?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%Dated: 02.11.2018
Reserved on : 25.10.2018
Delivered on : 02 .11.2018
*CORAM
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
+A.S.No.1070 of 1995
and
C.M.P.No.14521 of 1995
#1.Radha(died)
2.Chandra(died)
3.U.Balasubramaniam
4.B.Rajesh
5.K.Sambandam
6.S.Ramesh .. Appellants

(appellants 3 and 4 brought on record
as legal heirs of the deceased second appellants
vide order dated 29.12.2003 made in
C.M.P.No.19348 of 2002)

(appellants 5 and 6 are impleaded as legal heirs
of the deceased first appellant vide order
dated 02.02.2010 and made in
M.P(MD).No.1 and 2 of 2002 in A.S.No.1070 of 1995)

Vs.

$1.Shantha Ammal(died)
2.Panneerselvam
3.Pasupathi
4.Rajam
5.Chidambaram Pillai (died)
6.Narayani Ammal
7.Raja
8.Selvamani
9.Sasikala
10.Rathinakumar
11.Kunjammal(died)
12.R.Indhirani .. Respondents
(respondents 8 to 11 brought on record as
legal heirs of deceased R5 as per order dated 25.03.1998
in CMP.No.13418 of 1997)
(respondents 3,4,8 to 10 are recorded as legal heirs of
the deceased R11 vide order dated 22.08.2014
and made in M.P(MD).No.1 of 2011
in A.S.No.1070 of 1995)

(memo filed in OSR.440 dated 24.01.2017 to the effect that R1
died is recorded and R2 is recognized as legal heir of deceased R1

vide order dated 12.04.2017 made in A.S.No.1070 of 1995)

Prayer : Appeal is filed under Section 96 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge of Kumbakonam dated 21.07.1995 made in O.S.No.14 of 1988.

!For Appellants : Mr.M.P.Senthil
^For R~2 : Mr.T.Antony Arulraj
For R~3 : No appearance
For R4, R6 to R10
and R12 : No appearance
For R1, R5 and R11 : Died

:JUDGMENT
The plaintiffs in O.S.No.14 of 1988 on the file of the Subordinate Court, Kumbakonam, are the appellants herein.

2. O.S.No.14 of 1988 had been filed by two plaintiffs, Radha and Chandra who are both sisters. The suit had been filed seeking a declaration that the plaintiffs are the absolute owners of the suit properties and for consequential relief directing the first defendant to put the plaintiffs in possession of the suit -A- schedule properties, directing the second defendant to put the plaintiffs in possession of the suit -B- schedule properties, directing the defendants 3 and 6 to put the plaintiffs in possession of the -C- schedule properties and directing the defendants 3, 4, 9 and 10 to put the plaintiffs in possession of the -D- schedule properties and also grant past and future profits and also costs of the suit.
3. This suit came up for consideration before the learned Subordinate Judge, Kumbakonam. By judgment dated 21.07.1995, the suit was dismissed. Challenging the same, the plaintiffs have filed the present First Appeal.
4. Pending the appeal, both the plaintiffs died and their legal representatives were brought on record as appellants 3 to 6. Pending the appeal, the fifth respondent died and his legal representatives were brought on record as respondents 8 to 11. Thereafter, the 11th respondent also died and a memo was filed that her legal representatives were already on record as respondents 3, 4, 8 to 10. The 12th respondent was also brought on record also as another legal heir of the 11th respondent.

5. The said suit had been filed by two plaintiffs/sisters, Radha and Chandra seeking as stated above the declaration of title and recovery of possession of the suit ?A? to ?D? schedule properties. They were daughters of Late Chinnappa Pillai. He was the absolute owner of the suit properties. He died intestate on 16.04.1976 at Panthanalloor Village, Kumbakonam. His wife had predeceased him. The first defendant Shantha Ammal was his concubine. The second defendant Panneerselvam was her son. The defendants 3 and 4 were children of Mani Pillai the first cousin of Chinnappa Pillai. He died before the filing of this suit. The fifth defendant was a satellite to the family of Mani Pillai. The sixth defendant was the brother~in~law of Mani Pillai. The plaintiffs claimed that the defendants 1 to 6 set up a

will, as if it had been executed by Chinnappa Pillai on 30.03.1976. In the plaint, they claimed that Chinnappa Pillai was suffering physically and mentally at the time of his death. He was under the complete control of the first defendant. He was not in a position to understand anything. It was stated that taking advantage of his physical and mental condition, the defendants 1 to 6 had brought about the will, dated 30.03.1976. The plaintiffs denied that the will was a true and genuine document. After the death of the Chinnappa Pillai, the plaintiffs and one Sambandam Pillai filed O.S.No.57 of 1976 before the Subordinate Court, Kumbakonam, against the same defendants seeking accounts of the properties left behind by Chinnappa Pillai. That said suit was dismissed as not maintainable. Thereafter, the plaintiffs and the said Sambandam Pillai filed A.S.No.1127 of 1980 before the High Court, Madras. In the said first appeal, by order dated 02.03.1987 in C.M.P.No.2838 of 1987, the plaintiffs were given liberty to withdraw O.S.No.57 of 1976 and file a fresh suit seeking appropriate reliefs. It was under these circumstances that the suit had been filed seeking declaration of title and recovery of possession as stated above and also for payment of past and future profits.

