State Government has preferred appeal and the same has also been dismissed, wherein the judgment and decree passed in Original Suit No. 549 of 1968 are confirmed. The plaintiffs are not entitled to get the reliefs sought for in the plaint and therefore, the present suit deserves dismissal.

5. The respondents 1 to 5 in Second Appeal No. 1748 of 1996 as plaintiffs have instituted Original Suit Nos. 274 of 1992 on the file of the trial Court, praying to declare that the judgment and decree passed in Original Suit No. 549 of 1968 and its subsequent proceedings are illegal, wherein the present appellant has been shown as defendant.

6. It is averred in the plaint that the suit property is comprised in Survey No. 241/1, measuring 2 acres and the same belongs to the Government. The plaintiffs and others have encroached the same prior to forty years and constructed houses. The defendant is not having any manner of right, title and interest over the suit property. The defendant has instituted Original Suit No. 549 of 1968 for the reliefs of declaration and recovery of possession and the same has been decreed as prayed for. Against the judgment and decree passed by the

trial Court, the State Government (defendant No. 41) has preferred appeal and the same has also been dismissed. The decree passed in Original Suit No. 549 of 1968 has not been executed within a period of three years and therefore, the entire execution proceedings are barred by limitation under Article 135 of the Limitation Act and further as per the judgment and decree passed in Original Suit No. 549 of 1968, the alleged encroachment has not been removed. Therefore, the delivery recorded by the Court is not legally valid. The Special Thasildar has given a notice to the plaintiffs and others so as to give patta to them and the defendant has raised his objection. Under the said circumstances, the present suit has been instituted for the reliefs indicated supra.

7. In the written statement filed by the defendant, it is stated that it is false to contend that the suit property belongs to the State Government. The defendant has instituted Original Suit No. 549 of 1968 for the reliefs of declaration and recovery of possession in respect of the suit property and the same has been decreed as prayed for. Against the judgment and decree passed by the trial Court, the State Government has preferred an appeal suit and the same has also been dismissed, wherein the judgment and decree passed by the trial Court are confirmed. In pursuance to the judgment and decree passed in Original Suit No. 549 of 1968, the defendant has instituted execution proceedings and during the pendency of the same, the plaintiffs and others have come for compromise with the defendant and accordingly, compromise has been effected and subsequently, the plaintiffs and others have executed rent deeds in favour of the defendant. It is false to say that the execution proceedings initiated in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968 are illegal. The plaintiffs are entitled to get the reliefs sought for in the plaint and therefore, the present suit deserves dismissal.

8. The trial Court, on the basis of the divergent pleadings raised on either side, has framed necessary issues in both the suits and after perpending both the oral and documentary evidence, has dismissed the suits. Against the judgments and decrees passed by the trial Court, Appeal Suit Nos. 281 of 1994 and 282 of 1994 have been preferred by the plaintiffs on the file of the first appellate Court. The first appellate Court, after reappraising the evidence available on record, has allowed both the appeals, whereby and whereunder set aside the judgments and decrees passed by the trial Court in Original Suit Nos. 181 of 1992 and 274 of 1992. Against the common judgments passed by the first appellate Court, the present second appeals have been filed at the instance of the first defendant in Original Suit No. 181 of 1992 and defendant in Original Suit No. 274 of 1992.

9. At the time of admission of Second Appeal No. 113 of 1997, the following substantial questions of law have been formulated for consideration;

1) Are not the respondents 1 to 3/plaintiffs in Original Suit No. 181 of 1992 and all those represented by them, bound by the rental agreement executed by them and the rental receipts issued to them for the rents paid?

2) Is the lower appellate Court justified in holding that no delivery was effected when the parties had attorned tenancy and thereby symbolic delivery of possession had been effected?

3) Is not the finding of the lower appellate Court that merely because delivery has been recorded it does not mean decree has been satisfied erroneous?

