

IN THE COURT OF THE ADDITIONAL SUB COURT, HOSUR
Present: Tmt. L.Kalaivani, BA.,B.L.,
Additional Sub Judge, Hosur

Monday, the 11th day of January 2021.

I.A.No.05/2020 in A.S.No.9/2015

A.S.No.9/2015 in O.S.No.54/1999

Raja Reddy

Appellant/2nd defendant

//VS//

- 1.C.Srinivasa Reddy,
2. K.C.Chinna Muni Reddy
by POA.C.Srinivasa Reddy,
- 3.M.Thimma Reddy(Died)
- 4.Thimmakka
5. Chenna Reddy
6. Savithramma
7. Srinivasa Reddy
8. Narayanamma
9. Rashmi
- 10.Shilpa
- 11.Jayaram Reddy
- 12.Chennamma
- 13.Chennamma @Pillamma
- 14.Gowramma

Respondents/Plaintiffs/ 1st and 3rd to 13th defendants

On appeal from the Judgment and Decree in O.S.54/1999 on the file of the
District Munsif Court, Hosur dated 23.12.2014.

Between

1. C.Srinivasa Reddy
2. K.C.Chinna Muni Reddy
by POA C.Srinivasa Reddy

...Plaintiffs

//VS//

1. M.Thimma Reddy (died)
2. Raja Reddy
3. Thimmakka
4. Chenna Reddy
5. Savithramma
6. Srinivasa Reddy
7. Narayanamma
8. Rashmi
9. Minor Shilpa,
represented by
guardian mother
Narayanamma (7th respondent)
- 10.Jayarama Reddy
- 11.Chennamma
- 12.Chennamma @ Pillamma
- 13.Gowramma

.....Defendants

I.A.No.05/2020

Raja Reddy

Petitioner/Appellant

//VS//

- 1.C.Srinivasa Reddy,
2. K.C.Chinna Muni Reddy
by POA.C.Srinivasa Reddy,
- 3.M.Thimma Reddy(Died)
- 4.Thimmakka
5. Chenna Reddy
6. Savithramma
7. Srinivasa Reddy
8. Narayanamma
9. Rashmi
- 10.Shilpa
- 11.Jayaram Reddy
- 12.Chennamma
- 13.Chennamma @Pillamma
- 14.Gowramma

Respondents/Respondents

This appeal and interlocutory application is coming on 21.12.2020 before me for final hearing in the presence of Mr.M.Shivanna Chowdary, the learned counsel for appellant in the appeal and Petitioner in the interlocutory application and Mr.C.S.Renganathan, the learned counsel for the 1st and 2nd respondent in appeal and the interlocutory application, Mr.T.Gopala Reddy, the learned counsel for the 9th to 11th respondents, Thiru D.M.Shiva Shankar, the learned counsel for the 12th to 14th respondents, 3rd respondent died, 4th to 8th respondents are remained exparte and upon hearing the arguments of both side counsels and upon perusing the material records and the judgment of the trial court and having stood over for consideration till date, this court passing the following.

JUDGEMENT

I.A.No.5/2020

Petition to receive documents produced by the Petitioner/Appellant as additional documents in the appeal.

2. Brief averments of the petition:-

The petitioner is the appellant in the appeal suit and the 2nd defendant in the suit. The settlement "A" Register of Mookandapalli village relates to suit properties stands in the name of grandfather of the petitioner namely Muni Reddy, grandmother Chennammal and her son Rama Reddy. The settlement "A" Register would go to show the original owners names of the suit properties. Before the trial Court the respondent/plaintiff have not produced proper genealogical tree and in order to get clear picture about family of appellants and respondents, it is necessary for the petitioners to produce the genealogical trees of both sides. Therefore, the said documents are necessary to prove the case of the petitioners. Unless the documents are received as adduced evidence, the

petitioner would be put into great loss and hardships. Hence, the above petition.

