

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

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Monday, the 11<sup>th</sup> day of January 2021.  
I.A.No.06/2020 in A.S.No.7/2015  
A.S.No.7/2015 in O.S.94/2004

Raja Reddy

Appellant/3rd defendant

//VS//

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

Respondents/Plaintiffs/1<sup>st</sup>, 2<sup>nd</sup>,4<sup>th</sup> to 13<sup>th</sup>Defendants

On appeal from the Judgment and Decree in O.S.94/2004 on the file of the  
District Munsif Court, Hosur dated 23.12.2014.

**Between**

N.Sreenivasa Reddy

Plaintiff

//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.N.Srinivasa Reddy  
 2.M.Thimma Reddy(Died)  
 3.Chenna reddy  
 4.Jayarama Reddy  
 5.Thimmakka  
 6.Chennammal  
 7.Pillamma  
 8.Gowramma  
 9.Savithramma  
 10.Srinivasa Reddy  
 11.Narayanamma  
 12.Rashmi  
 13.Shilpa  
 14.C.Srinivasulu  
 15.S.Manjula

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.Renganathan, the learned counsel for the 1<sup>st</sup> , 14<sup>th</sup> and 15<sup>th</sup> respondents, Mr.T.Gopala Reddy, the learned counsel for the 4<sup>th</sup> , 9<sup>th</sup> to 13<sup>th</sup> respondents, Thiru D.M.Shiva Shankar, the learned counsel for the 6<sup>th</sup> , 7<sup>th</sup> and 8<sup>th</sup> respondents, 2<sup>nd</sup> respondent died, 3<sup>rd</sup> and 5<sup>th</sup> 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 has 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 1<sup>st</sup>, 14<sup>th</sup> & 15<sup>h</sup> 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.94/2004 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 plaintiff has 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 plaintiff has not filed any genealogical tree relates to his family and he had not disclosed his ancestors and family members name in his 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 respondents 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/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.C10 in his case. Therefore, 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 tree 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 sought to be 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.**

**13. A.S.7/2015:**

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.94/2004 on the file of the District Munsif Court, Hosur dated 23.12.2014.

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

The suit properties and other properties originally belong to the father of Nyatha Reddy and his brother Chenna Reddy ancestrally and they were in possession and enjoyment over the same. After the death of Chenna Reddy there was a partition between the father of the plaintiff namely Nyatha reddy, and sons of Chenna Reddy through the partition deed dated 20.06.1965 in which suit properties were allotted to the plaintiff and his father Nyatha Reddy. Ever since from the partition the plaintiff and his father Nyatha Reddy have been in absolute

possession and enjoyment over the suit properties. The father of the plaintiff namely Nyatha Reddy died in the year 1973 and after the demise the plaintiff succeeded the suit properties and he is in absolute possession over the same. The plaintiff had raised eucalyptus trees in survey no.460/2 and other lands and he is paying necessary taxes to the government to the suit properties. The 1<sup>st</sup> defendant is the father of the 2<sup>nd</sup> to 4<sup>th</sup> defendants and the defendants have no right or interest over the suit properties. While being so, the 1<sup>st</sup> defendant issued notice on 14.05.1998 to the plaintiff and claiming right over the suit properties for that the plaintiff issued reply notice on 02.06.1998. The plaintiff understands that the 1<sup>st</sup> defendant executed a general power of attorney in favour of his son the 3<sup>rd</sup> defendant and on then basis, the defendants trespassed into the suit properties and they had also cut and removed the eucalyptus trees worth Rs.30,000/- from survey no.460/2 and other survey nos. The defendants proclaimed that they would come again and remove the plaintiff from the suit properties. On 21.11.2000 the 1<sup>st</sup> defendant died leaving behind the 2<sup>nd</sup> to 13<sup>th</sup> defendants as his legal heirs and the 2<sup>nd</sup> to 4<sup>th</sup> defendants were already record and the 5<sup>th</sup> to 13<sup>th</sup> defendants were arrayed as parties to these suit for proper adjudication. Hence, the present suit for declaration of title, permanent injunction and compensation.

### **3. Breif averments in the written statement filed by the 3<sup>rd</sup> defendant before the trial Court**

Refuting all the averments found in the plaint except those are specifically admitted by the defendant. It is false to state that the suit properties originally belongs to the father of the plaintiff namely Nyatha Reddy and his brother Chenna Reddy ancestrally and they were in possession and enjoyment over the same. It is false to state that there was a partition between the Nyatha Reddy and sons of Chenna Reddy through the partition deed dated 29.06.1965