10. At the time of admission of the Second Appeal No. 1748 of 1996, the following substantial questions of law have been formulated for consideration;

1) Is the lower appellate Court justified in holding that the rental agreements voluntarily and willingly executed by the occupants are vitiated by fraud, coercion and undue influence when the parties agreed to attorn tenancy with a view to save their superstructure?

2) Is not the lower appellate Court bound by the decree rendered in 1993 I MLJ 234?

3) Is the lower appellate Court justified in holding the deliver recorded by the executing Court is unwarranted when the C.P.C. specifically provides that that the question of execution discharge and subrogate should be agitated in S.47 C.P.C. and not by a separate suit?

4) Are not the occupant of the land estopped from contending that the rent deeds executed by them and the receipts for payment of rent made by them are invalid?

11. Since common questions of law and facts are involved in both the appeals, common judgment is pronounced.

12. Before contemplating the rival submissions made by either counsel, it would be more useful to look into the earlier suit filed in Original Suit No. 549 of 1968. It is an admitted fact that the first defendant in Original Suit No. 181 of 1992 and the defendant in Original Suit No. 274 of 1992 as plaintiff has instituted Original Suit No. 549 of 1968 in respect of the suit property for the reliefs of declaration and recovery of possession and the same has been decreed as prayed for. Against the judgment and decree passed by the trial Court, the State Government, one of the defendants, has filed Appeal Suit No. 33 of 1971 and the same has also been dismissed, wherein the judgment and decree passed by the trial Court are confirmed.

13. In the present suits, the specific case of the plaintiffs is that the suit property is not the property of the first defendant in Original Suit No. 181 of 1992 and the defendant in Original Suit No. 274 of 1992 and the same absolutely belongs to the Government and therefore, the appellant (first defendant/defendant) is not having proprietary interest.

14. In the written statement filed on the side of the first defendant/defendant (appellant), it has been specifically stated that the title of the first defendant/defendant has already been declared in Original Suit No. 549 of 1968 and

therefore, the contention urged on the side of the plaintiffs in both the suits is not legally valid. As adverted to earlier, Original Suit No. 549 of 1968 has been instituted for the reliefs of declaration and recovery of possession, wherein the state Government has also been shown as one of the defendants. The trial Court, has decreed the suit as prayed for and the first appellate Court, has also confirmed the same. Therefore, the title of the first defendant/defendant (appellant) has already been declared in Original Suit No. 549 of 1968 and under the said factual circumstances, the plaintiffs cannot say that the suit property is the absolute property of the State Government.

15. The plaintiffs in Original Suit No. 181 of 1992 has filed the same praying to declare that the rent deeds executed by them and others are nothing but sham and nominal and inoperative. The plaintiffs found in Original Suit No. 274 of 1992 has instituted the same so as to declare that all the execution proceedings made in Execution Petition No. 278 of 1985 in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968 are invalid and inoperative.

16. As pointed out earlier, the trial Court has dismissed both the suits, but the first appellate Court has decreed both the suits, mainly on the ground that the entire proceedings made in Execution Petition No. 278 of 1985 in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968 are invalid and also inoperative.

17. In both the appeals, the following points have become emerged for determination;

a) Whether the Court can declare the rent deeds alleged to have been executed by the plaintiffs found in Original Suit No. 181 of 1992 can be declared as sham and nominal and also inoperative?

b) Whether the Court can declare that the entire proceedings taken in Execution Petition No. 278 of 1985 in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968 can be declared as invalid and inoperative?

18. In Original Suit No. 274 of 1992 the decree passed in Original Suit No. 549 of 1968 has been marked as Ex.A1, wherein it has been clearly stated that the said suit has been instituted for the reliefs of declaration and recovery of possession and the same has been decreed as prayed for. Ex.A2 is a certified copy of the proceedings made in Execution Petition No. 278 of 1985. In Ex.A2 it has been clearly mentioned that on 17.09.1990 delivery has been recorded and consequently execution petition closed.

