



S.A.No.229 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.229 of 2013
and
M.P.No. 1 of 2013

1. Chillarai @ Sengoda Gounder
2. Pattammal
3. Balu
4. Raji

... Appellants

Versus

1. Manickam
2. The District Collector,
Villupuram.
3. The Executive Engineer,
Public Works Department,
Kallakurichi.
4. Sahadeva Gounder
5. Govindan
6. The President,
Chozhampattu Panchayat,
Chozhampattu Village,
Sankarapuram Taluk.
7. The Commissioner,
Panchayat Union,
Sankarapuram,
Sankarapuram Town.



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8. Jayakumar

9. Pandiyan

10. Jayalakshmi

11. Vasantha

... Respondents

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.89 of 2004 on the file of the III Additional District Court, Kallakurichi, Villupuram dated 24.08.2012 in reversing the judgment and decree in O.S.No.483 of 1998 on the file of the Principal District Munsif Court, Kallakurichi dated 07.11.2001.

For Appellants : Mr.C.Saikrishna
for M/s.V.Srimathi

For R1 : Mr.K.P.Jotheeswaran
For R2 and R3 : Mr.M.Muthusamy
For R6 : Mr.S.V.Durai Solaimalai
For R4,5,7 to 11 : No Appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 24.08.2012 passed in A.S.No.89 of 2004 by the learned III Additional District Judge, Kallakurichi, Villupuram District reversing the judgment and decree dated 07.11.2001 passed in O.S.No.483 of 1998 by the learned Principal District Munsif, Kallakurichi.

2. The Plaintiff in the suit had filed the suit seeking mandatory injunction against the Officials who were the Defendants 1, 2, 7 and 8. The suit was dismissed by the learned District Munsif, Kallakurichi and it was set



aside by the learned Sub Judge, Kallakurichi against which the Defendant-3 have come to this Court by filing this Second Appeal.

3. The Complaint averments in brief are as follows:-

3.1. The suit property is a Government poramboke land in S.No.318/1B an extent of 4.07 cents measuring East-West 350 yards and North-South 4 yards breadth which is a check dam along with it a channel to drain rain water for storage during rain and to use it for agricultural purpose during summer. The suit property consists of *Odai poramboke* draining rain water from Nedumanur river to be drained into Sheshasamuthiram Lake and the check dam constructed to the height of 5 feet. The Plaintiff owns agricultural lands measuring 0.27 cents on the Southern side of the *Odai poramboke* (suit property) in S.No.318/14 and 0.39 cents in S.No.318/5. The waters of the suit property consisting of *Odai poramboke* along with the check dam is used by land owners for 50 acres around the *Odai poramboke*. The Plaintiff and the land owners of 50 acres of land are dependent on this *Odai poramboke* channel and the check dam for irrigating their farm lands. On the Southern side of the *Odai poramboke* channel has a bund, on which there are Palmyra trees and other trees to protect sand erosion during rainy season. The said bund was protecting the patta lands of the Plaintiff on both sides of the channel from being flooded during rainy season.



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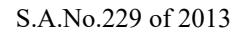
3.2. The Plaintiff had purchased the patta lands and is enjoying the same by cultivating crops. The Plaintiff and his predecessor-in-title for more than 40 years had been enjoying the *Odai poramboke* as a right of easement for irrigating his lands. The Defendants 3 to 6 have no right or claim over the *Odai poramboke*, suit property. While so, on 20.08.1997, the Defendants 3 to 6 had illegally cut and removed the trees standing on the bund on the southern side of the *Odai poramboke* and damaged the check dam. In spite of the objection by the Plaintiff stating that the conduct of the Defendants 3 to 6 will cause loss of irrigation facilities to the Plaintiff and 50 other land owners who are dependent on waters of the *Odai poramboke*. They had damaged the check dam also. They had cut and removed the trees worth Rs.15,000/-. The check dam was demolished which will result in flood waters during the rain seasons entering the patta lands of the Plaintiff on both sides of *Odai proamboke*. The Plaintiff is dependent on 0.66 cents of patta lands on both sides of the *Odai poramboke* for his livelihood. Except this land, he is not in possession of any other lands. The conduct of the Defendants 3 to 6 had caused heavy loss to the Plaintiff which cannot be compensated by money. The Plaintiff along with other Ayacutdars, who are dependent on this *Odai poramboke*, for their irrigation had sent representation to the Defendants 1, 2, 7 and 8 who are



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officials having the responsibility to maintain the *Odai poramboke* and the check dam.

