

Rita Vs. John D.Britto

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Court : Chennai

Decided On : Feb-18-2013

Judge : G.Rajasuria

Appellant : Rita

Respondent : John D.Britto

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:18.02.2013
Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.Nos.84 & 777 of 2000 and C.M.P.No.513 of 2010 Mrs.Rita .. Appellant in S.A.No.84 o

1. Mystle Florence Vanderveen 2.Renold Vanderveen 3.Michael Vanderveen 4.Ms.Patrica Vanderveen 5.Marianna Vanderveen 6.Garden Vanderveen 7.Arthur Vanderveen 8.Peter Vanderveen 9.Darry Vanderveen .. Appellants in S.A.No.777 of 2000 Vs. 1.John D.Britto 2.J.B.Isabella .. Respondents in S.A.No.777 o

1. J.Rex @ Rex Mariadoss 2.J.Martin 3.A.Savarinathan .. Respondents in S.A.No.777 of 2000 These second appeals are filed against the judgements and decrees dated 27.10.1999 passed by the Additional Subordinate Judge, Nagapattinam, in A.S.No.18 of 1998 and A.S.No.7 of 1998 reversing the common judgement and decrees dated 5.12.1997 passed by the learned District Munsif, Nagapattinam in O.S.Nos.50 and 108 of 1996 For Appellants : M/s.B.Ramamoorthy R.Mubarah Basha For Respondents : Mr.Srinath Sridevan
COMMON JUDGMENT S.A.No.84 of 2000 is focussed by the defendant,

inveighing the judgement and decree dated 27.10.1999 passed by the learned Additional Subordinate Judge, Nagapattinam, in A.S.No.18 of 1998 reversing the judgement and decree dated 5.12.1997 passed by the learned District Munsif, Nagapattinam, in O.S.No.50 of 1996, which is one for declaration and for delivery of possession. S.A.No.777 of 2000 is focussed by defendants 3 to 11, inveighing the judgement and decree dated 27.10.1999 passed by the learned Additional Subordinate Judge, Nagapattinam, in A.S.No.7 of 1998 reversing the judgement and decree dated 5.12.1997 passed by the learned District Munsif, Nagapattinam, in O.S.No.108 of 1996, which is also one for declaration and for delivery of possession.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

3. Compendiously and concisely, the germane facts absolutely necessary for the disposal of these two second appeals would run thus: (i) O.S.No.50 of 1996 was filed by the respondents in S.A.No.84 of 2000, namely, 1.John D.Britto and 2. J.B.Isabella, seeking the following reliefs: "a) to declare the plaintiffs' title to the suit property and consequently direct the defendant to deliver possession of the same to the plaintiffs. b) to grant a decree of mandatory injunction for the removal of the unauthorised construction made by the defendant in the suit property within the time to be fixed by this Hon'ble Court and in default thereof to direct the officer of the Hon'ble Court to remove the same and recover the cost from the defendant. c) to direct the defendant to pay the future profits till the delivery of possession." (extracted as such) in respect of the property described in the schedule of the plaint set out hereunder: Description of property Nagapattinam Registration District, Tiruppondi Sub-Registry, Nagapattinam Taluk 92, Velankanni Vattam and Village in Utthirimada Kovil Street, East of Street, and the Punja land belongs to Perairah West of Punja land belongs to the Parairah South of Punja land belong to Periria and Rex Martin, North of the punja land belongs to the Plaintiff in R.S.No.12/9A within the said boundary an extent of 0.54 cents in R.S.No.12/9A (New number 12/10) the portions marked as ABCDEF in plaint plain in red colour." (ii) O.S.No.108 of 1996 was filed by the respondents in S.A.No.777 of 2000, namely, 1. J.Rex @ Rex Mariadoss and 2.J.Martin, seeking the following reliefs:

