

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.06/2020 in A.S.No.8/2015
A.S.No.8/2015 in O.S.95/2004

Raja Reddy

Appellant/3rd defendant

//VS//

- 1.K.C.Pedda Muni Reddy @ K.C.Muni Reddy(Died)
- 2.M.Ravindra Reddy
- 3.M.Harisha
- 4.M.Suresh
- 5.M.Thimma Reddy(Died)
- 6.Chenna reddy
- 7.Jayarama Reddy
- 8.Thimmakka
- 9.Chennammal
- 10.Pillamma
- 11.Gowramma
- 12.Savithramma
- 13.Srinivasa Reddy
- 14.Narayanamma
- 15.Rashmi
- 16.Shilpa

Respondents/Plaintiffs/Defendants 1 and 2, 4to 13

On appeal from the Judgment and Decree in O.S.95/2004 on the file of the
District Munsif Court, Hosur dated 23.12.2014.

Between

- 1.K.C.Pedda Muni Reddy @ K.C.Muni Reddy(Died)
- 2.M.Ravindra Reddy
- 3.M.Harisha
- 4.M.Suresh

Plaintiffs

//VS//

- 1.M.Thimma Reddy(Died)
- 2.Chenna reddy
- 3.Raja Reddy
- 4.Jayarama Reddy
- 5.Thimmakka
- 6.Chennammal
- 7.Pillamma
- 8.Gowramma
- 9.Savithramma
- 10.Srinivasa Reddy
- 11.Narayanamma
- 12.Rashmi
- 13.Shilpa

Defendants

I.A.No.06/2020

Raja Reddy

Petitioner/Appellant

//VS//

- 1.K.C.Pedda Muni Reddy @ K.C.Muni Reddy(Died)
- 2.M.Ravindra Reddy
- 3.M.Harisha
- 4.M.Suresh
- 5.M.Thimma Reddy(Died)
- 6.Chenna reddy
- 7.Jayarama Reddy
- 8.Thimmakka
- 9.Chennammal
- 10.Pillamma
- 11.Gowramma
- 12.Savithramma
- 13.Srinivasa Reddy
- 14.Narayanamma
- 15.Rashmi
- 16.Shilpa

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 and interlocutory application and Mr.C.S.Ranganathan, the learned counsel for the 2nd to 4th respondents, Mr.D.M.Shiva Shankar, the learned counsel for the 9th to 11th respondents, Mr.T.Gopala Reddy, the learned counsel for the 12th ,15th & 16th respondents, 1st and 5th respondents are died and 6th to 8th , 13th and 14th 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.6/2020

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 3rd 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 appellant and respondents, it is necessary for the petitioner to produce the genealogical trees of both sides. Therefore, the said documents are necessary to prove the case of the petitioner. 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 2nd to 4th 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 respondents 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 this suit 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.95/2004 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 scenario 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 adverting 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.

09. 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 Srivastava 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/3rd 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. However, the petitioner already marked the settlement "A" register as Ex.B4 to Ex.B7. Thus, there is no need to receive the same again in the appellate stage. It is pertinent to note that the trial Court has failed to discuss about the settlement "A" register Ex.B4 to Ex.B7 and genealogy attached with the written statement.

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.

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

In the result, this petition is partly allowed in respect to genealogy tree and partly dismissed in respect to settlement "A" register. No cost.

1. A.S.8/2015:

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.95/2004 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 suit properties originally belongs to the father of the plaintiff namely Chenna Reddy and his brother Nyatha Reddy ancestrally. Father of the plaintiff