6. The first defendant filed written statement. This written statement was adopted by the defendants 2 to 6. In the written statement, it was stated that the properties had been bequeathed to the defendants 2, 3 and 4 by a will and they claimed that the will was true, valid and binding on the plaintiffs. They claimed that the said Chinnappa Pillai was in complete control of his mental senses. It was also stated that the plaintiffs had filed several suits against him and he had contested those suits. It was stated that he was therefore opposed to the conduct of his daughters, who are the plaintiffs herein. They further stated that the plaintiffs had been settled with properties and therefore they cannot challenge the will. It was stated that the first defendant was the concubine of Chinnappa Pillai and the second defendant Panneerselvam was born to them. It was stated that the will had been executed in accordance with due procedure and was also attested. It was stated that the suit is not maintainable. It was also stated that the suit is barred by the law of limitation and also barred by res judicata. It was, therefore, stated that the suit should be dismissed.

7. This suit came up for consideration before the learned Subordinate Judge, Kumbakonam and on the basis of the pleadings, the learned Subordinate Judge framed the following issues for consideration:~

1.Whether the plaintiffs are the owners of the suit properties and whether declaration of title can be granted in their favour?

2.Whether the Will executed by Chinnappa Pillai was executed when he was in disposing sound and deposing state of mind?

3.Whether the Will was brought about by undue influence?

4.Whether the deceased Chinnappa Pillai had right to deal with the Dharmam properties.

5.Whether the suit is barred by limitation?

6.Whether the suit is barred by res judicata?

7.Whether the suit had been correctly valued and whether the proper Court fees had been paid?

8.Whether the defendants are liable to pay past and future profits to the plaintiffs?

9.To what other reliefs of the plaintiffs are entitled to?
Thereafter, the following two additional issues were framed:~
1. Whether the suit properties in item Nos.34 and 66 have been properly described in the plaint?
2. Whether the item Nos.34 and 66 absolutely belonged to the first defendant?
The learned Subordinate Judge framed the following further additional issue:~
Whether the suit is maintainable as framed?
8. During trial, the plaintiffs examined three witnesses. P.W.1, K.Sambandam, was the husband of the first plaintiff. P.W.2 was V.Govindasamy one of the witness to the will and P.W.3 was Dr.S.Ganesan, who treated Chinnappa Pillai. On the side of the defendants, three witnesses were examined. D.W.1, Santha, the first defendant, D.W.2 C.Panneer Selvam, the second defendant and D.W.3 K.Thiagaraja Pillai the other witness to the will. The plaintiffs marked Exs.A~1 to A~46 and the defendants marked Exs.B~1 to B~38. Among the documents marked by the plaintiffs, Ex.A1 is the birth certificate of the second defendant. Ex.A.2, Ex.A.3 and Ex.A.4 are the birth certificates of the other children of the first defendant. Ex.A5 is the judgment is O.S.No.57 of 1976 and Ex.A.6 is the order of the Madras High Court in CMP.No.2838 of 1987 in A.S.No.1127 of 1980. Ex.A.7 and Ex.A.8 and Ex.A.9 are sale deeds in the name of the first defendant executed by Chinnappa Pillai. Ex.A~10 is the settlement deed in favour of the second defendant executed by Chinnappa Pillai. Ex.A~36 is the settlement deed in favour of Savithri Ammal executed by Chinnappa Pillai. The other documents were the certified copies of the Judgments/decrees and related documents the earlier suits in O.S.No.38 of 1974, O.S.No.55 of 1974, O.S.No.56 of 1974 and O.S.No.453 of 1985. On the side of the defendants, Ex.B.8 is the marriage invitation of the first plaintiff, Ex.B.9 and Ex.B.14 are the letters written by the husband of the first plaintiff to Mani Pillai, Ex.B.29 is the gift deed in favour of the first defendant/Santha Ammal executed by Chinnappa Pillai and Ex.B.37 is the will dated 30.03.1976 executed by Chinnappa Pillai. The other documents also related to the Judgments/decrees and related documents in the suits in O.S.No.55 of 1974, O.S.No.56 of 1974 and O.S.No.38 of 1974.

9. By Judgment dated 21.07.1995, the learned Subordinate Judge first took up for consideration the issue of limitation. The learned Judge considered the order of the Madras High Court in C.M.P.No.2838 of 1987 in A.S.No.1127 of 1980, wherein the earlier suit filed by the plaintiffs in O.S.No.57 of 1976 was permitted to be withdrawn and liberty was granted to institute a fresh suit for such reliefs as considered proper. It was then observed that Chinnappa Pillai died on 16.04.1976. The will executed by him came into effect on his death. The learned Judge determined that any suit filed for properties which were the subject matter of the will should have been filed within a period of twelve years under Article 65 of the Limitation Act. The learned Judge also considered Article 58 of the Limitation Act, which provided three years time to file a suit for declaration. The learned Judge then considered the rival arguments put forth by both sides. The plaintiffs had contended that the suit will be covered by Article 65 of the Limitation Act. The defendants had contended that the suit will be governed under Article 58 of the Limitation Act. The learned Judge then examined the

provision under Order 23 Rule 2 of C.P.C. He further examined whether Section 14 of the Limitation Act would be applicable. The learned Judge finally found that the suit was barred by limitation. The learned Judge then took up the issue of Court fees and the valuation of the suit. The plaintiffs had valued the suit under Sections 25~A, 44 and 22 of Tamil Nadu Court Fees and Suits Valuation Act, 1955. The learned Judge again found that the suit had not been properly valued. The learned Judge then took up the additional issue, namely, whether the suit was maintainable as framed. The learned Judge examined the evidence and the pleadings and finally stated that the suit is not maintainable. The learned Judge did not examine any other issue and dismissed the suit. Challenging that judgment, the plaintiffs had filed the present appeal.