"a) to declare the title of the plaintiffs and consequently direct the defendants to deliver possession of the suit property to the plaintiffs which is referred to as A B C D in the plaint plan; b) to direct the defendants to pay the future profits till the delivery of possession; c) award the cost of the suit. (extracted as such) in respect of the property described in the schedule of the plaint set out hereunder: Description of property VERNACULAR (TAMIL) PORTION DELETED (iii) In both the cases written statements were filed and the matters were resisted by the defendants concerned. (iv) Inasmuch as the property originally belonged to one and the same owner, namely, Vanderveen, and most of the factual issues were common, both, the parties as well as the trial Court thought fit to conduct a joint trial. (v) Whereupon issues were framed. Up went the trial, during which, the first plaintiff in both the suits examined themselves as P.W.1 and P.W.2 along with P.Ws.3 and 4 and Exs.A1 to A37 were marked on the plaintiffs' side. On the defendants' side, the first defendant in O.S.No.108 of 1996 was examined as D.W.1 and Exs.B1 to B21 were marked. Exs.C1 and C2 were marked as Court documents. (vi) Ultimately, the trial Court dismissed both the suits. Being aggrieved by and dissatisfied with the same, the plaintiffs preferred the first appeals challenging and impugning the common judgement and decrees of the trial Court. (vii) During the pendency of the first appeals, I.A.No.105 of 1998 was filed invoking Order 41 Rule 27 of C.P.C., seeking permission to adduce additional evidence, by filing the following documents:

1. Sale Certificate issued to Thandapani Chettiar dated 5.7.1940; 2. Delivery warrant dated 14.8.1940 certified copy; 3. Sale deed executed by Thandapani Chettiar dt.27.9.1946-original; 4. Encumbrance Certificate original; 5. Sale deed by Mariya Susai Servai 21.2.1951-original (viii) No doubt, the first appellate Court, in accordance with law, heard the appeals as well as the interlocutory application together. The first appellate Court thought fit that those additional documents should be entertained and accordingly given markings to them and decided both the appeals in favour of the plaintiffs, reversing the common judgement and decrees of the trial Court and decreeing the original suits in toto.

4. Being aggrieved by the reversal common judgement of the first appellate Court, these two second appeals have been focussed by the defendants on various

grounds and also suggesting substantial questions of law.

5. My learned predecessor formulated the following substantial questions of law: S.A.No.84 of 2000: "1. Whether the judgement of the lower appellate Court is vitiated in admitting additional documents in evidence in I.A.No.105/98 without giving an opportunity to the defendant to let in rebuttal evidence or receiving the same in evidence without following the procedure prescribed under Or.41 Rule 28 CPC?

2. When the plaintiffs seek to establish title to suit property of the deceased Vanderveen by filing execution proceedings against his legal representatives is not the suit barred under Sec.212 of the Indian Succession Act in as much as no Letters of Administration was granted?

3. Whether the learned Subordinate Judge erred in law in holding that the suit is not barred under Sec.31 of the Limitation Act 1963 when the plaintiffs have not proved that they have subsisting title by proving possession for 12 years prior to 1.1.64?

4. Whether the suit is barred by limitation, as the defendants have acquired title by adverse possession? S.A.No.777 of 2000: "1. Whether the judgement of the lower appellate Court is vitiated in its relying upon the additional evidence received in the connected A.S.No.18/98 without giving an opportunity to the defendants to let in rebuttal evidence or subjecting the plaintiffs to cross-examination?

2. When the plaintiffs seek to establish title to suit property of the deceased Vanderveen by filing execution proceedings against his legal representatives is not the suit barred under Section 212 of the Indian Succession Act in as much as no Letters of Administration was granted?

3. Whether the learned Subordinate Judge erred in law in holding that the suit is not barred under Section 31 of the Limitation Act 1963 when the plaintiffs have not proved that they have subsisting title by proving possession for 12 years prior to 1.1.1964?