3. The gravament of the counter filed by the 1st and 2nd respondents is as follows:-

Refuting all the averments found in the petition except those are specifically admitted by the respondents. The petitioner already filed the similar petition for reception of documents and the same was dismissed and again the petitioner has come forward with the present petition to create confusion. The petitioner filed settlement "A" Register of Mookandapalli Village relates to suit properties which reflects the name of Muni Reddy. The said Muni Reddy mentioned in the settlement "A" Register is not belongs to the petitioner's family. In reality, the Muni Reddy mentioned in the settlement "A" Register is belongs to the respondents' family. The respondents submitted original sale deeds Ex.A26 and Ex.A27 which stands in the name of Muni Reddy son of Chenna Reddy. Further, the respondents have produced patta no.201 as Ex.28 and tax receipts Ex.A31 to Ex.A46 which clearly shows that the suit properties belongs to the grandfather of the respondent namely Muni Reddy. After the death of grandfather namely Muni Reddy patta has been changed in the name of Chenna Reddy and the said patta has been marked as Ex.A29 and Ex.A32. The petitioner has produced the settlement "A" register as Ex.B4, Ex.B5 and Ex.B7 in O.S.95/14 and produced the settlement register in O.S.94/04 as Ex.A11. The respondents have already produced original documents, patta, kist receipts and adangal extract relates to suit properties before the trial Court. The properties mentioned in all the 3 suits in O.S.54/99, O.S.95/14 and O.S.94/04 belonged to Muni Reddy. In order to stall the proceedings the present petition has been filed. Hence, prayed for dismissal.

4. Now, the Point for Consideration is whether the documents can to be

received as additional evidence as prayed by the petitioner?

5. Point for consideration:-

This court has given its anxious consideration to the said contention raised by the learned counsel for both parties and carefully perused the materials available on record. It is no doubt that the present appeal has been preferred by the defendant against the Judgment and decree of learned District Munsif, Hosur in OS No.54/1999 dated 23.12.2014 and the petitioner has filed this petition seeking permission of this court to receive the documents filed along with this petition as additional evidence on the defendant's side.

6. The learned counsel for petitioner would submit that Muni Reddy is his ancestor and the plaintiffs have suppressed the original ancestor name and to show his family members a genealogical tree has been produced before the trial court along with written statement. But, the same has not been marked as exhibits. Further, learned counsel for petitioner would submit that the plaintiffs have not filed any genealogical tree relates to their family and they had not disclosed their ancestors and family members name in their pleadings. The last limb of the submission is that petitioner has produced the genealogical trees of the both plaintiffs and defendants to clarify the factual secenario and the same may be received as additional documents.

7. On the other hand, the learned counsel for the respondent would submit that the petitioner had already filed the similar petition for reception of documents and the same was dismissed and again the petitioner has come forward with the present petition to create confusion. Further, learned counsel for the respondents would submit that the petitioner had filed settlement "A" Register of Mookandapalli Village, the Muni Reddy stated in the "A" Register is the ancestor of the respondent/plaintiff.

8. It is no doubt that together with the present appeal there is an application

on record of the defendant/appellant, has filed under Order 47 Rule 27 Civil Procedure Code. Before advertng to the rival contentions raised by the learned counsels for both parties, it would be appropriate to reproduce the relevant provisions of the Order 41 Rule 27 of the CPC, which reads as under:

Order 41 Rule 27 of Code of Civil Procedure 1908:-

Production of additional in Appellate Court

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted,

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise if due diligence, be produced by him at the time when the decree appealed against was or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

9. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought

to be adduced have any relevance in the issues involved. It is settled law that under Order 41, Rule 27, additional evidence could be adduced in following situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.

10. In this context, on the aspects of the fate of the petition under Order 41 Rule 27 CPC, in the case of State of UP vs Manbodhan Lal Srivastasa reported in AIR 1957 SC 912, the Constitution Bench of the Hon'ble Apex Court held that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacuna in presenting its case at proper stage and to fill in gaps. Yet another decision of Natha Singh Vs Financial Commissioner Taxation, Punjab reported in AIR 1976 SC 1053, the Hon'ble Supreme Court was pleased to hold that unless additional evidence is necessary to pronounce the judgment, it should not be permitted to be adduced as the discretion given to the Appellate Court to receive and admit additional evidence, is not an arbitrary one but it is judicial one circumscribed by the limitation specified in Order 41 Rule 27 of the CPC.