19. The learned Counsel appearing for the appellant in both the appeals has strenuously contended that the appellant is the absolute owner of the suit property and the title of the appellant has been declared in Original Suit No. 549 of 1968, wherein the State Government has been shown as one of the defendants and against the judgment and decree passed in Original Suit No. 549 of 1968, the State Government has preferred Appeal Suit No. 33 of 1971 and the

same has also been dismissed, wherein the judgment and decree passed in Original Suit No. 549 of 1968 have been confirmed and therefore, the title of the appellant to the suit property has become final and in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968, the appellant as petitioner has filed Execution Petition No. 278 of 1985 and taken delivery of possession on 17.09.1990 and the same has also been recorded by the trial Court and during the pendency of Execution Petition No. 278 of 1985, the plaintiffs found in both the suits and others have executed various rent deeds in favour of the appellant, wherein they clearly accepted the title of the plaintiff therein, to the suit property and now the plaintiffs found in Original Suit No. 181 of 1992 have stated in the plaint that all the rent deeds have been obtained by force and therefore, the same are nothing but sham and nominal, and the plaintiffs found in Original Suit No. 274 of 1992 has filed the said suit praying to declare that the entire execution proceedings made in Execution Petition No. 278 of 1985 are illegal and inoperative, and the trial Court has rightly dismissed both the suits, but the first appellate Court, without considering the correct legal positions, has erroneously decreed the suits and therefore, the common judgment and decree passed by the first appellate Court are liable to be interfered with.

20. The learned Counsel appearing for the respondents 1 to 3 in Second Appeal No. 113 of 1997 has also equally contended that the rent deeds alleged to have been executed by the plaintiffs found in Original Suit No. 181 of 1992 have been obtained by using force and therefore, the same are sham and nominal and the trial Court, without considering the contentions urged on the side of the plaintiffs found in Original Suit No. 181 of 1992 has erroneously dismissed the suit, but the first appellate Court, after making elaborate discussion, has rightly decreed the suit and therefore, the judgment and decree passed in Appeal Suit No. 281 of 1994 by the first appellate Court, are perfectly correct and the same need no interference.

21. The learned Counsel appearing for the respondents 1 to 3 in Second Appeal No. 1748 of 1996 has also equally contended that even though Original Suit No. 549 of 1968 has been filed for the reliefs of declaration and recovery of possession, the plaintiff therein has not chosen to file Execution Petition No. 278 of 1985 within three years and therefore, Execution Petition No. 278 of 1985 is barred by limitation and further no delivery has been given to the plaintiff therein (appellant) and under the said circumstances, the entire proceedings made in Execution Petition No. 278 of 1985 in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968 are in valid and inoperative, and the trial Court, without considering the vital contentions raised on the side of the plaintiffs, has erroneously dismissed the suit, but the first appellate Court, has rightly decreed the suit as prayed for and therefore, the judgment and decree passed in Appeal Suit No. 282 of 1994 by the first appellate Court, are perfectly correct and the same need not be interfered with.

22. Basing upon the divergent submissions made by either counsel, the Court

has to analyse first with regard to the reliefs claimed in Original Suit No. 274 of 1992. As stated in many places, Original Suit No. 274 of 1992 has been filed praying to declare that the entire proceedings made in Execution Petition No. 278 of 1985 are invalid and also inoperative.

23. The main attack made in the plaint is that Original Suit No. 549 of 1968 has been instituted for the reliefs of declaration and recovery of possession and the same has been decreed and against the judgment and decree passed by the trial Court, Appeal Suit No. 33 of 1971 has been filed and the same has been dismissed, but, Execution Petition No. 278 of 1985 has been filed in the year 1985 and therefore, Execution Petition No. 278 of 1985 is barred by limitation and further no delivery has been made in favour of the plaintiff therein (appellant) and delivery recorded in Execution Petition No. 278 of 1985 is totally illegal and also inoperative.