6. The learned counsel for the appellants/defendants would pyramid his arguments, which could succinctly and precisely be set out thus: (i) The first appellate Court having chosen to entertain the additional evidence, failed to give opportunity to adduce rebuttal evidence and that caused serious prejudice to the case of the defendants. (ii) In fact, the trial Court dismissed the suits only on the non-production of the said additional documents, which were filed in the first appellate Court. While so, the first appellate Court, after entertaining such additional evidence, was not justified in simply and unilaterally reversing the common judgement and decrees of the trial Court. (iii) Had opportunity been given to the defendants to adduce rebuttal evidence, certainly the defendants would have adduced evidence to establish and point up that the alleged delivery effected by Amin was nothing but a paper delivery, which had been taken allegedly from the tenant and that it was not justified also. (iv) Over and above that, the plaintiffs continued to be in possession and enjoyment of the suit property and thereafter, they also sold a portion of it. (v) It is not as though only during the year 1988 the defendants holus-bolus barged into the property and raised construction. (vi) The contention of the plaintiffs that only during the year 1988, the defendants trespassed into the suit property and pendente lite raised construction is nothing but amounting to lying through teeth and it is too big a pill to swallow. In the absence of rebuttal evidence, the first appellate Court, for the first time, was made to believe the story of the plaintiffs, warranting interference in second appeals. (vii) As per O.41 Rules 27 and 28 of C.P.C. the first appellate Court should have given due opportunity to rebut the said additional evidence and necessarily the matter has to be remitted back to the first appellate Court for giving due opportunity of adducing rebuttal evidence so as to highlight the continuous possession of the defendants over the suit property, de hors the alleged delivery. Accordingly, the learned counsel would pray for setting aside the common judgement and decrees of the first appellate Court and for dismissing the original suits.

7. Per contra, in a bid to torpedo and pulverise and slap down the arguments as put forth on the side of the appellants/defendants, the learned counsel for the respondents/plaintiffs would advance his arguments, which could pithily and precisely be set out thus: (i) The defendants having accepted the Court proceedings during execution and the factum of the Court delivery, cannot try to

ignore it by contending that it was only a paper delivery or that the delivery could not have been taken from the tenant in violation of Order 21 Rule 96 of C.P.C.etc. (ii) Order 21 Rule 96 of CPC is only an enabling provision and there is no embargo that a tenant in possession, who is not a party to the lis, should not hand over possession to the Court auction purchaser of the property. (iii) The first appellate Court thought fit to entertain only the Court certified copies of documents and public documents. (iv) No one could be heard to challenge the Court and public documents. If for any reason this Court might feel that opportunity of adducing rebuttal evidence has to be given to the defendants, then Order 41 Rule 25 of C.P.C. could be invoked, or in the alternative, the first appellate Court could be directed as per Order 41 Rules 27 and 28 of C.P.C. to record the rebuttal evidence and submit the same to this Court and this Court could decide once and for all the second appeals finally. (v) If the matter is simply remitted back to the first appellate Court with the direction to entertain additional rebuttal evidence and decide on merits, then it would take decades together to reach finality, as after the first appellate Court's judgement, the aggrieved party might file afresh a second appeal which would be a whole new ball game and that would take a long time, and these second appeals themselves are of the year 2000. (vi)The available evidence is sufficient for the disposal of the second appeals. Accordingly, the learned counsel for the respondents/plaintiffs would pray for confirming the common judgement and decree of the first appellate Court.

8. A few facts in brief would run thus: (i) Indubitably and indisputably, the suit property originally belonged to one Vanderveen, who happened to be a Dutch Indian, and governed by the Indian Succession Act. He was indebted to one Dhandapani Chettiar during his life time; however, he committed default in discharging his debts. Whereupon, Dhandapani Chettiar filed a small cause suit and got a decree. (ii) Thereafter, Dhandapani Chettiar filed the E.P. and brought the suit properties as lot-2 and lot-3 therein. (iii) In the Court auction sale, Dhandapani Chettiar himself happened to be the successful bidder of those properties. (iv) According to the plaintiffs, Dhandapani Chettiar took delivery of possession as per Ex.A39-the delivery warrant dated 14.8.1940. (v) According to the plaintiffs, ever since the taking of delivery from the tenant of the legal heirs of Vanderveen, the auction purchaser and thereafter the plaintiffs have been in

possession and enjoyment; while so, only during the year 1988, the defendants barged into the suit property and pending litigation, they raised construction. (vi) Whereas, it is precisely the case of the defendants that there was no actual delivery of the suit property and it was only a paper delivery. The defendants are armed with adequate evidence which they have also produced before this Court by filing C.M.P.not No.513 of 2010 and the same are as follows:

S.No.	Date	Description of Documents
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25.	7.2087	Plaint in O.S.No.70 of 1987
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13.	11.1985	Tax receipt for Fasli Year 1394
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13.	11.1985	Tax Receipt for Fasli Year 1394
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14.	3.1987	Tax Receipt for Fasli Year 1396
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13.	8.1987	Order of the Registering Authority
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23.	2.1988	Tax Receipts for Fasli Year 1397
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		7 Deposition of Annammal
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		8 Extract of Patta Pass
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Book		9 Receipt by Labour
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		(vii) If the above documents
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are allowed to be produced and oral evidence also is allowed to be adduced, then that would adequately enlighten the issue and buttress and fortify the case of the defendants that actually delivery was not taken through Court by the auction purchaser and the defendants have been in possession and enjoyment of the suit property continuously. Substantial question of law No.1 in both second appeals are taken together for discussion as they are interwoven and interlinked,

interconnected and entwined with each other.

9. The pertinent question that arises for consideration is as to whether the first appellate Court was justified in simply entertaining the additional evidence and giving markings in deciding the appeals and that too with out giving opportunity to the defendants to adduce rebuttal evidence.

10. In this connection, I would like to cite the following decisions of the Honourable Apex Court:

2012. 8) SCC 14.[Union of India v. Ibrahim Uddin and another]; an excerpt from it would run thus: "59. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In SBI v. S.N.Goyal (2008) 8 SCC 92.this Court explained the terms "substantial question of law" and observed as under: (SCC p.103, para

13) "13.....The word "substantial" prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the partiesany question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.....There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (emphasis added) 48.To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the Court below and as to whether the applicant had prosecuted his case before the court below

diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage. State of consideration 49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgement or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgement on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court (vide *Arjan Singh v. Kartar Singh* and *Natha Singh v. Financial Commissioner., Taxation-(1976)3 SCC 2.: AIR 197.SC 1053*" 11. In the same precedent, the following decisions are found referred to: (1) AIR 196.SC 331.[*Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.*] (2) (2011) 1 SCC 67.[*Vijay Kumar Talwar v. CIT*] (3) AIR 194.PC 1.[*Bibhabati Devi v. Kumar Ramendra Narayan Roy*] (4) (1949) 17 ITR 26.(Nag) [*Suwalal Chhogalal v. CIT*] (5) AIR 195.SC 85.[*Oriental Investment Co. Ltd. v. CIT*] (6) AIR 19.SC 160.[*Jagdish Singh v. Natthu Singh*] (7) (1996) 5 SCC 35.[*Parativa Devi v. T.V.Krishnan*] (8) (1998) 6 SCC 42.[*Satya Gupta v. Brijesh Kumar*] (9) AIR 200.SC 53.[*Ragavendra Kumar v. Firm Prem Machinery & Co.*] (10) AIR 200.SC 126.[*Molar Mal v. Kay Iron Works (P) Ltd.*] (11) (2010) 11 SCC 48.[*Bharatha Matha v. R.Vijaya Renganathan*] (12) (2010) 12 SCC 74.[*Dinesh Kumar v. Yusuf Ali*] (13) (2002) 3 SCC 63.[*Jai Singh v. Shakuntala*] (14) (2008) 12 SCC 79.[*Kashmir Singh v. Harnam Singh*] 12. No doubt, a mere running of the eye over those decisions would reveal that additional evidence if to be taken, then the

appeal itself has to be taken and heard and for reasons to be recorded only, additional evidence could be entertained. However that it does not mean that whenever additional evidence is entertained, the Court should refrain from giving opportunity to the respondent in the appeal to adduce rebuttal evidence. It all depends upon facts and circumstances involved in a case.

13. The Honourable Apex Court would mandate that without hearing the appeal, if M.Ps or interlocutory applications under Order 41 Rule 27 C.P.C. are entertained, de hors the hearing on merits the appeal, then it would lead to non-appreciation of facts and available evidence already on record and non-application of mind also on the relevant issues.

14. With that in mind alone, the Honourable Apex Court had occasion to repeatedly highlight that the applications under Order 41 Rule 27 should be heard along with the appeal.

15. If the additional documents to be entertained are formal in nature, then the question of rebuttal evidence might not arise and the Court would be justified in simply giving markings and decide the main appeal itself. But in cases where if the consequences of entertaining additional documents, would necessarily entail in adducing rebuttal evidence on the part of the opponent then the first appellate Court has to stop at that stage and give opportunity to the respondent to adduce rebuttal evidence also.