11. The petitioner would contend that the settlement "A" Register would go to show the name of the ancestor of the petitioner and the said documents is necessary to prove the title of the suit properties. Therefore, the petitioner sought permission to produce the settlement "A" Register. On the other hand, the petitioner/2nd defendant would contend that the suit properties belong to them and his ancestors name found in the old settlement "A" register. In order to prove the title the petitioner has come forward with the present petition and asked to receive the old settlement "A" register. Admittedly, the name Muni Reddy found

in the old settlement “A” register with regard to the suit properties and the name of Chennammal and Rama Reddy also found in the settlement “A” register relates to the suit properties. Therefore, this Court is of the considered opinion that in order to ascertain the ownership of the suit properties the documents sought to be produced by the petitioner are necessary.

12 . Under Order 41 Rule 27 Civil Procedure Code, the appellate Court has the power to allow a document to be produced and a witness to be examined. But, the requirement of the said Court must be limited those cases where it found it necessary to obtain such evidence for enabling it to pronounce Judgment. In the present case on hand this Court feels that the documents produced by the petitioner is just and necessary to enable to pronounce Judgment on substantial issues i.e. to find out the original owner of the suit properties. Considering the said facts and circumstances of the case this Court is of the view that in order to decide the conflicting claims of the parties it is necessary to mark the genealogical trees of the both parties and settlement “A” register.

For the foregoing reasons, this Court inclined to allow this petition.

In the result, this petition is allowed. No cost.

1. A.S.9/2015:

Appeal is filed by the Appellant under Order 41 Rule 1 r/w section 96 of CPC against the Judgment and Decree passed in O.S.54/1999 on the file of the District Munsif Court, Hosur dated 23.12.2014.

2. Brief averments of the plaint filed by the plaintiffs before the trial Court:-

The plaintiffs are the sons of the Chenna Reddy who is the son of Muni Reddy. Thimma Reddy S/o.Muni Reddy who is the father of the Chenna Reddy, Pilla Reddy, Raja Reddy, Lakshmana Reddy, Gulla Reddy @ Raja Reddy and

Jayarama Reddy. Among these sons Pilla Reddy and Lakshmana Reddy were died. The Thimma Reddy and his sons have divided their joint family properties under the partition deed dated 05.02.1991. In the above said partition specific shares were allotted to the parties. The grandfather of the 1st defendant is one Thimmaraya Reddy and the said Thimmaraya Reddy had three sons namely Sekar Reddy, 2nd son died and Thimmaraya Reddy. The suit properties originally belong to the plaintiffs by the way of ancestral and partition. The 1st, 4th to 7th items of the properties in "A" schedule items, 1st to 4th, 6th and 8th items in "B" schedule properties are ancestral properties and the patta No.201 has been issued for the above said lands and other lands in favour of the father of the plaintiffs namely Chenna Reddy and his father Munireddy. The 1st item in "A" schedule property was purchased by the father of the plaintiff namely Chenna Reddy from One Pillaverra Reddy through the sale deed dated 30.09.1926. The 2nd and 3rd items in "A" schedule property belong to the father of the plaintiffs by the way of patta no.141. The 7th item in "A" schedule property was purchased by the father of the plaintiff through the sale deed dated 16.12.1937. The 8th and 9th items of property in "A" schedule were purchased by the father of the plaintiffs through the sale deed dated 26.04.1947. The father of the plaintiffs had purchased 3rd and 7th items in "B" schedule property through the sale deed dated 05.10.1923. The 3rd and 7th items in "B" schedule property were purchased by the father of the plaintiffs on 12.09.1920, 04.09.1921 and 29.11.1939. The father of the plaintiffs was in possession and enjoyment over the suit properties to that effect revenue records were issued in the name of the plaintiffs and his father. Thus, all the suit properties and other properties are joint family properties of the Chenna Reddy and his brother Nyetha Reddy and they were in joint possession over the same. Chenna Reddy Died in or about the year 1956 leaving behind his sons the plaintiffs, their brothers K.C.Munireddy @ Pedda Muni Reddy and Chandra Reddy

