



S.A.No.1775 of 1999

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1775 of 1999

and

C.M.P.No.18384 of 2002

and

M.P(MD).No.1 of 2011

- 1.Bakthavatchalam @ Babu (died)
- 2.Sellathurai (died)
- 3.Bakthasing
- 4.Arulchelvan
- 5.Chandrababu (Died)
- 6.Daniel Mohandoss
- 7.Johnson
- 8.Justin
- 9.Samraj
- 10.Vijayakumar (died)

... Appellants

-Vs-

- 1.Ushakumari
- 2.Sasi
- 3.Rajagopal
- 4.The Commissioner,
Kuzhithurai Municipality,



S.A.No.1775 of 1999

WEB COPY

Vilavancode Taluk,
Kanyakumari District.

5.The Chairman,
Tamil Nadu Electricity Board.

6.The Post Master General,
Regional Office,
Madurai.

7.The District Collector,
Kanyakumari District.

8.Rajamma (Died)

9.Johnson

10.Bakthasingh

11.Palace

12.Janaki

13.Murugesan

14.Senthil Latha

15.Minor Rajagopal

16.Minor Senthilkumar
Minors 15 and 16 Rep. by Court guardian
Mr.P.Selvamani,
Advocate, Kuzhithurai

17.Dhasini



S.A.No.1775 of 1999

18.Solomon Ponraj

19.Anbu Azhagi

20.Jeba

21.Beula

(Respondents 17 to 21 brought as
LRs of the deceased 1st appellant,
vide Court order dated 17.02.2016
made in M.P(MD).No.1 to 3 of 2012 in S.A.No.1775 of 1999.)

22.J.Lilly Santhabai Titus

23.J.Rose Pichimani

*(Respondents 22 and 23 brought as LRs of the
deceased 8th respondent vide Court order dated
17.02.2016 made in M.P(MD).No.1 to 3 of 2013
in S.A.No.1775 of 1999.)*

24.Bai Sellathurai

*(Respondent 24 brought as LRs of the
deceased 2nd appellant vide Court order dated
04.04.2016 made in M.P(MD).No.4 to 6 of 2012
in S.A.No.1775 of 1999.)*

25. Vimala

26.Minor.Nirmal

(Rep. by his mother and
natural guardian/25th respondent)
(Respondents 25 and 26 brought as LRs
of the deceased 10th appellant,
vide Court order dated 07.09.2018
made in M.P(MD).No.7 to 9 of 2012 in S.A.No.1775 of 1999.)



S.A.No.1775 of 1999

WEB COPY 27.Rajeshwari

28.Shinyumon

29.Shijumon

... Respondents

*(Respondents 27 to 29 brought as LR's
of the deceased 5th appellant vide
Court order dated 20.12.2021 made in
C.M.P(MD).Nos.10482, 10485 and 10486 of 2021 in S.A.No.1775 of 1999.)*

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 23.09.1999 made in A.S.No.78 of 1996 on the file of the Subordinate Judge, Kuzhithurai reversing the judgment and decree dated 03.04.1996 made in O.S.No.278 of 1981 on the file of the District Munsif Court, Kuzhithurai.

For Appellants : Ms.J.Anandhavalli

For Respondents: Mr.G.Ramanathan for R1 to R3

Mr.N.Subbarayalu for R4

Mr.P.Krishnasamy for R6

M/s _____

Special Government Pleader for R7

Mr.R.V.Sivaraman for R9 and R24

Mr.T.Selvakumar for R10

Mr.Punitha Devakumar for R22

* * * * *

JUDGMENT



S.A.No.1775 of 1999

WEB COPY

The respondents 1 to 3 herein have filed the suit in O.S.No.278 of 1981 before the Additional District Munsif Court, Kuzhithurai, for declaration, recovery of possession, mandatory injunction and cancellation of resurvey, against the appellants and others.