16. Here it has to be seen as to whether this is a case in which the first appellate Court should have stopped pronouncing judgement and it ought to have given opportunity to the defendants to adduce rebuttal evidence.

17. At this juncture, I would like to refer to the written statements of the defendants, where they would specifically plead that there was only paper delivery by Court Amin and actual delivery was not effected. As per the defendants, they continue to be in possession and enjoyment of the suit property, de hors Ex.A39- the delivery warrant dated 14.8.1940.

18. When such is the factual plea raised by the defendants, necessarily on entertaining additional evidence by the first appellate Court, it ought to have given due opportunity to the respondents to adduce rebuttal evidence both documentary as well as oral.

19. When this Court raised a query to the learned counsel for the defendants as to what prevented the defendants from adducing such evidence even in the trial Court in support of the written statement, the learned counsel for the defendants would, to some extent, convincingly reply that since the burden of proof is ambulatory and the plaintiffs did not prove their case with evidence, the defendants thought fit not to adduce evidence in that line.

20. The learned counsel for the plaintiffs would cite the following decision of the Full Bench of the Rajasthan High Court. AIR 197.RAJ 9.CHATAR LAL V. RAMDAS, certain excerpts from it would run thus:"25. The above decision thus makes a distinction when issues are remitted to (1) original court and (2) first appellate Court in second appeal. In case the issue is remitted to the first Court, that is, the original Court, then in that case even the findings of fact can be gone into in second appeal, as there is no finding of the first appellate Court, but in case the issue is remitted to the first appellate Court the position is different and the reasoning given is that the first appellate Court being of higher status the finding of such a court has more weight. The same result is arrived at on a broad application of section 103 C.P.C.

33. Having considered the case law which was brought to our notice we find ourselves in respectful agreement with the view that when an issue is remitted under Order 41, Rule 25, C.P.C., in second appeal to the first appellate Court, the finding of fact sent back by the first appellate court is not open to attack, except on the grounds stated in section 100, C.P.C. This view appears to be in consonance and harmony with the provisions contained in Order 42, Rule 1 and Sections 100, 101 and 103, C.P.C. Even in the amended Section 103, C.P.C. we find as to when the High Court can determine the issue of facts. The High Court is empowered to determine any issue necessary for the disposal of the appeal, if the evidence on the record is sufficient, when the same has not been determined by the lower

appellate court or by the court of first instance and the lower appellate court, or which have been wrongly determined by such court or courts by reason of a decision on such question of law, as is referred to in Section 100. The power to determine the issues on facts, is limited to the situations mentioned in Section 103. In case the issue of fact has been determined by the lower appellate court, whether on being remitted in second appeal or otherwise, such a finding of fact given by the lower appellate court cannot be determined by the High Court and reason appeals to be that as a senior and experienced Judge presides over the first appellate court, it will be taken that the findings of facts arrived at by him, are correct. If this would not have been the intention, an exception would have been provided that even in second appeal when issue of fact is remitted to the first appellate court, the findings on that issue can be assailed in second appeal. Rather we find a contrary intention expressed in the language of Order 42, Rule 1, C.P.C. coupled with the legal bar provided in Sections 100 and 101, C.P.C. and if these provisions are further read with the provisions of Section 103, the intention in our opinion becomes abundantly clear. The only way out appears to be that in order to obviate such an eventuality or result, the issues of fact should be remitted to the first Court in second appeal." 21. The above decision would be of a different point, so to say, precisely it is concerning Order 41 Rules 25 and 26 of C.P.C., which in my considered opinion cannot be pressed into service, because here it is not as though an issue relating to prescription was not formulated by the trial Court, but the trial Court framed issues comprehensively.