24. The appellant in both the appeal as plaintiff has obtained an executable decree in Original Suit No. 549 of 1968 to the extent of declaration of title and recovery of possession. The judgment and decree passed in Original Suit No. 549 of 1968 have been challenged in Appeal Suit No. 33 of 1971 and the same has also been dismissed. Therefore, the title of the appellant has become final. It is an admitted fact that Execution Petition No. 278 of 1985 has been filed in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968. On 17.09.1990 delivery has been recorded and consequently execution petition closed and further Original Suit No. 549 of 1968 has been filed for the reliefs of declaration and recovery of possession Execution Petition No. 278 of 1985 is not barred by limitation.

25. The first appellate Court, has come to the conclusion that the entire proceedings made in Execution Petition No. 278 of 1985 are invalid and inoperative mainly on the ground that no possession has been given to the appellant in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968, confirmed in Appeal Suit No. 33 of 1971.

26. The learned Counsel appearing for the appellant in both the appeals, has befittingly drawn the attention of the Court to the following decisions;

a) The first and foremost decision is reported in 1991 (1) L.W. 244 (C. Ramasami v. Kuruva Boyan and Ors.) wherein this Court has clinchingly held as follows;

It is not possible for a Court to ignore the evidence afforded by the Court officials to the effect that delivery has been effected, on the mere allegation that there was no actual delivery. In order to reject the official records such as the bailiff's endorsements, there must be a definite and specific plea of fraud. In the absence of a plea of fraud with full particulars as are necessary to support the same, the Court shall not direct an enquiry as to whether there is actual delivery. In every case the judgment debtor is interested in stating that there is no physical delivery in order that he may obtain an order of stay in the appellate Court. A bare allegation that the delivery is a paper delivery and that the appellant

continues in possession is hardly sufficient to direct an enquiry whether there is physical delivery. The presumption u/s 114 of the Evidence Act that official acts are performed regularly will undoubtedly apply.

b) The second decision is reported in 1963 (2) M.L.J. 162 (Ramaganesan Pillai and Ors. v. Rajah Ayyar and Ors.) wherein the Full Bench of this Court has held that a Court executing the decree will be competent to enforce an agreement entered into between the parties in the course of execution proceedings, if the agreement is lawful one, not extraneous to the decree but on the other hand governs the liability under the decree and relates to the manner of its enforcement. Further it has been held that compromise has created a fresh rights.

27. From the close reading of the decisions referred to supra, it is made clear to the Court that it is not possible to ignore the evidence offered by the Court officials in respect of delivery of possession on the mere allegation that there is no actual delivery and further the presumption available u/s 114 of the Evidence Act can be drawn in respect of official acts. Further it is made clear that during the pendency of an execution petition, compromise can be effected.

28. In the instant cases, the appellant has filed Execution Petition No. 278 of 1985 in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968, confirmed in Appeal Suit No. 33 of 1971 so as to get delivery of possession of the suit property. During the pendency of Execution Petition No. 278 of 1985, the present plaintiffs and others have entered into compromise with the appellant and due to that an endorsement has been made on the side of the petitioner therein on 17.09.1990 to the effect that delivery may be recorded and in view of the endorsement, delivery has been recorded and closed. Since during the pendency of Execution Petition No. 278 of 1985, the present plaintiffs and others have entered into compromise with the appellant and thereby they accepted the title of the appellant to the suit property, the Court can very well come to a conclusion that a deemed delivery has been made in favour of the appellant. In fact, in all the rent deeds executed by the plaintiffs and others title of the appellant has been clearly accepted and on that basis, endorsement has been made in Execution Petition No. 278 of 1985 and the executing Court has also recorded delivery. Under the said circumstances, the Court cannot come to a conclusion that entire execution proceedings made in Execution Petition No. 278 of 1985 are invalid and inoperative.