2. The learned trial Judge, after completion of the pleadings, framing of issues and after completion of trial, dismissed the suit. Challenging the judgment and decree passed in the suit by the trial Court, the respondents 1 to 3 herein filed appeal in A.S.No.78 of 1996 on the file of the Subordinate Court, Kuzhithurai. The learned appellate Judge, after re-appreciating the entire oral and documentary evidence, allowed the appeal and set aside the judgment and decree passed by the trial Court. Challenging the said judgment and decree passed by the first appellate Court, the defendants 11, 14 and 20 to 27 in the suit, have filed the present Second Appeal before this Court.

3. Unfortunately, no substantial question of law is formulated so far and the Second Appeal is not admitted.

4. Today, the Second Appeal is coming under the caption "Notice of



S.A.No.1775 of 1999

WEB COPY

motion". This Second Appeal is pending from the year 1999. The respondents 1 to 3/plaintiffs have filed C.M.P.No.18384 of 2002, to receive the additional evidence and this Civil Miscellaneous Petition is also heard along with the Second Appeal.

5. This Court has taken up both the Second Appeal and the said Civil Miscellaneous Petition filed to receive the additional evidence for final hearing.

6. Heard the learned counsel for the appellants and the learned counsel for the respective respondents and perused the materials available on record.

7. The appellants are the defendants 11, 14 and 20 to 27 in O.S.No. 278 of 1981 on the file of the District Munsif Court, Kuzhithurai. The respondents 1 to 3 herein have filed the suit for declaration of title, recovery of possession, cancellation of re-survey and mandatory injunction to remove electric post, telephone post and water pipeline connections.

8. According to the respondents 1 to 3, who are the plaintiffs in the suit, the suit properties are comprised in old Survey Nos.1624/22 and 25,



S.A.No.1775 of 1999

WEB COPY

having an extent of 5 cents in Nalloor village. Since there was an attempt made by the defendants 5 to 14 and others, the suit was filed by the plaintiffs for the above said relief and for mandatory injunction against the defendants 1 to 4, who had put up the electric post, telephone post and water pipeline connection, at the instigation of the defendants 5 to 14. The suit properties were declared in favour of the respondents 1 to 3/plaintiffs as per the judgments and decrees in O.S.Nos.383 of 1959, dated 12.12.1960, O.S.No.411 of 1964, dated 04.11.1966 and also in S.A.No.984 of 1969 of this Court, by judgment dated 10.11.1971.

9. The appellants are the owners of the suit properties, which lie in front of the defendants' property and the same are located in Old Survey No.1617 and there are no properties as described by the respondents 1 to 3 / plaintiffs in Old Survey Nos.1624 /22 and 25. The respondents 1 to 3 herein/plaintiffs has no right in the suit properties and the decree pleaded by the plaintiffs, is not binding on the appellants. The defendants 1, 4 and 11 filed their written statement denying the title of the respondents/plaintiff.

10. The fourth plaintiff/third respondent herein was examined as



S.A.No.1775 of 1999

WEB COPY

P.W.1 and 40 documents as Ex.A1 to A40 were marked on the side of the respondent/plaintiff. The 14th defendant was examined as D.W.1 and 27 documents were marked as Ex.P-1 to P-27 on the side of the defendants and five Court documents were marked as Ex.C1 to C5, which are the report of the Advocate Commissioner and Plans.

11. The trial Court, after considering the entire pleadings and materials, dismissed the suit. The plaintiffs had filed A.S.No.78 of 1996 before the Subordinate Court, Kuzhithurai. The learned Subordinate Judge, after reappreciating the entire evidence, allowed the appeal. Therefore, the present second appeal has been filed by the defendants 11, 14 and 20 to 27 in the suit.