3.3. The Plaintiff had also reported the illegal conduct of the Defendants 3 to 6 having damaged the bund on the Southern side of the *Odai poramboke* and the check dam to the Tahsildar, Sankarapuram and to the Executive Engineer, Public Works Department, Kallakurichi, the second Defendant. The complaint was sent through registered post on 28.11.1977. After lodging the complaint, the Defendants 1, 2, 7 and 8 had not taken any action against the Defendants 3 to 6. Therefore, the Plaintiff had sent a legal notice dated 27.03.1998 to the Defendants 1 to 8 stating that the Defendants 1 and 2 who are duty bound to protect the interest of the farmers by maintaining the *Odai poramboke* and the check dam had by their indifference encouraged the Defendants 3 to 6 in their illegal act. On the Northern side of the *Odai poramboke* an extent of 100 feet in breadth an area of one acre and above is in illegal possession of an influential person who had encroached on the Northern side of *Odai poramboke*. If the Defendants 1, 2, 7 and 8 feel that there is a necessity for a cart track, they could have very well used the land in possession of the influential person who is in illegal possession of one acre and above of the *Odai poramboke* on the Northern side which could have



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4. The written statement filed by the second Defendant and adopted by the first Defendant are briefly as follows:

4.1. The property in S.No. 318/1B is an *Odai poramboke* and the Plaintiffs and other Ayacutdhars are using the waters of the *Odai poramboke* are admitted. The Plaintiff and others have encroached on the *Odai poramboke*. Therefore, the *Odai poramboke* was altered. The trees standing on Government lands belonging to the Government. The individuals have no right to claim right over the trees standing on the Government lands. The Defendants 3 to 6 had acted on the larger interest of the people of the village and therefore, had formed a road on the *Odai poramboke* which will not affect the right of the Plaintiff. The claim of the Plaintiff that the trees standing on the *Odai poramboke* was maintained by the Plaintiff is denied by the second Defendant. The Plaintiff was not given any right to maintain the trees by the Government. The Plaintiff having encroached the *Odai poramboke* and altered the *Odai poramboke*, therefore, there is no draining facility for the rain waters to drain. If the Plaintiff vacates the encroached portion, automatically, the rain water will drain to the check dam.

4.2. The cart track laid on the *Odai poramboke* is to serve for the common public of the village. It need not be removed and the *Odai*



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poramboke need not be restored. The *Odai poramboke* belongs to the local Panchayat. The President of the Panchayat acts on behalf of the larger interest of the people in the village. The village people had demolished the structure and long after the check dam had been demolished the Plaintiff having blaming the officials will not help anyone. The *Odai poramboke* was encroached by the Plaintiff which resulted in obliteration of the *Odai poramboke*. Whether to restore the *Odai poramboke* is to be decided by the village Panchayat. The claim made by the Plaintiff that the Defendants 1 and 2 had remained mute spectators and colluded with the Defendants 3 to 6 is not true. If the Plaintiff undertakes to vacate the encroached portion on the *Odai poramboke*, the President of the village panchayat can act for restoration of the *Odai poramboke*. In which case, the second Defendant undertakes to restore the *Odai poramboke* and the check dam. As per Section 14 of the Tamil Nadu Land Encroachment Act, 1905, the Government is empowered to remove encroachments on Government *poramboke* lands. The Defendants 1 and 2 are officials. As per the said Act, the Court cannot issue directions to the Defendants 1 and 2.