as his legal heirs. The plaintiffs, their brothers and their uncle were joint possession over the suit properties and other properties. Thereafter, there was a partition in between the plaintiffs, their brothers Pedha Muni Reddy, Chandra Reddy and their uncle Nyetha Reddy. The above said partition was registered on 29.06.1965 and the suit properties were allotted to the shares of the plaintiffs and their brothers. After the partition the plaintiffs and their brothers were in possession and enjoyment over the suit properties and they had partitioned their share through the partition deed dated 28.08.1992. In the above said partition "A" schedule properties were allotted to 1st plaintiff and "B" schedule property were allotted to the 2nd plaintiff. Ever since from the partition dated 28.08.1992 the plaintiffs are in separate possession and enjoyment over their respective shares. The 2nd plaintiff is away from the suit property and he is residing in London and the properties are managed by his power of attorney namely I.B.Nanjunda Reddy as per the general power of attorney dated 13.04.1968. The sons of the Chenna Reddy, the plaintiffs had incurred debts from the State Bank of India, Hosur on the strength of their lands and discharged the debts loan in the year 1970. The 1st plaintiff is the resident of Kothur Village and also Bangalore. Taking advantage of the name Muni Reddy which is common in the family, the 1st defendant is trying to create encumbrance over the suit properties. Therefore, the plaintiffs issued notice to the 1st defendant through the Daily Thanthi newspaper dated 02.08.1998. The plaintiffs have obtained decree in respect to the survey no.758/2 and 758/3 in O.S.No.463/1996. After issuing notice to the 1st defendant through general publication the defendants tried to sell the suit properties. During the pendency of the suit the 1st defendant died on 21.01.2000 leaving behind 3 sons, 3 daughters and his wife. The other legal heirs of the 1st defendant arrayed as 3rd to 13th defendants in the suit. Hence, the present suit for declaration of title and permanent injunction.

3. Breif averments in the written statement filed by the defendants before the trial Court

Refuting all the averments found in the plaint except those are specifically admitted by the defendants. It is true that the plaintiffs are the sons of Chenna Reddy who is the son of Muni Reddy. But, the great grand father name of the plaintiffs is Pilla Reddy. It is true that the grand father of the 1st defendant is one Thimma Reddy and he had 3 sons. The defendants knew the sons of the Kothur Chenna Reddy who are the K.C.Chinnamuni Reddy, C.Chandra Reddy and C.Srinivasa Reddy. But, they do not know about the partition effected between them on 28.08.1992. In reality, originally the suit properties and other properties belongs to one Munisamy Reddy who had 3 sons namely Veera Reddy, Chenna Reddy and Rama Reddy and among them the said Veera Reddy had two sons namely Thimma Reddy and Muni Veerappa, the said Muniveerappa had no issues and the Thimma Reddy had 3 sons namely Pillaveera Reddy, Segga Reddy and Muni Reddy. The 2nd son of Munisamy Reddy namely Chenna Reddy had a son namely Muni Reddy who had no issues. The Thimma Reddy had 3 sons namely Pillaveera Reddy, Segga Reddy and Muni Reddy. Therefore, Thimma Reddy and his family members succeeded the entire properties and a partition effected in between their family. After the Muni Reddy, his son Thimma Reddy and grandsons Chenna Reddy, Pilla Reddy, Lakshmana Reddy, Raja Reddy and Jayarama Reddy are in possession and enjoyment over the suit properties. Among the above said persons the Pilla Reddy died leaving behind his wife Santhamma and his son Srinivasa Reddy. The lakshmana Reddy died leaving behind his wife Narayanamma and his two daughters namely Rasmi and Silpa. The 2nd defendant is in possession and enjoyment over the family properties. Though there was a partition between the family members it was only a partial partition. On