29. It has already been pointed out that in the decision reported in 1991 (1) L.W. 244 (C. Ramasami v. Kuruva Boyan and Ors.) it has been clearly held that official acts cannot be ignored and further the presumption available u/s 114 of the Evidence Act can very well be drawn in respect of official acts. Even at the risk of jarring repetition, the Court would like to point out that proper delivery has been recorded by the executing Court in Execution Petition No. 278 of 1985 and the same cannot be ignored simply on the ground that the superstructures which are in existence in the suit property, have not been removed by way of executing the

decree passed in Original Suit No. 549 of 1968, confirmed in Appeal Suit No. 33 of 1971.

30. Of-course, it is true that the superstructures which are in existence in the suit property have not been removed. But, at the same time by way of agreement between the appellant and others the title of the appellant to the suit property has been clearly accepted and in pursuance of the same the rent deeds have been executed by the plaintiffs and others. Therefore, the Court cannot come to a conclusion that the entire proceedings made in Execution Petition No. 278 of 1985 are invalid and inoperative.

31. The learned Counsel appearing for the appellant in both the appeals, has also drawn the attention of the Court to the decision reported in *Shew Bux Mohata and Others Vs. Bengal Breweries Ltd. and Others*, wherein the Honourable Apex Court has held as follows;

Under Order 21 Rule 35 a person in possession and bound by the decree has to be removed only if necessary, that is to say, if necessary to give the decree-holder the possession he is entitled to and asks for. But it is open to the decree-holder to accept the delivery of possession under that rule without actual removal of the person in possession. If he does that, then he cannot later say that he has not been given that possession to which he was entitled under the law. Where the decree-holders of their own accepted delivery of possession with defendant remaining on the premises with their permission, and they granted a receipt acknowledging full delivery of possession, and permitted the execution case to be dismissed on the basis that full possession had been delivered to them by defendant, they are bound to the position that the decree has been fully executed and the decree cannot be executed any more.

32. From the close reading of the decision rendered by the Honourable Apex Court, it is easily discernible that it is open to the decree-holder to accept the deliver of possession without actual removal of the person in possession and if he accepts possession to that extent, later he cannot say to the effect that he has not been given possession and further it is made clear that the decree has been fully executed and the same cannot be executed any more.

33. In the instant cases, as noted down earlier, in pursuance of the judgment and decree passed in Original Suit No. 549 of 1968, in Execution Petition No. 278 of 1985 delivery has been effected in favour of the appellant. Therefore, it is too much on the part of the plaintiffs found in Original Suit No. 274 of 1992 to contend that no proper delivery has been made.

34. In view of the foregoing narration of both the factual and legal premise, it is very clear that the approach made by the first appellate Court for setting aside the judgment and decree passed in Original Suit No. 274 of 1992 by the trial Court, cannot be accepted. Therefore, the argument advanced by the learned Counsel appearing for the appellant in Second Appeal No. 1748 of 1996 is really having subsisting force, whereas the argument advanced by the learned Counsel

appearing for the respondents in Second 1748 of 1996 is sans merit.

35. Now the Court has to perpend the reliefs sought for in Original Suit No. 181 of 1992. The main relief claimed in Original Suit No. 181 of 1992 is to declare that the rent deeds obtained by the first defendant/appellant are invalid and inoperative.

36. In fact, this Court has groped the entire averments made in the plaint and ultimately found that the plaintiffs have stated to the effect that the first defendant (appellant) is not having title to the suit property and the suit property vests with the State Government and the first defendant (appellant) has threatened the plaintiffs and others by saying that he obtained necessary permission from the Court so as to demolish their houses in pursuance of the order passed in Execution Petition No. 278 of 1985 and by way of force the appellant/first defendant has obtained the rent deeds in question and the same are nothing but sham and nominal and also in operative.