5. The written statement filed by the 4th Defendant and adopted by the Defendants 3, 5 and 6 are as follows:



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5.1. The Defendants 3 to 6 are unnecessary parties to the dispute. The claim made by the Plaintiff that the Defendants 3 to 6 had cut and removed the trees on the bund on the Southern side of *Odai poramboke* and demolished the check dam are not true. These Defendants had not interfered and removed the trees or demolished the check dam. Only due to the previous enmity, to wreak vengeance on the Defendants 3 to 6, the Plaintiff had wantonly made allegations against the Defendant 3 to 6. Chozhampattu Grama Panchayat had passed a resolution for laying of a cart track from Nedumanur to Chozhampattu over the *Odai poramboke* and it was laid with the permission of the pattadars of the adjoining lands. The resolution of the Panchayat was sent to the Government and based on that, the Tahsildar and Surveyor and other Revenue Officials had visited the village and measured the lands for laying of the cart track. The officials only had demolished the check dam and laid the cart track. The cart track was laid over patta lands of the Defendants 3 to 6 and the land belonging to 20 other land owners. The same was under the supervision of the Commissioner of the Panchayat Union. The cart track runs upto 3 kilometres. The Defendants 3 to 6 have no role in laying of the cart track. The lands in S.No.318/5 belonging to the Plaintiff which is situated on a higher plane and it is a *Punja* land. The land in S.No. 318/5 had not used the water from the *Odai poramboke*. The land in S.No. 318/14 has *Odai* on the



western side and the Plaintiff can utilise the *Odai* to irrigate his lands in S.No. 318/14 even now. During rainy season, the water on the *Odai poramboke* will be available only for one or two weeks and it cannot be used for irrigation as claimed by the Plaintiff. The Plaintiff has well and he is using the water from the well for irrigating his lands in S.No. 318/14 and 318/5. The Plaintiff had encroached the *Odai poramboke* and clubbed it with his patta lands in S.No. 318/14 and 318/5 and had been cultivating it. The Plaintiff himself had obliterated the *Odai poramboke* and had filed the suit with false averments. The trees standing on *Odai poramboke* was sold in public action by the officials. Those who had purchased it in public action had cut and removed the trees. The Defendants 3 to 6 have no role in the same. The suit is not maintainable against the Defendants 3 to 6 and it has to be dismissed.

6. The brief averments made in the written statement filed by the 8th Defendant are as follows:

6.1. The suit property belongs to the Government. The Plaintiff himself has admitted that the suit property is *Odai poramboke*. On the request and the representation of the villagers, the village Panchayat had passed a resolution on 20.03.1998 in which Resolution No.3 stated that a cart track is to be laid along *Odai poramboke*. For laying of the cart track, no amount was



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sanctioned under any of the schemes. Considering the welfare of the villagers the cart track was laid. Nobody has the right to object to the larger interest of the villagers in laying of the cart track or in the power of the local Panchayat to use the Government lands for the common use of the villagers. The Plaintiff had filed the suit only to harass the officials. The 8th Defendant adopts the contentions raised by the second Defendant. The suit filed by the Plaintiff is not maintainable and hence, it has to be dismissed.

7. Based on the pleadings of the Plaintiff in the plaint and the written statement filed by the Defendants 2, 4 and 8, the learned Principal District Munsif, Kallakurichi, had raised the following issues:

(i) Whether the Plaintiff is entitled to the relief of mandatory injunction as prayed for?

(ii) Whether the claim made by the Defendants that the encroachments made on the *Odai poramboke* had obliterated *Odai poramboke* is true?

(iii) Whether the Defendants 3 to 6 are necessary parties?

(iv) To what relief the Plaintiff is entitled to?

8. During trial, the Plaintiff examined himself as P.W-1. The documents relied on by the Plaintiff in support of his contention in the plaint were marked as Ex.A-1 to Ex.A-9. Ex.A-1 is the plaint plan attached to the