with regard to the suit properties. It is false to state after the death of Nyatha Reddy the plaintiff is in possession and enjoyment over the suit properties as the absolute owner. The plaintiff did not give the details as to how the Chenna Reddy and his brother Nyatha Reddy acquired suit properties and other properties. The plaintiff has come forward with the present suit based on the partition deed dated 29.06.1965. The plaintiff is taking advantage of the names similarity and claiming right over the suit properties. Veera Reddy, Chenna Reddy and Rama Reddy are the brothers and their father namely Munisamy Reddy. The Veera Reddy, Chenna Reddy and Rama Reddy acquired the suit properties and other properties through the sale deeds. 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 Pillveera Reddy, Segga Reddy and Muni Reddy. The 1<sup>st</sup> defendant is the son of Muni Reddy and 2<sup>nd</sup> to 4<sup>th</sup> defendants are the sons of 1<sup>st</sup> defendant and grand sons of Muni Reddy. The Chenna Reddy had a son namely Muni Reddy and the said Muni Reddy had no issues. The brother of the Veera Reddy namely Rama Reddy had a son namely Chinnappa Reddy and the said Chinnappa Reddy had no issues. Therefore, the suit properties fall back to the shares to the Veera Reddy branch and the property left by the Muni Reddy also fall back Veera Reddy. Thus, the sons of Veera Reddy namely Thimma Reddy and Muniveerappa got title over the suit properties. Muniveerappa had no issues and the entire properties fall back to the Thimma Reddy. The said Thimma Reddy had 3 sons namely Pillaveera Reddy, Segga Reddy and Muni Reddy. Before 1960, there was a partition between the sons of Thimma Reddy and suit properties were allotted to the Muni Reddy in the above said partition. The said Muni Reddy died leaving behind his one son namely Thimma Reddy the 1<sup>st</sup> defendant who succeeded the suit properties. The defendants are having valid records to show that the suit properties and other properties belonged to their ancestors. The R.H

record maintained by the sub-registrar office, Hosur discloses the name of Muni Reddy son of Chenna Reddy for the suit properties. 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. The plaintiff is not in possession over the suit properties and he is claiming right over the same based on the self serving documents. 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 are ancestral properties of the plaintiff and the same were allotted to him through the partition dated 29.06.1965 as alleged?
- (2) Whether it is true that the defendants cut down the eucalyptus trees in the suit properties and caused damage a sum of Rs.30,000/- to the plaintiff?
- (3) Whether the suit properties originally belonged to the ancestors of the 1<sup>st</sup> defendant namely Muni Reddy and the same were allotted to Thimma Reddy branch in the partition that has been taken place in the year 1960?
- (4) Whether the genealogical tree filed by the plaintiff is true?
- (5) Whether the plaintiff is entitled to get declaration of title and permanent injunction as prayed for?
- (6) Whether the plaintiff is entitled to get a sum of Rs.30,000/- as compensation?
- (7) To what other relief the plaintiff is entitled to?

05. Before the trial Court, on the side of the plaintiffs, PW1 and PW2 were examined and Ex.A1 to Ex.A43 were marked. On the side of the defendants, DW1 to DW5 were examined and Ex.B1 to Ex.B4 were marked and third party exhibits X1 to X11 were marked.

06. 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 plaintiff side evidence only and the trial Court failed to consider the oral and documentary evidence produced by the defendants. The trial Court failed to note the genealogical tree submitted by the defendants along with statement and wrongly understood the ancestor names of the defendants. The trial Court has wrongly appreciated the oral evidence of the plaintiff and wrongly fixed the name of the plaintiff's ancestor and come to the conclusion. The trial Court failed to consider that the Muni Reddy has got 3 sons namely Veera Reddy, Chenna Reddy and Rama Reddy. The Thimma Reddy is the grand son of the Veera Reddy is the 1<sup>st</sup> defendant and the plaintiff admits that he has sold the lands in survey no.686/2, 686/2B, 449/1, 460/3, 466 and 682/2B to various persons. Therefore, the plaintiff is not entitled to the relief without amending the plaint. The trial Court failed to consider that the patta no.201, 148, 200 and 238 which stands in the name of Muni Reddy who is the grand father of the 1<sup>st</sup> defendant and the trial Court failed to note that the ancestor's names of the defendants namely Chennammal and Rama Reddy found in the revenue records. The trial Court wrongly interpreted the contents of Ex.B1 document dated 23.05.1900 in which the defendant grand father Muni Reddy purchased the lands in survey no.464/2. The trial Court failed to consider that the father of the 1<sup>st</sup>

defendant name is Muni Reddy and grand father name of the plaintiff is also Muni Reddy by taking advantage of the name the plaintiff claiming right over the suit properties based on the bogus partition deed dated 29.06.1965. The trial Court failed to consider the name of the ancestor of the trial Court not consider that the name of the ancestor of the defendants mentioned in the inam period revenue record and also sale deed dated 23.05.1990. The trial Court failed to consider that the plaintiff has not produced any document prior to the partition deed dated 29.06.1965 and all the documents were created after 1964. The trial Court failed to consider the Ex.B2 sale deed executed by the defendants to one K.L.Sampath nagaraj and other on 28.08.2007 and the plaintiff and PW2 have admitted the said alienation. However, they had not taken steps to implead the purchaser. During the pendency of the trial the plaintiff has deleted 4 properties and the plaintiff claiming compensation for the deleted properties also. Without considering the same, the trial Court granted damage a sum of Rs.30,000/- against the defendants. 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 plaintiff has proved that Muni Reddy son of Chenna Reddy is his ancestor?
2. Whether the trial Court property appreciated the oral and documentary evidence produced by the defendants?
3. Whether the appeal is liable to be allowed?