10. As stated above, pending the appeal, both the appellants/plaintiffs died and their legal representatives had been brought on record. The first respondent/first defendant and the 11th respondent also died and 5th respondent also died and his legal representatives had also been brought on record.

11. Heard arguments advanced by Mr.M.P.Senthil, the learned counsel for the appellants and Mr.T.Antony Arulraj, learned counsel for the contesting second respondent, who was the second defendant in the suit.
12. The parties will be referred as plaintiffs and defendants for the sake of convenience.
13. Mr.M.P.Senthil, learned counsel for the plaintiffs pointed that the suit had been dismissed on the grounds of limitation, improper valuation of the suit and maintainability. It had been held that the suit should have been filed for partition and separate possession. The learned counsel stated that the suit had been filed well within the period of limitation and it would fall under Article 65 of the Limitation Act. This Court had granted permission to institute a fresh suit and that the suit had been filed immediately. The learned counsel also stated that Ex.B.37~will dated 30.03.1976 was shrouded with suspicion. It was stated that according to the evidence of P.W.3~Doctor, Chinnappa Pillai was not in good mental and physical health. The learned counsel pointed out Ex.A.2~ birth certificate of the second defendant/ Panneer Selvam, which showed the name of his father as a different person. The learned counsel stated that the first defendant /Santha Ammal exercised extreme control over Chinnappa Pillai and also stated that the will had been obtained by coercion and undue influence. It was also pointed out that under the will, the plaintiffs, who are the only children/daughters of Chinnappa Pillai, had been completely excluded. They had been allotted only 8 acres by an earlier settlement deed. Chinnappa Pillai had executed sale deeds and settlement deeds in favour of the first, second defendants. The learned counsel stated that the learned Subordinate Judge had not given findings on other substantial issues, particularly, on the proof of the will. He, therefore, stated that the judgment under appeal should be reversed.

14. On the other hand, Mr.T.Antony Arulraj, learned counsel for the contesting second respondent stated that Article 65 will be attracted only when declaration is sought on the basis of the title. In the present case,

in view of the will, the plaintiffs do not have any title over the properties and consequently only Article 58 would apply. The learned counsel also stated that under Order 23 Rule 2 CPC, application of Section 14 of Limitation Act is not possible. The learned counsel stated that the suit is barred by limitation. The learned counsel also pointed out that Chinnappa Pillai had settled properties in favour of both the plaintiffs. The plaintiffs had filed three suits against Chinnappa Pillai. They also filed Execution Petitions. These proceedings ended just one month before he died. It was stated that he did not live with plaintiffs. They also did not attend his funeral. It was stated that under the strained background between the plaintiffs and Chinnappa Pillai the will had been executed out of free consent and the learned counsel, further, stated that no influence was applied on Chinnappa Pillai for executing the will. The learned counsel stated that the suit is barred by limitation and consequently, urged the Court to dismiss the appeal.

15. The following points arise for determination in the appeal:~
1.Whether the suit in O.S.No.14 of 1988 is barred by limitation?
2.Whether the period of limitation in instituting the suit is to be determined by Article 58 or by Article 65 of the Limitation Act?
3.Whether the suit had been properly valid and proper Court fees paid?
4.Whether the suit as framed is maintainable?
5.Whether the Will dated 30.03.1976 marked as Ex.B.37 was executed by Chinnappa Pillai out of free consent and when in sound state of mind?
6.Whether the will was obtained through undue influence?
7.Whether the will had been proved in manner known to law?
8.Whether the plaintiffs are entitled for the relief of declaration and recovery of possession?
9.Whether the judgment under appeal requires interference?

16. Point Nos.1 and 2:~
1.These points relate to whether the suit is barred under the law of limitation:~
(i) It is the contention of the learned counsel for the plaintiffs that the suit reliefs fall under Article 65 of the Limitation Act. On the other hand, it is the contention of the learned counsel for the defendants that the suit reliefs are covered under Article 58 of the Limitation Act. Under Article 65 of the Limitation Act, the period of limitation is 12 years and it relates to possession of immovable property or any interest therein based on title. It is contention of the learned counsel for the defendants that since Chinnappa Pillai had executed a will and had died prior to the institution of the suit, the plaintiffs do not have title over the properties.