37. It has been contended on the side of the appellant/first defendant that during the pendency of Execution Petition No. 278 of 1985, the plaintiffs and others have entered into the compromise with the appellant/first defendant and in pursuance of the same, they executed the rent deeds in question in favour of the appellant/first defendant and therefore, they accepted title of the appellant/first defendant to the suit property and no force has been exercised by the appellant/first defendant and in order to grab the suit property, the present suit has been instituted.

38. It has already been pointed out that the learned Counsel appearing for both sides have already advanced their argument in respect of the reliefs sought for in Original Suit No. 181 of 1992. The only point that involves in Original Suit No. 181 of 1992 is as to whether the rent deeds obtained in the name of the appellant/first defendant are sham and nominal and inoperative.

39. It is needless to say that the words sham and nominal are one and the same and the word "sham" means bogus or false and the word "nominal" means existing in name only. Therefore, the relief claimed in Original Suit No. 181 of 1992 is itself erroneous. The main attack made in Original Suit No. 181 of 1992 is that all the rent deeds executed by the plaintiffs and others in favour of the appellant/first defendant are obtained by using force.

40. The learned Counsel appearing for the respondents 1 to 3 in Second Appeal No. 113 of 1997 has drawn the attention of the Court to the letter addressed by the District Munsif, Srivaikundam to the Executive Engineer, Tamil Nadu Electricity Board, Tiruchendur, wherein it has been stated that the Executive Engineer, Tamil Nadu Electricity Board, Tiruchendur is directed to remove service connections for demolishing buildings which are in existence in the suit property. It is an admitted fact that in the suit property, the present plaintiffs and others have constructed various houses by way of making encroachments and only for the purpose of removing the same in Original Suit No. 549 of 1968 the reliefs of

recovery of possession, after removing superstructure, has been sought for. In Execution Petition No. 278 of 1985 an Advocate Commissioner has been appointed so as to remove superstructures and in order to facilitate the work of Advocate Commissioner, the District Munsif, Srivaikundam, might have written the letter referred to earlier. The words mentioned in the letter itself do not constitute force alleged to have been used by the appellant/first defendant against the plaintiffs found in Original Suit No. 181 of 1992.

41. It is an admitted fact that Original Suit No. 181 of 1992 has been filed in a representative capacity. On the side of the plaintiffs, PW1 alone has been examined and his evidence itself is not sufficient to come to a conclusion that the entire rent deeds have been obtained by using force and on that score also, Original Suit No. 181 of 1992 is liable to be dismissed. The trial Court has dismissed Original Suit No. 181 of 1992, but the first appellate Court, has granted the reliefs sought for in Original Suit No. 181 of 1992 mainly on the ground that the proceedings made in Execution Petition No. 278 of 1985 are illegal and inoperative. As per law the alleged affected plaintiffs must give independent evidence so as to prove the alleged force. But, as animadverted to earlier, PW1 alone has given evidence to that effect. On the basis of the evidence of PW1 alone, the Court cannot come to a conclusion that the all the rent deeds have been obtained by using force.

42. At this juncture, the following factual aspects are very much essential; In Original Suit No. 569 of 1968 the title of the appellant/first defendant has been clearly declared, wherein the State Government has also been arrayed as one of the defendants. The State Government has agitated the judgment and decree passed in Original Suit No. 549 of 1968 by way of filing Appeal Suit No. 33 of 1971. The State Government has set up title upon it. But, the contentions urged by the State Government has been rejected and ultimately Appeal Suit No. 33 of 1971 has been dismissed, and thereby upheld the judgment and decree passed in Original suit No. 549 of 1968. It is an admitted fact that the present plaintiffs and others have put up houses in the suit property by way of making encroachments. In order to safe guard their houses, probably they might have entered into compromise with the appellant/first defendant during the pendency of Execution Petition No. 278 of 1985 and consequently they executed the alleged rent deeds. Therefore, the question of using force on the part of the appellant/first defendant so as to get the alleged rent deeds, does not arise and the same has been invented only for the purpose of instituting Original Suit No. 181 of 1992.