**09. 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.94/2004. The unsuccessful 3<sup>rd</sup> defendant before the trial Court is an appellant herein. The plaintiff has filed the suit for declaration of title, damage and permanent injunction with the cost of the suit. According to the plaintiff the suit properties and other properties originally belong to the father of Nyatha Reddy and his brother Chenna Reddy ancestrally and they were in possession and enjoyment over the same. After the death of Chenna Reddy there was a partition between the father of the plaintiff namely Nyatha reddy, plaintiff and sons of Chenna Reddy through the partition deed dated 20.06.1965 in which suit properties were allotted to the plaintiff and his father Nyatha Reddy. Ever since from the partition the plaintiff and his father Nyatha Reddy have been in absolute possession and enjoyment over the suit properties. The father of the plaintiff namely Nyatha Reddy died in the year 1973 and after the demise, the plaintiff succeeded the suit properties and he is in absolute possession over the same. The plaintiff had raised eucalyptus trees in survey no.460/2 and other lands and he is paying necessary taxes to the government to the suit properties. The 1<sup>st</sup> defendant is the father of the 2<sup>nd</sup> to 4<sup>th</sup> defendants and the defendants have no right or interest over the suit properties. While being so, the 1<sup>st</sup> defendant issued notice on 14.05.1998 to the plaintiff and claiming right over the suit properties for that the plaintiff issued reply notice on 02.06.1998. The plaintiff understands that the 1<sup>st</sup> defendant executed a general power of attorney in favour of his son the 3<sup>rd</sup> defendant and on than basis, the defendants trespassed into the suit properties and they had also

cut and removed the eucalyptus trees worth Rs.30,000/- from survey no.460/2 and other survey nos. The defendants proclaimed that they would come again and remove the plaintiff from the suit properties. Therefore, the plaintiff has filed suit for declaration of title and other reliefs.

10. On the other hand, the defendants would contend that the suit properties belongs to Muni Reddy son of Chenna Reddy as alleged by the plaintiff. 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 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 of whom ancestor.

11. To prove the case of the plaintiff, the plaintiff namely Srinivasa Reddy examined as PW1 and the brother of the plaintiff namely Muni Reddy examined as PW2. Through the PW1 and PW2 the Ex.A1 to Ex.A43 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 3<sup>rd</sup> defendant namely Raja Reddy examined as DW2 and on going through the chief examination it could be seen that 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.

12. On going through the evidence on the records it could be seen that the plaintiff claims right over the suit property based on the Ex.A8 patta and partition deed Ex.A1. Admittedly, Ex.A1 partition deed dated 29.06.1965 is the self serving document and the same was executed in between the family members of the plaintiff. On going through the Ex.A4 patta no.201 it would reveal that the suit properties stand 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.

13. The plaintiff has filed suit seeking the relief of declaration of title and permanent injunction. But, he has not produced any independent evidence or documents to prove his 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.

Source of the genealogy and its dependability.

Admissibility of the genealogy under the Evidence Act.

A proper use of the said genealogies in decisions or judgments on which reliance is placed.

Age of genealogies

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 plaintiff not even discloses his ancestor name in his pleadings and they has 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 plaintiff has not established his genealogy as per the guideline of the Honourable Apex Court.

14. 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”.

15. 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.

16. In the present case, admittedly the name Muni Reddy found in the settlement register relates to patta number 201 and the properties stated in the suit schedule covered in patta 201. The plaintiff and his 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. 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 and not even discuss the issue no. 3 and 4. 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.C2 to Ex.C10 RH registers and settlement "A" registers. As discussed above, decision of trial Court without the proof of original ancestor of the plaintiff is not correct. Thus, the point no.1 and 2 are answered against the plaintiff. The finding of the trial Court that the plaintiff has produced the partition deed 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 plaintiff is not correct. Thus, the point no.1 and 2 are answered against the plaintiffs.

**17. 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 plaintiff or original owner of the properties

mentioned in the revenue records, the trial Court has given relief in favour of the plaintiff.

18. 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 was 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 1<sup>st</sup> 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.

**19. I.A.No.6/2020 in A.S.No.07/2015**

**In the result, this petition is partly allowed in respect to genealogy tree**

and partly dismissed in respect to settlement "A" register. No cost.

20. A.S.No.7/2015:

In the result, this appeal is allowed and decree and Judgment passed by the District Munsif, Hosur in O.S.No.94/2004 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 to frame relevant additional issues, if any 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 11<sup>th</sup> day of January 2021.

**Additional Subordinate Judge,  
Hosur**