(ii) The learned counsel, therefore, stated that Article 58 alone is attracted which is the Article to obtain a relief of declaration and the period fixed therein is three years. It is seen that the plaintiffs had filed O.S.No.57 of 1976 seeking accounts of the income of the properties left behind by Chinnappa Pillai. The judgment in that suit was marked as Ex.A.5. It was dated 29.08.1980. The said suit was dismissed on the ground of maintainability. Thereafter, the plaintiffs filed A.S.No.1127 of 1980

before the High Court. They filed C.M.P.No.2838 of 1987. Orders were passed in the said Civil Miscellaneous Petition on 02.03.1987. This was produced as Ex.A.6. In Ex.A6, the High Court had granted leave to withdraw O.S.No.57 of 1976 and file a fresh suit for such reliefs, as though just and proper. After that, the present suit in O.S.No.14 of 1988 had been filed on 20.01.1988. In the light of these background facts, the learned counsel for the plaintiffs stated that the period of the pendency of O.S.No.57 of 1976 has to be excluded and if it is so done, the suit would be very much within the period of limitation. It is seen that Chinnappa Pillai died on 16.04.1976. The cause of action arose on that date. The learned counsel for the defendants however pointed out Order 23 Rule 2 CPC, wherein it had been provided that if a fresh suit is instituted, then the plaintiffs shall be bound by the law of limitation, as if the first suit had not been filed. The learned Subordinate Judge had held that Article 58 of the Limitation Act would apply to the present case.

(iii) I disagree with the said contention. The claim of the plaintiffs is based on title. Title will pass to the defendants, not by execution of the will but only when the will is proved in manner known to law. The defendants have not filed any application for probate of the will. Unless the will is proved, they also cannot claim title over the properties. If the will was not in existence then the plaintiffs, as daughters, would inherit the properties. Consequently, I hold that the suit will be covered only under Article 65 and not under Article 58.
(iv) In AIR 2000 SC 1099 (State of Maharashtra Vs. Pravin Jethalal Kamdar), the scope of both Articles 58 and 65 of the Limitation Act had been examined:~
?Article 58 of the Limitation Act, 1963, prescribes limitation of three years from the date when the right to sue first accrues to obtain a declaration. Under Article 65, the period of limitation prescribed for filing a suit for possession of immovable property or any interest therein based on title is 12 years from the date when possession of the defendants becomes adverse to the plaintiff. The contention urged on behalf of the State Government was that Article 58 of the Limitation Act was applicable as the plaintiff had sought declaration about the invalidity of the order dated 26th May, 1976 and sale deed dated 23rd August, 1976 and that the period of limitation of three years had to be computed from 26th May, 1976 and, therefore, the suit filed on 22nd August, 1988 was hopelessly barred by time. This contention was rejected by the High Court as also by the trial court. The contention urged on behalf of the plaintiff and which has been accepted is that the suit is basically for possession of the property based upon title and the sale deed dated 23rd August, 1976 and the order dated 26th May, 1976 and the order dated 26th May, 1976 being void ab inito and without jurisdcition, a plea about its invlidity can be reaised in any proceedings and it is not necessary to claim any declaration and thus Article 65 which deals with suit for possession based on title would be applicable from the date, the possession of the defendant becomes adverse to the plaintiff.?

?The fact of plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file

the suit would be 12 years. When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are nullity. In Ajudh Raj and Ors. v. Moti S/o Mussadi [(1991) 3 SCC 136] this Court said that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non~existent in the eyes of law and is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act. ?
(v) In 2015 7 SCC 58,(M.P.Steel Corporation Vs. Commissioner of Central Excise), the ingredients of Section 14 of Limitation Act had been discussed:~

7.Section 14 of the Limitation Act reads as follows:
14. Exclusion of time of proceeding bona fide in court without jurisdiction.?
(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub~section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.?For the purposes of this section,?
(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.?

8. Shri A.K. Sanghi, learned senior counsel appearing on behalf of the Department has stated that at no point of time has the appellant taken up a plea based on Section 14. Neither has the appellant met with any of the five conditions set out in paragraph 21 of Consolidated Engg. Enterprises v. Principal secy., Irrigation Deptt., (2008) 7 SCC 169, which reads as follows:~

?21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:
(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
(2) The prior proceeding had been prosecuted with due diligence and in good faith;
(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
(5) Both the proceedings are in a court.?

(vi) Order 23 Rule 2 CPC is as follows:~
?in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.?

(vii) This provision has been relied on by the learned counsel for the defendants to contend that Section 14 of the Limitation Act cannot be applied to the facts of the present case.

(viii) In (2008) 7 SCC 169 (Consolidated Engineering Enterprises Vs Principal Secretary, Irrigation Department), the scope of Section 14 of the Limitation Act had been illustrated:~

--To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this Judgment have to co~exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essentially pre~requisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h)of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard and fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts

with due diligence and in good faith.--

(ix) A combined reading of the principles stated above would imply that if the suit is based on the title, then the period of limitation would be governed under Article 65 of the Limitation Act. If an earlier suit had been filed and exemption is sought and if permission had been granted under Order 23 Rule 2 CPC then to seek the benefit of Section 14 of the Limitation Act, the earlier suit should have been filed bona fide. In the present case, the reliefs sought in O.S.No.57 of 1976 were held to be not maintainable by the trial Court. But that does not imply that the suit was not bona fide. Bona fide is inferred from the fact that the plaintiffs had also filed first appeal before the High Court. The first appeal was pending for seven years. Thereafter, they filed an application seeking permission to withdraw and institute a fresh suit. When permission had granted under such circumstances, the period of pendency of O.S.No.57 of 1976 has to be excluded and Section 14 of Limitation Act would come to the rescue of plaintiffs. Article 65 also applies to the present case and I hold that the suit has been filed within the period of limitation. The points are answered accordingly.