died in the year 1960. Subsequent to the death of the father, a partition effected in between the legal heirs of Chenna Reddy and Nyatha Reddy on 29.06.1965. Ever since, from the above said partition the plaintiff and his brothers were in possession and enjoyment over the suit properties and other properties. Thereafter, a partition effected in between the brothers of the plaintiff on 28.08.1992 and in that partition the suit properties were allotted to the plaintiff. From the partition that has been effected on 28.08.1992 the plaintiff is absolute possession and enjoyment of the suit properties and he has build a terraced house in the survey no.573/1 and he is paying necessary taxes to the Government for the suit properties. Except, the plaintiff no other person have any right or interest over the suit properties. The 1st defendant is the father of the 2nd to 4th defendants and the defendants have no right or interest over the suit properties. While being so, the 1st defendant issued notice to the plaintiff on 14.05.1999 and claiming interest over the suit properties for that the plaintiff issued reply on 02.06.1998. The plaintiff understands that the 1st defendant had executed a general power of attorney in favour of his 2nd son the 3rd defendant and on the basis of the same the defendants trying to sell the suit properties to the 3rd parties. During the pendency of the suit the 1st defendant died on 21.11.2000 and leaving behind the 2nd to 13th defendants as his legal heirs and 2nd to 4th defendants already made partition to the suit. Hence, the present suit for title and permanent injunction.

3. Breif averments in the written statement filed by the 3rd defendant and adopted 1st and 2nd defendants before the trial Court

Refuting all the averments found in the plaint except those are specifically admitted by the 1st to 3rd defendants. It is false to state that the suit properties belong to the plaintiff and he is in possession over the suit properties. It is also false to state that the suit properties originally belongs to the father of the

plaintiff namely Chenna Reddy and his brother Nyatha Reddy ancestrally and they were in possession and enjoyment over the same. It is false to state that the legal heirs of the Chenna Reddy and his brother Nyatha Reddy partitioned the suit properties and other properties on 29.06.1965 and thereafter the plaintiff and his brothers were partitioned their share on 28.08.1992. The plaintiff did not give details as to how the Chenna Reddy and his brother Nyatha Reddy acquired suit properties. The plaintiff has filed the suit based on the partition deed dated 29.06.1965 and the same was effected between the plaintiff's family and his uncle's family. The partition effected between the plaintiff and his brothers on 28.08.1992. The Veera Reddy, Chenna Reddy and Rama Reddy are the brothers and their father was one Munisamy Reddy. The said Veera Reddy, Chenna Reddy and Rama Reddy acquired the suit properties and other properties as their own by virtue of number of sale deeds in their favour. The sons of Veera Reddy namely Muniveerappa and Thimma Reddy had also acquired some properties by virtue of sale deeds. The said Thimma Reddy had 3 sons namely Pillaveera Reddy, sega Reddy and Muni Reddy. The 1st defendant is the sons of Muni Reddy and the 2nd to 4th defendants are the son of 1st defendant and grand sons of the Muni Reddy. The brothers of the Veera Reddy namely Chenna Reddy had a son Muni Reddy and the said Muni Reddy had no issues. The another brother of Veera Reddy namely Rama Reddy had a son namely Chinnappa Reddy had no issues. Therefore entire property falls back to the Veera Reddy branch. Veera reddy sons namely Thimma Reddy and Muniveerappa are having right and tile over the suit properties and other properties. In the year 1960 there was a partition in between the sons of Thimma Reddy and in the partition the Muni Reddy acquired suit properties and other properties. After the demise of Muni Reddy the 1st defendant succeeded the suit properties. At present, the plaintiff is taking advantage of name similarity of Muni Reddy and tried to grab the suit properties. The Muni Reddy

father of Chenna Reddy and Nyatha Reddy had nothing to do with the suit properties. As such, being the son of Chenna Reddy, the plaintiff could not get any title and interest over the suit properties. Revenue records maintaining by the Hosur Sub Registrar discloses the name of Muni Reddy son of Chenna Reddy for the suit properties and the settlement patta given during the period of 1907 was also bearing the name of Muni Reddy. There was no settlement during the period of 1958 to 1960 for the suit properties and UDR patta have wrongly given in favour of the plaintiff without enquiry. Hence, prayed for dismissal.

4. 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 belonged to Chenna Reddy and his brother Nyatha Reddy as alleged?
- (2) Whether the partition in between the father of the plaintiff and his brother dated. 29.06.1965 is true?
- (3) Whether the suit properties are the separate property of the plaintiff based on the partition?
- (4) Whether the suit properties belong to the defendants based on the documents?
- (5) Whether the plaintiff is entitled to get relief as prayed for?
- (6) To what other relief the plaintiff is entitled to?