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plaint. Ex.A-2 is the complaint preferred by the Plaintiff to the Executive Engineer (PWD) dated 26.11.1997 to the Defendants herein. Ex.A-3 is the postal receipt for sending the complaint under Ex.A-2 through registered post to the Defendant-2. Ex.A-4 is the legal notice dated 27.03.1998 sent on behalf of the Plaintiff by his Advocate to Defendants 1 and 2. Ex.A-5 is the reply dated 01.04.1998 from the first Defendant the District Collector to the Counsel for the Plaintiff. Ex.A-6 is the notice issued by the Counsel for the Plaintiff dated 07.07.1998 under Section 80 of CPC to the 8th Defendant, Commissioner, Sankarapuram Panchayat Union. Ex.A-7 is the acknowledgment for sending Ex.A-6 through registered post which was received from the Commissioner, Sankarapuram Panchayat Union. Ex.A-8 is the reply dated 01.04.1998 from the District Collector, Villupuram District from the Executive Engineer, Public Works Department, Villupuram to the notice under Ex.A-6. Ex.A-9 is the reply notice dated 15.09.1999 sent by the Commissioner, Sankarapuram Panchayat Union, to the Counsel for the Plaintiff. The Village Administrative Officer of Chozhampattu Village was examined as D.W-1. In support of his claim, he marked Ex.B-1 and Ex.B-3. Ex.B-1 is the “A” Register of the Chozhampattu Village. Ex.B-2 is the adangal extract for Chozhampattu Village. Ex.B-3 is the FMP plan showing the *Odai poramboke*. The 6th Defendant, who is the 7th Defendant as President



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of Chozhampattu Village Panchayat, was examined as D.W-2. One

Mr.Arunagiri, Assistant Engineer of Public Works Department was examined as D.W-3. Ex.B-4 is the report from the Executive Engineer, Public Works Department, dated 12.05.1998 to the Tahsildar, Kallakurichi which was marked during the deposition of the Assistant Engineer as D.W-3. The Plaintiff had filed petition for appointment of Advocate Commissioner. The Advocate Commissioner had visited the suit property and filed his report and plan which were marked as Ex.C-1 and Ex.C-2 during the evidence of the Plaintiff.

9. After hearing the arguments of the Plaintiff and the Defendants and on assessment of evidence of the Plaintiff and the Defendants, the learned Principal District Munsif, by judgment dated 07.11.2001 had answered the issues 1 to 4 against the Plaintiff and thereby dismissed the suit.

10. Aggrieved, the Plaintiff had preferred Appeal in A.S.No. 89 of 2004 on the file of the learned III Additional District Judge, Villupuram at Kallakurichi raising the following grounds:

10.1. The learned Principal District Munsif had ignored the evidence available through the Advocate Commissioner under Ex.C-1 and Ex.C-2 and



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the report of the Executive Engineer to the District Collector and to the Tahsildar, Sankarapuram Taluk and had misdirected himself and dismissed the suit of the Plaintiff which is perverse.

10.2. The learned Principal District Munsif had placed reliance on the admissions in the cross-examination of the Plaintiff who is an illiterate farmer and picked part of the cross-examination and dismissed the claim of the Plaintiff ignoring the totality of the evidence of the Plaintiff as P.W-1 which was available through Ex.A-1 to Ex.A-9 and Ex.C-1 & Ex.C-2 and also the official letter addressed by the Executive Engineer to the District Collector, Villupuram and the Tahsildar, Sankarapuram Taluk under Ex.B-4.

10.3. The learned Principal District Munsif ignored the admissions made by the official witnesses D.W-1, D.W-2 and D.W-3 in their cross examination by the learned Counsel for the Plaintiff which are proof sufficient to the claim of the Plaintiff. It is a clear case of the Plaintiff that the Defendants 3 to 6 in collusion with that Defendants 1, 2, 7 and 8 had demolished the check dam and obliterated the *Odai poramboke* by laying cart track over the *Odai poramboke*. The evidence available in the cross examination of the Defendant witnesses 1, 2 and 3 by their admission in cross examination is sufficient to decree the suit. There is clear admission by D.W-3 who is none other than the Defendant-6 as official as the Panchayat President,



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Chozhampattu Village Panchayat. He himself had filed written statement stating that Defendants are unnecessary parties. His evidence indicates that they have not received any prior approval to alter, to demolish and to obliterate the water resources. Therefore, the judgment dismissing the suit of the Plaintiff for mandatory injunction seeking restoration of the *Odai poramboke* for the benefit of Ayacutdhars has to be decreed.

11. Based on the grounds raised by the Plaintiff as Appellant in A.S.No. 89 of 2004, the learned III Additional District Judge, Villupuram at Kallakurichi had raised the following points for determination:

- (i) Whether the Plaintiff is entitled to relief of mandatory injunction as prayed for?
- (ii) To what relief the Plaintiff is entitled to?