28.05.1892 the properties in old patta no.740 correlated new survey no.540 and 542 old inam survey no.146 and 148 purchased by Thimma Reddy son of Veera Reddy, Chennappa Reddy son of Rama Reddy from Venkamma and her son Venkatesaiah through the sale deed dated 28.05.1892. Through the document no.14/1898 the said Munireddy son of Chennappa Reddy purchased a property covered in old survey no.129 and 179 correlated new survey no.523 and 573/1. Through the document no.369/1900 the Muni Reddy S/o.Chenna Reddy purchased a property covered in survey no.70 of Kothur village on 23.05.1900. Through the document dated 05.04.1930 Thimma Reddy S/o.Veera Reddy purchased the lands in survey no.515, 518 and 519 of Mookandapalli Village. On 26.03.2015 Muni Reddy S/o.Chenna Reddy has purchased the property in survey no.478 through the document no.297/1915. The lands in survey no.546 correlated old survey no.152 belong to Muni Reddy son of Chenna Reddy. The lands in survey no.548 do not belong to the defendants and there is no claim over the same. Survey no.476 belongs to Muni Reddy son of Chenna Reddy and old revenue records bear the name of Muni Reddy son of Chenna Reddy. The survey no.481/1 and 481/2 belongs to Muni Reddy son of Chenna Reddy. The lands in survey no.589, 713/2 and 710/2A are not concerned with defendants and they have no claim for the same. The suit "B" schedule properties belong to the defendants and the lands in survey no.492 and 493 belongs to Muni Reddy S/o. Chenna Reddy. The lands in survey no.479 and 480 belongs to Muni Veerappa S/o.Veera Reddy by virtue of sale deed document no.685/1903. The lands in survey no.481 belongs to Muni Reddy S/o.Chenna Reddy and lands in survey no.511 also belongs to Muni Reddy S/o.Chenna Reddy, the lands in survey no.512 belongs to Muni Reddy by virtue of document no.537/1898. The plaintiffs stated that the suit properties belongs to Muni Reddy s/o.Pilla Reddy and the plaintiffs are taking the advantage of name similarity of Muni Reddy and they

claiming right over the suit properties. But, the document no.279/1915 and 369/1900 reveal the name of Muni Reddy son of Chenna Reddy. The plaintiffs have no right or interest over the suit properties. Hence, prayed for dismissal.

4. Reply statement filed by the plaintiffs before the trial Court:

The written statement filed by the defendants is contrary to the notice issued by the 1st defendant on 14.05.1998. The Thimma Reddy son of Muni Reddy has 5 sons and 3 daughters. The genealogical trees filed by the defendants are not correct. Prior to 20.08.1992 there was a partition in between Chenna Reddy and Nyatha Reddy on 29.06.1965. The survey no.540, 542 were purchased by the plaintiffs' father namely Chenna Reddy and out of this survey no.542 was sold away in the year 1990. The land in survey no.540 is in possession of the 1st plaintiff Srinivasa Reddy. Survey No.479 and 480 were purchased by the father of the plaintiff namely Chenna Reddy son of Muni Reddy. The lands in survey nos.492, 493, 481, 511 and 512 are belongs to the plaintiffs namely by virtue of patta No.201 and 234. Some portions of lands in survey nos.492 and 493 were acquired by the Government in the year 1963 for railway line and compensation was received by this plaintiffs. It is false to state that the grandfather name of the plaintiffs is Muni Reddy son of Pilla Reddy. In reality, the grandfather name Muni Reddy son of Chenna Reddy. The revenue records relate to the suit properties stands in the name of the plaintiffs and their predecessors.

5. Based on the pleadings of both sides the trial court framed the following issues for consideration

- (1) Whether it is true that the suit properties belong to the plaintiffs by way of ancestral and by virtue of partition deeds in the year 1992 and 1996?
- (2) Whether it is true that the plaintiffs are suppressing that their grandfather name which is Muni Reddy son of Pilla Reddy?

(3) Is it true that the plaintiffs had divided the suit properties on 28.08.1992 without the knowledge of the defendants?

(4) Whether the partition dated 05.02.1991 is the partial partition as alleged by the defendants?

(5) Whether the plaintiffs are entitled to get declaration and permanent injunction as prayed for?

(6) To what other relief the plaintiffs are entitled to?

6. Before the trial Court, on the side of the plaintiffs, PW1 and PW2 were examined and Ex.A1 to Ex.A55 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B1 to Ex.B14 were marked.

7. On consideration of pleadings, oral and documentary evidence of both parties and after hearing the arguments of both sides, the learned trial judge has decreed the suit without cost by his judgment and decree dated: 23.12.2014. Aggrieved by the said judgment and decree the defendants had preferred this appeal:

8. Grounds Of Appeal:

The decree and Judgment of the Trial Court are patently erroneous, manifestly illegal, Contrary to law weight of evidence and probabilities of the case. The trial Court failed to note that the Chenna Reddy son of Muni Reddy mentioned in Ex.A11 to Ex.A17 is not the grand father of the plaintiffs and the trial Court failed to note that the PW1 stated in his evidence that his father was died in the year 1955 or 1956 and he further stated that his father was a party to the partition deed dated 29.06.1965. The trial Court failed to note that the PW1 deposed in his evidence that his age is 56, if his father is alive his age would have been 90 years. However, Ex.A14 and Ex.A16 were executed 93 years back and the same is not possible. Therefore, names of the purchaser in those documents could not be name of the plaintiffs' father. The trial Court failed to consider the

deposition of PW1 and also failed to consider that the Chenna Reddy son of Muni Reddy stated in Ex.A11 to Ex.17 are not the grandfather of the plaintiffs and it is the name of ancestors of the 2nd defendant. The trial Court failed to consider the suppression of suit in O.S.463/96 by the plaintiffs. The trial Court failed to note that Ex.A26 to Ex.46 are the copies obtained after the suit and names found in the documents are ancestor of the 2nd defendant. The trial Court failed to consider the evidence adduced by DW1 to DW4 and also failed to consider that the plaintiffs are not having documents in their name to create the partition deed dated 29.06.1965 relates to suit properties. The trial Court failed to consider that the name of the ancestor of the defendants found in the revenue records in the inam period. The Judgment of the trial Court is against law and facts. Therefore, the Judgment is liable to be set aside.

9. The point for consideration in the appeal is that:

1. Whether the plaintiffs have proved that Muni Reddy son of Chenna Reddy is their ancestor?
2. Whether the trial Court properly appreciated the oral and documentary evidence produced by the defendants?
3. Whether the appeal is liable to be allowed?

The parties, for convenient sake and easy identification, are referred to hereunder according to their same litigative status before the trial Court in the main suit.)

10. For the sake of convenience point no.1 and 2 are taken up jointly and answered:

This appeal has been prepared against the Judgment and decree of the learned District Munsif, Hosur dated 23.12.2014 made in O.S.54/99. The unsuccessful 2nd defendant before the trial Court is an appellant herein. The plaintiffs have filed the suit for declaration of title and permanent injunction with

the cost of the suit. According to the plaintiffs, the portion of suit properties belonged to Muni Reddy son of Chenna Reddy by the way of ancestral and the portion of suit properties were purchased by the Chenna Reddy. The said Chenna Reddy is the father of the plaintiffs and after the demise of their father, in the year 1965 a partition effected in between the legal heirs of Chenna Reddy and his brother Netha Reddy. In the partition dated 29.06.1965 the suit properties and other properties were allotted to the share of the plaintiffs and their brothers. It is specific case of the plaintiffs that the portion of suit properties belongs to the Muni Reddy son of Chenna Reddy who is the grandfather of the plaintiffs.

11. On the other hand, the defendants would contend that the portion of suit properties belongs to Muni Reddy son of Chenna Reddy as alleged by the plaintiffs. But, the said Muni Reddy son of Chenna Reddy is their grandfather. In reality, the grandfather name of the plaintiffs is Muni Reddy son of Pilla Reddy. On conjoint perusal of the pleadings on either side it clearly revealed that the parties admitted that the portion of suit properties originally belonged to Muni Reddy son of Chenna Reddy. The only dispute in between the plaintiffs and defendants is that the said Muni Reddy son of Chenna Reddy is whose ancestor.

12. To prove the case of the plaintiffs, the 1st plaintiff namely Srinivasa Reddy examined as PW1 and the brother of the plaintiffs namely Muni Reddy examined as PW2. Through the PW2 and PW2 Ex.A1 to Ex.A55 were marked. On the other hand, to substantiate the fact that the Muni Reddy son of Chenna Reddy is the ancestor of the defendants, the 2nd defendant namely Raja Reddy examined as DW2 and on going through the chief examination he had reiterated the averment set out in the written statement. The DW2 to DW4 are the revenue officials and they had spoken about the revenue records relate to the suit properties.