17. Point No.3:~
The learned Subordinate Judge held that the suit had not been properly valued and that proper Court fees had not been paid. It is seen that at that time when the suit was adjudicated by the learned Subordinate Judge, the Subordinate Court had unlimited pecuniary jurisdiction. If the value of the suit was not proper, then the learned Subordinate Judge should have called upon the plaintiffs to revalue the suit in accordance with the Rules and pay necessary Court fees. Opportunity must have been given for that purpose. Consequently, I hold that the dismissal of the suit on that ground cannot be sustained.

(i) I hold that the trial is the proper Court to decide about that and consequently, the valuation given by the plaintiffs will have to be accepted. I hold that the suit had been properly valued and necessary Court fees had been paid. If the valuation is improper, then at the time of drafting the decree, opportunity has to be given and additional Court fees can be collected from the plaintiffs. The point 3 is answered accordingly.

Point No.4:~
18. The suit had been filed seeking declaration of title and for recovery of possession. In the opinion of the learned Subordinate Judge, a suit for partition should have been filed. I do not agree with that opinion of the learned Subordinate Judge. A suit for declaration is filed when there is a cloud on the title. In the present case, the defendants are in possession of the suit property. They have challenged the title of the plaintiffs or the right of the plaintiffs succeed to title on the basis of inheritance as daughters of Chinnappa Pillai. Naturally recovery of possession has to be sought. Further, the plaintiffs have to necessarily seek a declaration of title. A suit for partition cannot be filed, since the plaintiffs dispute the status of the first and second defendants. Therefore, I hold that the suit as framed is maintainable. This point is answered

accordingly.

Point Nos.5 to 7:~

19. The entire litigation surrounds around the amorous life of Chinnappa Pillai. The plaintiffs Radha and Chandra are the only daughters of Chinnappa Pillai. Chinnappa Pillai died on 16.04.1976. His wife (mother of the plaintiffs) predeceased him. The first defendant was his concubine. The second defendant was her son. It is claimed by the first defendant that the second defendant was born through Chinnappa Pillai. This fact is denied and challenged by the plaintiffs. They produced Ex.A.1, which is the birth certificate of the second defendant. Ex.A1 is dated 27.12.1979. It shows that a child by name Panneer Selvam was born on 07.01.1959. The name of the father/mother is given as Krishnasamy/Santha. To further point out that the other children of Santha were also not born through the Chinnappa Pillai, the plaintiffs also filed Ex.A.2 and Ex.A3 and Ex.A4. Ex.A2 is the birth certificate of the daughter of Santha. This daughter was born on 02.10.1955. The name of her father/mother were given as Dassi/Santha. Santha had two other daughters, who are younger than the second defendant/Panneer Selvam. Their birth certificates were produced as Ex.A3 and Ex.A4. Ex.A3 is the birth certificate of the daughter born on 19.02.1961. The name of the father/mother are given as Narayanasamy Gounder/Santha Ammal. Ex.A4 is the birth certificate of the last daughter who was born on 20.04.1964. The name of the father /mother is given as Narayanasamy/Santha. All the four children were born in Pandanallur Village, which is the native village of the plaintiffs and Chinnappa Pillai. Santha was also residing there. These four documents throw up very disturbing facts. It is claimed that Santha was living with Chinnappa Pillai prior to and after the birth of the second defendant. But the birth certificates which have not been contested by the defendants show that her children were not born through Chinnappa Pillai. It was during this period that settlement deeds were executed by Chinnappa Pillai in her favour. It is seen that for each one of her four children the name of her husband is given differently. Though the suit is only regarding the status of Panneerselvam / second defendant, it is seen that the name of his father had been given as Krishnasamy. I am not prepared to dwelve further on this issue.

(i) In the above background, the will Ex.B37, has to be examined. It was dated 30.03.1976. In the will, he had stated:
?vdf;F mbf;fb cly; eyf;FiwT Vw;gl;L mbf;fb gLj;j gLf;ifapy; ,Ue;J tUfpw epiyik Vw;gl;Lf; nfhz;bUg;gjhy;...?
He further stated:
?jw;NghJ ehd; ge;jey;Y}h; ngUkhs; Nfhtpy; fPo tPjpapy; trpf;Fk; ehuhazrhkp fTz;lh; Fkhup rhe;jh mk;khSila guhkupg;pgy; tho;e;J tUfpNwd;.?

(ii)It is thus seen that he had expressed that not only was he in good physical health but was also under care/control of the first defendant/Santha. He further stated:
?vd;Dila jpUg;jpf;Nfw;wgb vdf;F fe;j Njitahd gzp tpilfisAk; nra;J nfhz;L vd;id guhkupj;J tUfpw fhuzj;jpdhYk; rhe;jh mk;khsplk; vdf;F ,Uf;fpw mgpkhdj;ij Kd;dpl;L ...?

(iii) This again reaffirms the fact that she was having control over him. He then described the second defendant as follows:
?,e;j capy; ?gp? n\l;a+ypy; fz;bUf;fpw nrhj;Jf;fis i\ rhe;jh mk;khspd; FkhuDk; vdJ mgpkhdGj;jpuDkhd 17 taJs;s ikdh; gd;d{h;nry;tk;...?