12. On re-assessment of evidence available before the learned Principal District Munsif, Kallakurich, through the evidence of the Plaintiff as P.W-1 and the documents under Ex.A-1 to Ex.A-9, and the Commissioner's report under Ex.C-1 and Ex.C-2 and the evidence of Defendants under D.W-1 to D.W-3 under Ex.B-1 to Ex.B-4, the learned III Additional District Judge, Villupuram at Kallakurichi on independent assessment and on re-assessment of evidence, had properly appreciated the evidence and set aside the judgment



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of dismissal dated 07.11.2001 passed in the suit in O.S.No.483 of 1998, by the learned Principal District Munsif, by judgment dated 24.08.2012 thereby allowed the appeal in A.S.No.89 of 2004 granting decree for mandatory injunction directing the Defendants to restore the *Odai proamboke*.

13. Aggrieved, the legal heirs of the third Defendant as Appellants 2 to 4 and 4th Defendant as Appellant-1 filed this Second Appeal.

14. On 08.03.2013, while admitting this Second Appeal, this Court had framed the following substantial questions of law:-

i) Whether the lower Appellate Court is justified in decreeing the suit for mandatory injunction, when P.W-1 had failed to prove damages or injury to his right and especially, when he had admitted that his right to irrigate the lands had not been affected as he is regularly watering the lands from Seshasamuthiram lake?

ii) When the road was laid in the larger interest of public, is the Court below justified in decreeing the suit for mandatory injunction in the absence of the suit being one under Order I Rule 8 C.P.C?

15. The learned Counsel for the Appellants in the Second Appeal (3rd and 4th Defendants) submits that the learned Principal District Munsif had on proper appreciation of evidence dismissed the suit as the Plaintiff cannot seek mandatory injunction when he himself had encroached portions of the *Odai*



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Poramboke, as per his admission in the cross examination. Therefore, the learned Principal District Munsif had rightly dismissed the suit. Also, it is the contention of the learned Counsel for the Appellants in the Second Appeal (3rd and 4th Defendant in the District Munsif) that the Plaintiff himself had admitted that he is utilising the water available in the lake for his Patta land measuring 60 cents. Therefore, he is in no way affected by putting up road on the *Odai Poramboke*.

16. The learned Counsel for the Respondents 2 and 3 Mr.M.Muthusamy vehemently objected to the submission of the learned Counsel for the Appellants submitting that the Executive Engineer, Public Works Department, Kallakurichi had himself addressed a letter to the District Collector pointing out the consequences of denial of water down the stream to the villagers for irrigation in his letter which was marked as Ex.B-4.

17. It is the submission of the learned Counsel for the Respondent-1 (Plaintiff before the trial Court) Mr.K.P.Jotheeswaran that the learned Principal District Munsif failed to consider those facts. It is identified as only *Odai Poramboke* and also there is admission in the evidence of the Plaintiff that there was check dam across the *Odai Poramboke*. Also by destroying the



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Odai Poramboke by the conduct of the Defendant-7 and Defendant-8 in collusion with Defendants 3 to 6, the Plaintiff had suffered loss due to water entering his field during rainy season which was usually draining through the stream. Now, course of the water was altered due to the act of the Defendants 1 to 8. Therefore, he had rightly approached the Court by filing a suit for mandatory injunction.

18. It is the contention of the learned Counsel for the Respondent-1 that even otherwise, the learned Principal District Munsif ought to have taken cognizance based on materials available before him through Advocate Commissioner's Report as well as Ex.B-4, the letter addressed by the Executive Engineer, P.W.D to the District Collector, Villupuram District, Defendant-1 regarding consequences of altering the stream *Odai Poramboke* thereby denying water down the stream to the irrigation fields which depend on the stream. He had also mentioned the villages affected by the alteration of *Odai Poramboke*.

19. It is the contention of the learned Counsel for the Respondent-1 that the first Appellate Court on re-appreciation of the very same evidence available before the learned Principal District Munsif, had on proper



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appreciation of evidence granted decree of mandatory injunction. Therefore, the Second Appeal lacks merit and is to be dismissed. The judgment of the learned first Appellate Court in A.S.No.89 of 2004, dated 24.08.2012 to be confirmed.