13. On going through the evidence on the records it could be seen that the

suit 1st item of "A"schedule property was purchased by the plaintiff's father namely Chenna Reddy through the Ex.A16 sale deed dated 13.09.1926. A perusal of Ex.A12 sale deed dated 26.04.1947 it would reveal that the father of the plaintiffs Chenna Reddy son of Muni Reddy has purchased the 7th item of suit "A"schedule property through the Ex.A12. A go through of Ex.A11 it could be seen that the father of the plaintiffs namely Chenna Reddy son of Muni Reddy has purchased the suit 8th and 9th item of properties in "A"schedule on 26.04.1947 through the Ex.A3. Further, the father of the plaintiffs has purchased the suit 3rd and 7th item in "B"schedule property through the Ex.A13 to Ex.A15 sale deeds dated 05.10.1923, 12.09.1920 and 04.11.1921. A perusal of Ex.A17 sale deed dated 29.11.1938 it could be seen that the father of the plaintiffs namely Chenna Reddy son of Muni Reddy has purchased the 5th item of "B"schedule property. The 2nd defendant also admits that the above said properties were purchased by the father of the plaintiffs namely Chenna Reddy son of Muni Reddy.

14. The plaintiffs would contend that they have produced the original documents Ex.A50 to Ex.A55 sale deeds and which would reveal that the Muni Reddy son of Chenna Reddy is the grandfather of the plaintiffs. A conjoint perusal of the Ex.A50 to Ex.A55 it could be seen that the Chenna Reddy son of Muni Reddy is the purchaser of the said properties. Therefore, obviously original documents are in the custody of the purchased Chenna Reddy son of Muni Reddy. It is pertinent to note that the defendants had not disputed the properties purchased by the father of the plaintiffs namely Chenna Reddy son of Muni Reddy. The Court cannot assume based on the original sale deeds Ex.A50 to Ex.A55 that the Muni Reddy son of Chenna Reddy is the grandfather of the plaintiffs without proper proof. Mere production of original sale deeds Ex.A50 to Ex.A55 would not sufficient to hold that the properties mentioned in the revenue records except the properties stated in the sale deeds belongs to the plaintiffs'

ancestor namely Muni Reddy S/o.Chenna Reddy. Thus, the arguments of the plaintiffs are not sustainable.

15. With regard to the suit 2nd to 6th items in "A"schedule and 1st, 2nd, 4th, 6th and 8th items in "B"schedule, the plaintiffs claims right over the suit properties based on the patta issued by the revenue officials and partition deeds Ex.A9 and Ex.A10. Admittedly, Ex.A9 partition deed dated 29.06.1965 and 28.08.1992 are the self serving documents and the same were executed in between the family members of the plaintiffs. On going through the Ex.A18, Ex.A28 and Ex.A29 patta no.201 and 740 it would reveal that the suit properties stands in the name of Chenna Reddy. Whereas in the old settlement "A"register patta no.201 stands in the name of Muni Reddy. The defendants claim that the Muni Reddy stated in the settlement "A"register is their ancestor. To prove that the Muni Reddy son of Chenna Reddy is whose ancestor, both the parties have not produced any independent witnesses and they have not produced any documents with regard to genealogy.

16. The plaintiffs have filed suit seeking the relief of declaration of title and permanent injunction. But, they have not produced any independent evidence or documents to prove their genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if only is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved. At this juncture, it is worthwhile to mention the Judgment of our Apex Court reported in **1983 AIR 684**, wherein it has held that

"1. Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the courts before accepting or relying on the genealogies.

(a)Source of the genealogy and its dependability.

- (b) Admissibility of the genealogy under the Evidence Act.
 - (c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.
 - (d) Age of genealogies
 - (e) Litigations where such genealogies have been accepted or rejected.
1. On the question of admissibility the following tests must be adopted:
- (a) The genealogies of the families concerned must fall within the four corners s. 32(5) or s.13 of the Evidence Act.
 - (b) They must not be hit by the doctrine of post item motam.
 - (c) The genealogies or the claim cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.
 - (d) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved."

Applying the said dictum to the present case on hand, the plaintiffs not even disclose their ancestor name in their pleadings and they have not filed any genealogy so as to ascertain the real owner of the properties mentioned in the revenue record patta no.201. This Court is of the view that, the plaintiffs have not established their genealogy as per the guidelines of the Honourable Apex Court.

17. At this stage, this Court would like to refer the Judgment of our Honourable Apex Court reported in **(2012) 5 SCC 370**, has given guidelines as to how the Judge has to play an active role to discover the truth and he should explore all the avenues open to him in order to discover the truth. The extract of the Judgment is as follows:

“The truth should be guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is the mandate, obligation and bounden duty”.