12. The specific case of the appellants is that the suit properties fall under old Survey No.1617. According to the respondents 1 to 3/plaintiffs, the suit properties fall under Old Survey No.1624/22-25 and in order to substantiate their case, the third respondent was examined as P.W.1 and 40 documents were marked and one Advocate Commissioner was appointed, who inspected the suit properties and he has also filed his



S.A.No.1775 of 1999

WEB COPY

reports and plans. The respondents 1 to 3/plaintiffs further claim that earlier, the suit properties were declared as properties of the plaintiffs as per the judgment and decree passed in O.S.Nos.383 of 1969, 411 of 1964 and S.A.No.984 of 1969 and they also produced the relevant documents before this Court.

13. On a reading of the oral and documentary evidence, the first appellate Court being the final Court of fact finding Court, re-appropriated the entire materials and independently gave a finding that the suit properties belong to the respondents/plaintiffs and the suit properties fall under old Survey No.1624 of 22-25, whereas the appellants have stated that the suit properties fall under Old Survey No.1617 and also stated that the suit properties are covered under O.S.No.293 of 1968 and they have filed the copy of the judgment, whereas they have not filed the copy of the final decree. Therefore, the respondents 1 to 3 have filed the application in C.M.P.No.18384 of 2002 to receive the additional documents. Both the Courts below clearly discussed about O.S.No.293 of 1968. Therefore, the respondents 1 to 3 have filed the final decree passed in O.S.No.293 of 1968



S.A.No.1775 of 1999

WEB COPY

and "chitta" in respect of D3/52/2A and D3/53/2B and tax receipts in the name of Rajagopal.

14. All the documents clearly show that the suit properties do not fall under Old Survey No.1617. Therefore, the appellants case is not correct. The trial Court had not properly appreciated the evidence and dismissed the suit. However, the appellate Court correctly re-appreciated the entire evidence and considering the oral and documentary evidence and also the learned Advocate Commissioner's report and plan, found that the suit properties fall under Old Survey No.1624/22-25. Further, the first appellate Court clearly re-appreciated the evidence of D.W.1, who clearly admitted that the suit properties do not fall under old Survey No. 1617. Further, the suit properties are measuring an extent of 5 cents and as per the learned Advocate Commissioner's Report, the identification of the properties, is also not in dispute. Therefore, the first appellate Court had rightly re-appreciated the evidence and gave an independent finding, which is only on the basis of the factual aspects. There is no perversity in



S.A.No.1775 of 1999

re-appreciation of evidence by the first appellate Court and no substantial question of law emerges to admit the appeal. Therefore, this Second Appeal is liable to be dismissed, at the admission stage itself.

15. C.M.P.(MD).No.18384 of 2022, has been filed by the respondents to receive the additional documents, which documents are already referred to by the appellants in their written statment, except the final decree, no other document is filed as additional evidence. The final decree clearly shows that the suit properties do not fall under old survey No.1617. Therefore, the appellants stated that petition to receive the additional evidence need not be allowed, since all the documents are already submitted by the appellants and the same were already referred to by the appellate Court and receiving those documents will not improve the case. Under these circumstances, this Court does not find any merit in this case.

16. Therefore, the Second Appeal is dismissed and C.M.P. (MD).No.18384 of 2022 is also dismissed. Consequently, M.P(MD)No.1 of



S.A.No.1775 of 1999

WEB COPY

2011 is closed. There shall be no order as to costs.

15.06.2023

Speaking Order: Yes/no

NCC : Yes/No

Index : Yes / No

tta/cs

To

1. The Subordinate Judge, Kuzhithurai.
- 2.The District Munsif Court, Kuzhithurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.
4. The Commissioner, Kuzhithurai Municipality,

12/14



S.A.No.1775 of 1999

WEB COPY

Vilavancode Taluk, Kanyakumari District.

5. The Chairman,
Tamil Nadu Electricity Board,
Chennai.
6. The Post-Master General,
Regional Office,
Madurai.
7. The District Collector, Kanyakumari District.

P.VELMURUGAN, J

tta/cs



WEB COPY



S.A.No.1775 of 1999

S.A.No.1775 of 1999

15.06.2023