20. The learned Counsel for the sixth Respondent Mr.S.V.Durai Solaimalai submitted his arguments. He is appearing for the sixth Respondent who is the then Panchayat President, in his individual capacity as a contesting Defendant before the trial Court. The Suit property is an *Odai Poramboke* of Chozhampattu Village. Manickam, the Plaintiff in the Suit sought relief of mandatory injunction to remove the road laid in the Village.

21. It is the submission of the learned Counsel for the sixth Respondent that in the Chozhampattu Village, there are about 150 farmers relying on that *Odai Poramboke* for their irrigation purposes. Therefore, without disturbing the channel, the mud road was formed based on the resolution passed in the Village. The sixth Defendant as Village President is acting on behalf of the larger interest of the public in the Village. The Plaintiff in this case had approached the Court of the learned District Munsif, Kallakurichi, seeking mandatory injunction to restore the channel and to



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remove the mud road.

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22. It is the submission of the learned Counsel for the sixth Respondent in the Second Appeal that the mud road was laid for the benefit of the larger interest of the public in the Village. Also, in the mud road only, people take the dead bodies to the burial ground. This road has nothing to do with the *Odai Poramboke*. Therefore, on proper appreciation of evidence, the learned Principal District Munsif had dismissed the Suit. Therefore, the learned Counsel for the sixth Respondent submits that he is sailing with the Appellants/Defendants 3 and 4 before the trial Court. Therefore, the Second Appeal is to be allowed. The Judgment and decree passed by the learned third Additional District Judge, Villupuram at Kallakurichi granting decree to the Plaintiff is to be set aside and the Judgment of the learned Principal District Munsif is to be restored.

23. Heard the learned Counsel for the Appellants Mr.C.Saikrishna for M/s.V.Srimathi, the learned Counsel for the first Respondent Mr.K.P.Jotheeswaran, learned Counsel for the Respondents 2 and 3 Mr.M.Muthusamy and the learned Counsel for the sixth Respondent Mr.S.V.Durai Solaimalai.



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24. Perused the plaint, written statements filed by Defendant-2, Defendant-4 and Defendant-8, issues framed by the trial Court, the evidence of P.W-1, D.W-1 to D.W-3, documents under Ex.A-1 to Ex.A-9. Ex.B-1 to Ex.B-4 and Ex.C-1 and Ex.C-2, Advocate Commissioner's Report and Plan. Perused the judgment of the learned Principal District Munsif, Kallakurichi in O.S.No.483 of 1998 dated 07.11.2001 and the learned III Additional Sub Judge, Kallakurichi in A.S.No.89 of 2004.

25. From the perusal of the records, it is seen that there was an Advocate Commissioner's Report that there was an Odai. In Tamil, Odai refers to Stream. Whereas cart track refers to “*tz;og; ghij*”. Here it is the case of the Plaintiff that the *Odai Poramboke* was damaged by putting up cart track. There is evidence before the trial Court through the Officials who were examined as Defendants and also Advocate Commissioner's reports which were marked as Ex.C-1 and Ex.C-2. Still the learned District Munsif, Kallakurichi dismissed the suit in O.S.No.483 of 1998 on the ground that the Plaintiff had sought mandatory injunction as the Defendants had encroached Odai poramboke affecting the cultivation by the Plaintiff in his patta lands.

26. While answering the Issue-1, the learned Principal District



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Munsif had in the course of the discussion stated that when the Officials cut and removed the trees on the banks of the stream, *Odai Poramboke*, the Plaintiff raised objections and preferred complaint with Defendant-2 under Ex.A-2 which was acknowledged by Defendant-2 under Ex.A-3. The complaint was preferred on 26.11.1997. Since there was no response from the Officials of P.W.D, the Plaintiff had sent notice through his lawyer dated 27.03.1998 to the District Collector and the Executive Engineer, P.W.D [Defendants 1 and 2 in the suit] through Ex.A-3. The reply received from the District Collector, the Defendant-1 was marked as Ex.A-5. Subsequently on 07.07.1998, the Plaintiff had sent lawyers notice under Section 80 of C.P.C to Defendant-7 and Defendant-8, the President Chozhampattu Panchayat and the Commissioner, Sankarapuram Panchayat Union was marked as Ex.A-6 and the acknowledgement was marked as Ex.A-7. The copy of the letter addressed by the District Collector to the Executive Engineer, P.W.D, the copy of which was sent to the learned Counsel for the Plaintiff was marked as Ex.A-8. Reply to the Advocate notice under Ex.A-6 by the Commissioner Sankarapuram Panchayat Union, the Defendant-8 was marked as Ex.A-9. The learned Principal District Munsif in the course of the discussion to Issue-1 had observed that when Defendant-3 to Defendant-6 colluded with the Defendant-7, the Panchayat President Chozhampattu Panchayat and based on which the