18. Further, it is held in various decisions of our Honourable Apex Court and High Court that the trial is the voyage of discovery in which truth is the quest. The truth behind the disputed facts could be ascertained by analyzing all the facts and circumstances of the case. As per the above guidance, it is the duty of the Court to scrutinize the documentary and oral evidence with other circumstances and then decide whether the all such evidence will be accepted and believable in ordinary course of human affairs.

19. In the present case, admittedly the name Muni Reddy found in the settlement register relates to patta number 201 and most of the properties stated in the suit schedule covered in patta 201. The plaintiffs and their family members have stated in the Ex.A9 partition deed that the properties are their ancestral and self acquired properties. However, they had not specifically stated in the Ex.A9 partition deed as to how they got ancestral properties and through whom they succeeded the properties.

20. On going through the Ex.B7 sale deed dated 28.05.1892 it could be seen that one Thimma Reddy and Chinnappa Reddy have purchased the lands in survey no.146 corresponding new survey number 540. But, the plaintiffs have produced Ex.A39 to order of the settlement officer to show their title over the said property. However, there is no explanation on the side of the plaintiffs as to how they got the survey no.540 after the Ex.B7 sale deed. Moreover, on going through the records it could be seen that the trial Court has not properly appreciated the oral and documentary evidence produced by the defendant. The finding of the

trial Court that the plaintiffs have produced original sale deeds and through the same original owner of the suit properties could be ascertained is not correct. As discussed above, decision of trial Court without the proof of original ancestor of the plaintiffs is not correct. Thus, the point no.1 and 2 are answered against the plaintiffs.

21. Issue No.3:

In view of discussion made above this Court has come to the conclusion that the decision of the Trial Court with regard to the declaration of title and permanent injunction is not proper. In general, the disposal of appeal would end allowing or dismissal. But, this appeal is not such a regular one. Because, without analyzing the ancestor of the plaintiffs or original owner of the properties mentioned in the revenue records, the trial Court has given relief in favour of the plaintiffs.

22. Before going to decide the order of remand, the Court should keep in mind that there is a establish law that normally order of remand cannot be passed as a routine course. But, in the instant case it is noted that the defendants have enclosed the genealogy in their written statement. Whereas, the said genealogy has not at all discussed by the trial Court. Further, the learned counsel appearing for the defendants would argue that the documents marked by the defendants not at all discussed by the trial Court. It is to be bear in mind that when the parties placed evidence either to prove their case or to disprove the opponent case, it is bounden duty of the Court to discuss about it relevancy. However, the trial Court has failed to discuss the documents relied by the defendants. Such being, the defendants have come forward and pray to receive the genealogy and settlement "A" register as their side documents. In the present case, the disputed facts remained without an appreciation before the trial Court. The trial Court decreed the suit without determining the original owner of the properties mentioned in the revenue records. If the parties are permitted to adduce evidence with regard to their genealogy in the appellate stage, their right of preferring 1st appeal will be curtailed, such being so in order to give an opportunity to prove the genealogy on either sides and in order to

get clear picture about the original owner of the suit properties it is necessary to remand the case for reconsideration by trial Court in respect to genealogy and old settlement "A" register. Only appreciation of oral and documentary evidence of the parties with regard to genealogy the right and claims of the parties to the lis could be decided. Therefore, this Court is inclined to set aside the decree and Judgment passed by the trial Court and remits back the matter to the trial Court for a fresh disposal.

23. I.A.No.5/2020 in A.S.No.09/2015

In the result, this petition is allowed. No costs.

24. A.S.No.9/2015:

In the result, this appeal is allowed and decree and Judgment passed by the District Munsif, Hosur in O.S.No.54/99 dated 23.12.2014 is hereby set aside. The trial Court is directed to issue summons to the parties and directed to permit the parties to file genealogy and settlement "A" register. The trial Court is further directed to frame relevant additional issues and also permit both parties to adduce additional evidence if any and then dispose the suit a fresh at the earliest from the date of receipt of copy of the Judgment and decree. Considering the facts and circumstances of the case there shall be no cost.

This Judgment dictated to my Steno-Typist, typed by her, in the computer and printed in the printer, corrected and pronounced by me in the open court, on this the 11th day of January 2021.

**Additional Subordinate Judge,
Hosur**