(iv) Chinnappa Pillai had described the second defendant only as his mgpkhdGj;jpud;. This description of the second defendant is very significant. On the date, when this Will/Ex.B.37 was executed, Chinnappa Pillai-s wife was already dead. He had described Panneerselvam, who was aged 17 years as his ?mgpkhdGj;jpud;? and not as ?Gj;jpud;?. Reading this statement in~conjunction with Ex.A1, A2, A3 and A4 will lead to conclusion that Chinnappa Pillai did not consider the second defendant Panneer selvam as his begotten son. He considered him as equivalent to a son and on whom he had affection. This affection cannot immediately mean that the second defendant was born to him. The affection would also mean that the second defendant was born to Santha to whom he was indebted since he was living with her.

(v) A few background facts will have to be re~examined to determine the relationship among the parties. Ex.A.10 is settlement deed dated 27.09.1973 executed by Chinnappa Pillai in favour of the second defendant /Panneer Selvam. Panneer Selvam was described as follows:~
?rhe;jh Fkhud; ikdh; 14 taJs;s gd;dPh;nry;tDf;F fhh;baDk; jhahUk; Rngh\fpAkhfpa i\ ge;jey;Y}upypUf;Fk; ehuhazrhkp fTz;lh; Fkhuj;jp rhe;jh vd;gtSf;F....?

(vi) Again Chinnappa Pillai had not described the second defendant as his son. He had not even described the first defendant Santha as a married lady. He related her to her father rather than to himself. Later, in the very same document after stating that he had two daughters, he further stated as follows:~
?vdf;F Ntw Mz; re;jjpfs; fpilahJ. vd;Dila mgpkahdGj;jpud;.....? (vii)
The above statement leads to the irresistible conclusion that not only was he prepared to describe the first defendant as his wife, but he was also not prepared to accept the second defendant was his son. In fact he categorically stated that he had no -Mz; re;jjpfs;-. This would mean he had no sons to succeed him or to inherit his properties as a right.
(viii) In Ex.A7 which is a sale deed dated 20.01.1962 executed by Chinnappa Pillai in favour of Santha, she was described as daughter of Narayanasamy Gounder. She was again not described as his wife. Similarly in Ex.A8, which is yet another sale deed 23.06.1962 executed in favour of Santha Ammal daughter of Narayanasamy Gounder, he did not describe her as his wife. In Ex.A9 , sale deed in favour of Narayanasamy-s daughter Santha executed by Chinnappa Pillai, she was again not described as his wife.
(ix) The learned counsel for the defendants placed reliance on Ex.B.35, which is the SSLC certificate of Panneer Selvam/second defendant. In this Secondary School Leaving Certificate, the father-s name of the second defendant was given as R.Chinnappa Pillai. However, this description cannot override, Chinnappa Pillai-s description as ?mgpkhdGj;jpud;? in all the registered documents. Ex.A1 had been issued by the Revenue Authorities and D.W.1, who was the first defendant, had not objected to the names shown as father/mother.

(x). In this background it is clear that Chinnappa Pillai and Santha had not married. The terms of will shall have to be interpreted with that fact as the basic premise. It is the specific contention of the learned counsel for the appellants that though he had stated that he has only two daughters in earlier documents and though he had stated that he has no sons, he had however continuously described Panneer Selvam as his ?mgpkhdGj;jpud;?.

(xi) It has to be examined whether the will has been proved in accordance with the stipulations laid down in Section 63 of the Indian Succession Act and in Section 68 of the Indian Evidence Act.

Section 63 of the Indian Succession Act is as follows:~
?Every testator, not being a soldier employed in an expedition or engaged in actual warfare (or an airman so employed or engaged) or a mariner at sea, shall execute his Will according to the following Rules:~

(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.
(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.
(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.
Section 68 of the Indian Evidence Act is as follows:~
?If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:?
It is to be examined whether the will had been exempted in manner known to law and whether it had been proved in accordance with law. In the present case, the will/ Ex.B.37 had been attested by P.W.2/ V.Govindasamy and D.W.3/ K.Thiagaraja Pillai. The crucial aspect in Section 63 of the Indian Succession Act is ?each of whom has seen the testator sign....?
P.W.2 in his evidence stated in chief as follows:
?rpd;dg;gh gps;is capy; gj;jpuj;jpy; ifnaOj;J Nghl;lij ehd; ghh;f;ftpy;iy. fhl;lg;gLk; gp.th.rh.M.37y; ehd; rhl;rpf; ifnaOj;J Nghl;Ls;Nsd;. me;j rhl;rp ifnaOj;ij vd; tPl;by; te;J thq;fpg; Nghdhh;fs;. ehd; ifnaOj;J Nghl;lij rpd;dg;gh gps;isNah kw;w rhl;rpfNsh ghh;f;ftpy;iy. gp.th.rh.M.37y; ehd; ifnaOj;J NghLk;NghJ rpd;dg;gh gps;is ,y;iy.?