43. The trial Court, after making threadbare discussion, has rightly dismissed the suit, but the first appellate Court, has simply decreed the suit mainly on the ground of the reliefs granted in Original Suit No. 274 of 1992. The conclusion arrived at by the first appellate Court is totally erroneous. Therefore, the argument advanced by the learned Counsel appearing for the appellant in respect of Second appeal No. 113 of 1997 is having merit, whereas the argument

advanced by the learned Counsel appearing for the respondents is sans merit.

44. The main substantial question of law framed in Second Appeal No. 1748 of 1996 is as to whether the first appellate Court is justified in holding the delivery recorded by the executing Court is unwarranted.

45. It has already been dealt with in detail and found that the delivery recorded by the executing Court in Execution Petition No. 278 of 1985 is perfectly correct and the same cannot be agitated in any subsequent proceedings. Therefore, all the substantial questions of law framed in Second Appeal No. 1748 of 1996 are decided in favour of the appellant.

46. The main substantial question of law framed in the Second Appeal No. 113 of 1997 is as to whether the respondents herein are bound by the rent Deeds.

47. It has also already been dealt with in detail and found that the plaintiffs have not established the alleged fact that the rent deeds in question have been obtained by using force by the appellant. Since the rent deeds in question have been executed by the plaintiffs, the same are binding upon them and therefore, the substantial questions of law framed in Second Appeal No. 113 of 1997 are also decided in favour of the appellant.

48. Before parting with these appeals, this Court would like to sum up the following factual aspects with regard to the conduct of the plaintiffs in both the suits;

The appellant in both the suits as plaintiffs has instituted Original Suit No. 549 of 1968 for the reliefs of declaration and recovery of possession, wherein the State Government has been arrayed as one of the defendants. The specific contention of the State Government is that the suit property is a natham promboke and the same vests with the State Government. The trial court has granted the reliefs sought for in the plaint. Against the judgment and decree passed by the trial Court, the State Government has also preferred Appeal Suit No. 33 of 1971 and the same has also been dismissed and therefore, title of the present appellant to the suit property has already been settled and nobody is entitled to question the same. Now the present plaintiffs have set up title to the suit property upon the State Government so as to deny the title of the appellant and further some of the plaintiffs in Original Suit No. 274 of 1992 are defendants in Original Suit No. 549 of 1968. Therefore, it is quite clear that the plaintiffs in both the suits are encroachers and they have driven the appellant from pillar to post by way of filing the present suits and they wanted to misuse the Court proceedings and further the suit property is a trust property dedicated for the benefit of the temple. In fact, the plaintiffs in both the suits are nothing but property grabbers. Since the plaintiff are nothing but property grabbers, their contentions in the present suits should be rejected summarily. The trial Court, as stated in many places, has rightly dismissed both the suits, but the first appellate Court, without considering the conduct of the plaintiffs and also without considering that the title of the appellant has already been settled in Original Suit No. 549 of 1968,

has erroneously decreed the suits, which paved the way for filing the present second appeals and even at the risk of jarring repetition, the Court would like to point out that in the instant cases, a true owner of the suit property has been put into unnecessary troubles and tribulations mainly on the ground of frivolous contentions.

49. It has already been discussed in detail and ultimately found that the judgment and decree passed by the first appellate Court are totally erroneous and therefore, the common judgment and decree passed by the first appellate Court are liable to be set aside and the present second appeals are liable to be allowed.

50. In fine, these second appeals are allowed with costs. The common judgment and decree passed in Appeal Suit Nos. 281 of 1994 and 282 of 1994 by the District Court, Tuticorin are set aside and the judgments and decrees passed in Original Suit Nos. 181 of 1992 and 274 of 1992 by the District Munsif Court, Srivaikundam are restored. Consequently, connected miscellaneous petitions are closed.