5. Before the trial Court, on the side of the plaintiffs, PW1 to PW3 were examined and Ex.A1 to Ex.A46 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B1 to Ex.B8 were marked and third party documents Ex.X1 to Ex.X11 were marked.

6. 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:

7. Grounds Of Appeal:

The decree and Judgment of the Trial Court is against the law weight of evidence and probabilities of the case. The Trial Court erred decreeing in the suit by considering the plaintiffs side evidence only. The trial Court failed to note the genealogical tree submitted by the defendant along with statement and wrongly understood the ancestor names of the defendants. The trial Court failed to consider that one Munisamy Reddy was the remote ancestor of the defendant and his 3 sons namely Veera Reddy, Chenna Reddy and Rama Reddy and they have acquired and possessed the suit properties as ancestral and they had purchased some of properties in their name. The trial Court failed to note that Chenna Reddy and their sons were died without issues and their elder brother Veera Reddy succeeded the entire property. The trial Court failed to consider that the said Veera Reddy has 2 sons namely Thimma Reddy and Muni Veera Reddy and the said Thimma Reddy has 3 sons namely Pilla Veera Reddy, Sega Reddy and Muni Reddy and among them Muni Reddy's sons is the 1st defendant. The trial Court failed to appreciate that there was a oral partition among the sons of Thimma Reddy and the 1st defendant get the suit properties. The trial Court failed to consider that the plaintiff had added 4 items as 7 to 10 in the amended plaint nearly 13 acres which proves that the plaintiff have no knowledge about the properties and he has right over the suit properties. The trial Court failed to note that as per the evidence of the plaintiffs the grandfather Muni Reddy's father name is Pilla Reddy not Chenna Reddy. The trial Court failed to note that the plaintiffs have not proved the grandfather Muni Reddy's father name. The trial

Court failed to consider the Ex.A2 sale deed dated 23.05.1900 which is 113 years old documents stands in the name of Muni Reddy son of Chenna Reddy and plaintiffs have failed to prove their relationship with Muni Reddy S/o.Chenna Reddy. The trial Court failed to consider that the plaintiffs had not objected the Ex.A41 partition deed among the defendants and failed to frame issue with regard to the prior documents to 29.06.1965 partition deed. The trial Court failed to consider the evidence adduced by the DW1 to DW5 and Ex.B1 sale deed. The trial Court failed to consider that the ancestor's name of the defendants were found in the inam period revenue records and also settlement records in the year 1907 and sale deed dated 23.05.1900. The trial court failed to appreciate the oral and documentary evidence produced by the defendants.

(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.)

8. 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?

9. For the sake of convenience Point no.1 & 2 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.95/2004. The unsuccessful 3rd 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. After the demise of Chenna Reddy there was a partition effected in between the brothers of the 1st plaintiff and brother of the Chenna Reddy namely Nyatha Reddy on 29.06.1965 in which the suit properties and other properties were allotted to the 1st plaintiff and his brothers. Ever since, from the partition that has been taken place on 29.06.1965 the 1st plaintiff and his brothers are in joint possession over the suit properties. Subsequently, there was a partition on 28.08.1992 in between the 1st plaintiff and his brother in which the suit properties were allotted to the share of the 1st plaintiff. Ever since, from the partition, the 1st plaintiff is in absolute possession and enjoyment over the suit properties. While being so, by using the names similarity the defendants claims right over the suit properties. Hence, the present suit for declaration of title and permanent injunction.

10. To substantiate the case of the plaintiffs the 1st plaintiff Pedha Muni Reddy examined as PW1. On going through the chief examination he had reiterated the avernments said out in the plaint. Through the PW1 Ex.A1 to A46 were marked. A go through of Ex.A6 sale deed dated 26.03.2015 it could be seen that the father of the plaintiffs namely Chenna Reddy son of Muni Reddy has purchased the suit 6th item the lands in survey no.478. The 3rd defendant also admits that the above said property was purchased by the father of the 1st plaintiff namely Chenna Reddy son of Muni Reddy.