The witness clearly stated that he did not see Chinnappa Pillai sign the will. In fact, Chinnappa Pillai was not even present when the witness signed the will as attestor.
In cross he stated as follows:
?gp.th.rh.M.37y; mJ vd;d Mtzk; vd;W njupe;J nfhz;Ljhd; ifnaOj;J

Nghl;Nld;. rpd;dg;gh gp;s;isf;fhf ehd; tptrha tUkhd tup JiwapYk;
];Nll;nkz;l; nfhLj;Js;Nsd;. mth; ,we;j gpwFk; rhe;jk;khSf;fhf mf;upfy;rh;
,d;fk; lhf;]; MgPrpy;];Nll;nkz;l; nfhLj;Js;Nsd;.?

(xii) The above statements indicate that the witness was not nurturing any hostility towards Santha Ammal. He had given evidence on her behalf before the Agriculture Income Tax Office. He was also not hostile to Manipillai, who was also a beneficiary under the will. During the cross~ examination, he has stated as follows:~
?vdf;F kzpg;gps;is ngaupy; nuhk;k ek;gpf;if.?
He stated that he trusted Manipillai.
This evidence has to be seen in conjunction with the evidence of D.W.3/ Thiagarajan who stated that;
?capy; vOjpa fhyj;jpy; rpd;dg;gh gps;isapd; cly;epiy ed;whf ,Ue;jJ.
ey;y epidNthL ,Ue;jhh;. mtUila kdepiy Qhgf rf;jp MfpaitAk; ed;whf ,Ue;jd.?
He has stated that he actually signed the Will in the presence of the Chinnappa Pillai.
The above evidence reveals the following :~
1.P.W.2 did not see Chinnappa Pillai signing the Will.
2.D.W.3 saw Chinnappa Pillai signing the Will.
3.D.W.3 further stated that the Chinnappa Pillai was fully conscious at that time of executing the Will.
(xiii) The evidence of D.W.3 is challenged by the learned counsel for the appellants by pointing out in Ex.A37. In Ex.A37, D.W.3 had filed an affidavit in O.S.No.4 of 1977, which was a suit filed by minor Panneerselvam against Sambandam Pillai and others and D.W.3 had stated in the affidavit:
?I know the minor plaintiff..... I am closely connected with the plaintiffs family?.
(xiv) This statement has been strongly relied to show that the witness was not an independent witness, but that he has attachment to the family of the first and second defendants. His statement about the mental and physical condition of Chinnappa Pillai will have to be read in conjunction with the statement of P.W.3/Dr.Ganesan, who treated Chinnappa Pillai that witness stated that:~
?1976k; tUlk; khh;r; khjk; 3tJ thuj;jpy; Kjd;Kjypy; mtiug; ghh;j;Njd;. 2> 3 ehl;fs; fopj;J 2tJ Kiwahf mtiug; ghh;j;Njd;. mth; xU tPl;by; jpz;izapy; ,Ue;jNghJ mth; gLj;j gLf;ifahf ,Ue;jNghJ mtiu gupNrhjpj;J ghh;j;Njd;. xU nkj;J Nghl;L mjpy; mth; gLj;J ,Ue;jhh;. ehd; mtiu gupNrhjpj;j NghJ mth; rpWePh; NfhshW rk;ge;jkhf f\;lg;gl;Lf; nfhz;bUe;jhh;. ehh;kyhf rpWePh; NghfKbahky; ,Ue;jjpdhy; rpWePh; ntsptUtjw;F mth; tapw;wpy; xU ba+g; (mbtapw;wpy; xU gpshlh;) Nghlg;gl;L mjd; topahf rpWePh; ntspf; nfhz;L tug;gl;lJ. mth; Fog;gkhd epiyapy; ,Ue;jhh;. Nfl;Fk; Nfs;tpfSf;F mtuhy; rupahf gjpy; nrhy;y Kbatpy;iy. njhlh;gpy;yhky; Ngrpf; nfhz;L ,Ue;jhh;. Fiwe;j msT rpWePh; te;Jf; nfhz;bUe;jJ. mtUf;F jhk; vd;d nra;fpNwhnkd;W kdepiy ,y;yhJ ,Ue;jJ.?
(xv) This statement by the doctor clearly exposes the fact that the Chinnappa Pillai was not physically well, was not mentally aware of what is happening around him and he was speaking incoherently. He was not able to answer any question and he was suffering from severe physical ailment. He was in a confused state of mind. A catheter had been inserted.
The Doctor, PW~3 also stated as follows:

?mtUf;F itj;jpak; ghh;j;J kUe;J nfhLj;Njd;. 2TJ jlitAk; vd;id me;jk;khs;jhd; te;J mioj;Jr; nrd;whh;. mg;NghJ rpd;dg;gh gps;is Kjy; jlit ,Ue;jijf; fhl;bYk; f\;lkhd epiyikapy; ,Ue;jhh;. Mtuy; rupahf Ngr Kbatpy;iy.?
The above evidence signifies that his condition worsened by the next consultation.
He also stated as follows:~
?mjd;gpd; xU 10 ehl;fSf;Fs; vOjpa xU fj;ij Ngg;gh;fis vLj;Jf; nfhz;L me;jk;khs; vd;id ifnaOj;J NghLk;gb Nfl;lhh;. ehd; mjw;F vd;d vd;W Nfl;Fk;NghJ nrhj;J rk;ge;jhkhdJ vd;Wk;> mjdhy; ifnaOj;J Nghl Ntz;Lnkd;Wk; nrhd;dhh;. rpd;dg;gh ifnaOj;J NghLfpw msTf;F epjhdkhf ,y;iynad;Wk;> mjdhy; ehd; ifnaOj;J mtw;wpy; Nghl Kbahnjd;Wk; nrhd;Ndd;. mjd;gpd; me;jk;khs; Ngha;tpl;lhh;.?
(xvi) He identified the lady about whom he spoke in the evidence as Santha. During her evidence D.W.1/Santha disclaimed all knowledge of the Doctors. However, in her own evidence in the earlier suit in O.S.No.57 of 1976, she had stated that Chinnappa Pillai took treatment with Doctor Ganesan. She has stated as follows:
?,th; jhd; lhf;lh; ,lk; Ngha; ghh;j;J te;jhh;.?
It is thus seen that Ex.B37 is shrouded with suspicion. The execution has not been proved since PW.2 has stated that he did not see the testator signing the doubt. The doctor-s evidence clearly reveals that the testator was both mentally and physically unsound.