22. Order 41 Rule 25 of C.P.C. would mandate thus: (i) If the lower Court omitted to frame issue; or (ii) Omitted to try any issue; or (iii) if the appellate Court determines that any new issue relating to any fact has to be framed and decided by the lower Court; then the question of invoking Order 41 Rule 25 of C.P.C. and consequently Rule 26 would emerge. But in this case, no such circumstances arose. 23. Here my above discussion would exemplify and demonstrate that the factual matrix herein does not come within the four corners of Order 41 Rule 25 and 26 of C.P.C., whereas, a mere reading of Order 41 Rule 28 C.P.C. would exemplify and demonstrate, convey and project that whenever additional evidence or rebuttal evidence has to be entertained then the Court can mandate the lower Court to do so.

24. The other precedents cited on the plaintiff's side would run thus: (i) The judgement of the Honourable Apex Court reported in 2011(1) CTC 12.MALAYALAM PLANTATIONS LTD., STATE OF KERALA AND ANOTHER; (ii) The judgement of the Honourable Apex Court reported in AIR 196.SUPREME court 1471 MRS.HEM NOLINI JUDAH (SINCE DECEASED) AND AFTER HER LEGAL REPRESENTATIVE MRS. MARLEAN WILKINSON, V. MRS. ISOLYNE SAROJSBASHINI BOSE AND OTHERS; (iii) The judgement of this Court reported in 2011(2) CTC 43.1. G.GANESAN AND OTHERS V. 1.P.SUNDARI AND OTHERS; (iv) The judgement of this Court reported in 2011(1) TN MAC 64.NATIONAL INSURANCE COMPANY LTD., V. 1/KANNAN @ SAMPOORNA KANNAN; (v) The judgement of this Court reported in (2010) MLJ 54.VARADHAN V. M.GOVINDASAMY; (vi) The judgement of this Court reported in 2000(IV) CTC 65.S.N.ANANTHACHARI V A.C.RAJAGOPALAN AND SIX OTHERS; (vii) 1997(II) CTC 31.IGNASIAMMAL V. MRS.FATHIMA BEEVI AND ANOTHER; Those decisions are also not on the peculiar factual matrix involved in this case.

25. Here, it is a singularly singular case in which the rebuttal evidence to be adduced is in support of prescriptive title, and the additional evidence adduced before the first appellate Court was relating to possession. So it is out and out a factual issue and the evidence also has to be analysed in that regard. If by directing the first appellate Court or even the trial Court to record evidence and submit it to this Court for being decided, then it would amount to deciding the main issue relating to prescription, which is predominantly a factual issue for the first time in second appeal, which cannot be legally permissible as per Section 100 of C.P.C. and the aggrieved party would lose one right of appeal. But on the other hand if the matter is remitted back to the first appellate Court with a direction to record the rebuttal evidence relating to prescription only and give its finding on that, along with the entire appeal, then all the aggrieved party would have the right to file second appeal, which would be in the interest of justice as well as audi alteram partem more appropriate and befitting.

26. As such, in view of the fact that the case requires rebuttal evidence as put forth by the defendants, such non giving of opportunity to the defendants, in my considered opinion, proves fatal to the ultimate decision rendered by the first

appellate Court, without in any way dealing with other issues decided by the first appellate Court, I would like to remand the matter back to the first appellate Court.

27. With this in mind I would like to set aside the common judgement and decrees of the first appellate Court with the specific direction that oral evidence shall be allowed to be adduced by the plaintiffs and formally get those additional documents marked; Whereupon the defendants shall be allowed to get marked their additional documents subject to proof, admissibility and relevancy and accordingly it is ordered.

28. In order to disambiguate the ambiguity if any, the additional documents filed in IA.No.105 of 1998 shall be on record and they shall be formally marked through their witness or witnesses of the plaintiff and similarly the additional documents filed by the defendants in C.M.P.No.513 of 2010 shall also be entertained by the first appellate Court, subject to proving their admissibility and relevancy relating to the issue of prescription. Thereafter, after hearing both sides, a reasoned judgement shall be delivered on the entire appeals within two months from the date of receipt of a copy of this order.

29. The Substantial Question of law (1) in both the appeals are answered in favour of the defendants and the other substantial questions of law have not been decided as of now in view of the remanding back the matter to the first appellate Court.

30. The parties shall appear before the first appellate Court on 14.3.2013.

31. The second appeals are disposed of accordingly. No costs. msk To 1. The Additional Subordinate Judge, Nagapattinam.

2. The District Munsif, Nagapattinam

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