11. On going through the Ex.A10 patta it discloses that the suit 1st to 6th, 8th and 9th properties stands in the name of Chenna Reddy who is the father of the 1st plaintiff. A careful perusal of the records it discloses that the plaintiffs have not produced the sale deeds or patta to prove the title of suit 7th item the lands in survey no.570/3. The plaintiffs have produced the adangal extract as Ex.A13 in their name for the suit 7th item of suit properties. The Ex.A13 adangal extract would not sufficient to prove the title over the suit 7th item of property.

12. The record clerk of the Tashildar examined as PW2 and he has spoken about the adangal extract and he deposed that the adangal relates to the suit properties stands in the name of the 1st plaintiff namely K.C. Pedha Muni Reddy. The brother of the 1st plaintiff namely K.S.Srinivasa Reddy examined as PW3 on going through the chief examination it could be seen that the PW3 corroborated the evidence of the PW1. On the other hand, the 3rd defendant examined as DW1 and on going through the chief examination it could be seen that he had reiterated the avernments said out in the written statement.

13. The defendants filed written statement and they would contend that the Muni Reddy son of Chenna Reddy is their ancestor. However, the plaintiffs filed suit by taking advantage of name similarity of Muni Reddy. From the pleadings it is clear that the defendants would contend that the Muni Reddy son of Chenna Reddy is their grandfather and not the plaintiffs grandfather as alleged by them. But, the trial Court has come to conclusion that the defendants have not produced any documents to show that they are the legal heirs of the Muni Reddy son of Chenna Reddy. In the present case, the plaintiffs have filed suit for declaration of title and permanent injunction. Admittedly, both the parties have not produced any independent oral evidence or documents to prove the genealogy. The defendants filed written statement and they would contend that the Muni Reddy son of Chenna Reddy stated by the plaintiffs is their grandfather as such the burden is lies upon the plaintiffs to prove the genealogy. On contrary, the trial Court has given finding that the defendants have not proved that their ancestor name is Muni Reddy son of Chenna Reddy.

14. It is pertinent to note that the defendants had not disputed the properties purchased by the father of the 1st plaintiff namely Chenna Reddy son

of Muni Reddy. With regard to the suit 2nd to 6th, 8th and 9th items of properties the plaintiffs are claims right over the suit properties based on the patta issued by the revenue officials and partition deeds Ex.A1 and Ex.A2. Admittedly, Ex.A1 partition deed dated 29.06.1965 and Ex.A2 partition deed dated 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.A11, Ex.A14 to Ex.A17 patta no.201, 297, 491, 1178 and 2223 it would reveal that originally the suit properties stands in the name of Chenna Reddy and thereafter patta has been transferred in the name of the 1st plaintiff. Whereas, in the old settlement "A" register patta no.201 stands in the name of Muni Reddy. The defendants claims 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.

15. 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.”

16. 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 records. This Court is of the view that the plaintiffs have not established their genealogy as per the guideline 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 “A” register Ex.B4 to Ex.B7 relates to patta number 201 and the properties stated in the suit schedule covered in patta 201 except the suit 6th and 7th schedule properties. The plaintiffs and their family members have stated in the Ex.A1 partition deed that the properties are their ancestral and self acquired properties. However, they had not specifically stated in the Ex.A1 partition deed as to how they got ancestral properties and through whom they succeeded the properties.

20. On going through the Ex.B1 sale deed dated 20.12.1897 it could be seen that one Chinna Muniyappa son of Pappanna Chetty executed sale deed in favour of Kotha Muni Venkata Chetty son of Kotha Ayothya Rama Chetty with regard to the lands in survey no.179 corresponding new survey number 573. But, the plaintiffs have produced Ex.A10 patta no.201 to show their title. However, there is no explanation on the side of the plaintiffs as to how they got the survey no.573 after the Ex.B1 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 defendants. The finding of the trial Court that the defendants have

not produced documents to prove their ancestor is not correct and it is pertinent to note that the trial Court has not appreciated the Ex.B1 sale deed and Ex.B4 to Ex.B7 settlement "A" registers. 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 . 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.6/2020 in A.S.No.08/2015

In the result, this petition is partly allowed in respect to genealogy tree and partly dismissed in respect to settlement "A" register. No cost.

24. A.S.No.8/2015:

In the result, this appeal is allowed and decree and Judgment passed by the District Munsif, Hosur in O.S.No.95/2004 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**