In AIR 1959 SC 443 (H.Venkatachala Iyengar Vs. B.N.Thimmajamma), it had been stated as follows:

--the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S.63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the. testator as required by law was sufficient to discharge the onus. Where, however, there were- suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas, but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder-s case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature., The condition of the testator-s mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator ; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances ; or the will might otherwise indicate that the said dispositions might not be the result of the testator-s free will and mind. In such cases, the Court

would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which, conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where- there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate though the will might be unnatural and might cut off wholly or in part near relations.?

In AIR (1974) 2 SCC 600 (Surendra Pal Vs. Dr.Saraswati Arora), it had been stated as follows:~

?the propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator-s free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and qualify of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in relevant circumstances of the case, entertain.

In 1992 2 SCR 30 (Guro Vs. Atma Singh), which reads as follows:~

With regard to proof of a will, the law is well~ settled that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a will by section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leader part in the making of the will under which he receives a substantial benefit. The presence of suspicious

circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator.

In 2005 1 SCC 40 (Daulat Ram Vs. Sodha), which reads as follows:~

Will being a document has to be proved by primary evidence except where the court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.

(xvii) In the present case, one of the attesting witnesses, PW.2 has very clearly stated that he did not see Chinnappa Pillai singing the will. The Doctor has very clearly stated that Chinnappa Pillai was suffering from sickness and was not able to answer any question. He was in a confused state of mind and was speaking incoherently. The Will was executed on 30.03.1976. Chinnappa Pillai died on 06.04.1976. In the Will, the plaintiffs had been totally excluded. It is no doubt true that by a settlement deed, 4 acres of land had been allotted both of them. But what was allotted to the defendants was substantially more and no convincing reason has been given to disinherit and exclude the plaintiffs. It is a fact that the plaintiffs had filed a suit against him. But when a father openly lives with another lady, it is only natural that the daughters would have taken steps to protect the properties. In the present case also every step which the plaintiffs took were with intention to protect the properties. I hold that the will had not been proved in the manner known to law. In Ex.B.37, registration has also been done in a perfunctory manner. The Sub~Registrar had not explained the purpose of the document and the effect of disposition of properties through a will.

In AIR 1962 SC 567 (Rani Purnima Debi Vs. Kumar Khagendra Narayan Deb), which had been held as follows:~

?There is no doubt that -if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself

be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will Was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering.

Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.? The Registration of Ex.B37 would not dispel the suspicious circumstances.

(xviii) For all these reasons I hold that the Will had not been proved in manner known to law and it has to be rejected. The point is answered accordingly. It is also seen that Chinnappa Pillai was totally under the control of the first defendant/Santha. Even during the period they were together she had two further children after the second defendant and even in the birth certificates of those children, the names of the father differ. She did not dispute the corrections of those even that of the second defendant-s birth certificate. There is no reason why he had bequeathed substantial properties to the second defendant after he had stated that ?Mz;fs; re;jjpfs; ,y;iy?. Consequently, a very strong inference can be drawn that the will was the result of extreme influence exercised by the first and second defendants. It is rejected by me. The points 5 to 9 are answered accordingly.

Point No.8:
20. In view of the fact that the Will is rejected by this Court and since it is admitted by all the parties that the plaintiffs are the daughters of Chinnappa Pillai and the only legal heirs, naturally, they are entitled to get the relief of declaration of title and consequential recovery of possession as sought in the plaint.

(i). However, it had been pointed out that two of the items are the exclusive properties of the first and second defendants. At the time of execution, the defendants are at liberty to point out the properties, to which, sale deeds/settlement deeds have already been executed in their favour and the learned Subordinate Judge can consider such applications in

accordance with law. Consequently, I hold that the plaintiffs are entitled for the relief of declaration and recovery of possession. Since even in the plaint, it had been stated that the defendants are not in possession of all the properties, I further hold that in the absence of specific details, the further reliefs of past and future profits cannot be granted.

Issue No.9:

21. In the result, the Appeal is allowed with costs and the judgment and decree in O.S.No.14 of 1988 on the file of the Subordinate Court, Kumbakonam dated 21.07.1995 is set aside and the suit is decreed with respect to the relief of declaration of title and recovery of possession but dismissed with respect to the claim for past and future profits. Connected Civil Miscellaneous Petition is closed.

To
The Subordinate Judge of Kumbakonam.