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Defendant-8/Commissioner, Sankarapuram Panchayat Union had laid the road by destroying and damaging the *Odai Poramboke*. The Plaintiff was in enjoyment of his Patta lands under S.No.318/14, 318/15, where the stream flows in between these two Patta lands. The learned Principal District Munsif had also observed that as per the statutory notice sent by the learned Counsel for the Plaintiff under Ex.A-4, it is clearly stated that the water from the *Odai Poramboke* benefits about 50 families down the stream. Also the learned Principal District Munsif had in the course of discussion found out that in the Advocate Commissioner's reports marked as Ex.C-1 and Ex.C-2, the property in Patta land enjoyed by the Plaintiff had been identified as D and E in S.No.318/14, 318/15. D and E are the branching channels from the *Odai Poramboke*. The learned Principal District Munsif in the judgment while assessing evidence had observed that in the evidence it is available that the Defendants had damaged the check dam built across the *Odai Poramboke* and laid road on the *Odai Poramboke* and the admission by the Plaintiff in the course of the cross examination, that he is depending on Seshasamuthiram lake for irrigation, had dismissed the suit for mandatory injunction. The learned Principal District Munsif failed to appreciate the fact that *Odai Poramboke* are lands belonging to Government, which means lands situated on both the sides of *Odai poramboke* (stream) water course which not only maintains water



table during summer but also beneficial to avoid flooding during rainy season.

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27. It is the specific case of the Plaintiff that the Defendant-3 to Defendant-6 in collusion with Defendant-7 had damaged the *Odai Poramboke* and laid the road. This was evident through Advocate Commissioner's report under Ex.C-1 and Ex.C-2. It is the case of the Plaintiff that the Court has to pass judgment granting decree for mandatory injunction to restore the *Odai Poramboke* and the check dam built across the *Odai Poramboke* for the benefit of the farmers. There is evidence through Ex.B-4 that the action of the Defendant-7 and Defendant-8 in laying the road thereby damaging the stream causes denial of right of irrigation to the farmers down the stream which roughly benefits 50 farmers in various villages down the stream. It is the specific case of the Plaintiff that the Defendants wantonly damaged the *Odai Poramboke* by laying the road for the benefit of Defendant-3 to Defendant-6. They too have agricultural land in the village but their lands were not affected by the conduct of the Defendant-7 and Defendant-8 by altering the *Odai Poramboke* and converting it as cart track or village road. It causes flooding of the agricultural land as the water has no other source to drain, thereby damaging the crops in Patta land of the Plaintiff. That much of evidence is available in the deposition of the Plaintiff.



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28. In the cross examination, Plaintiff had admitted that he is not dependent on the *Odai Poramboke* for his irrigation. Exclusively he relies on the Seshasamuthiram lake for his irrigation for his Patta land. That cannot be a ground to dismiss the suit. It is the case of the Plaintiff that by the conduct of the Defendants 3 to 8, he had suffered damages as the water from the *Odai Poramboke* entered the field/Patta land of the Plaintiff. Under those circumstances, the learned Principal District Munsif, Kallakurichi failed to appreciate the facts available from the materials placed before the Court through evidence of Plaintiff and Defendants. It is to be noted that the Plaintiff is an illiterate farmer. An illiterate farmer who has more knowledge of the agricultural operations and the natural resources required for the agriculture. Whereas the Officials are blind and indifferent to the ground situation. An ordinary illiterate villager is able to appreciate ecology whereas the educated Officials are ignoramus to the ecology. The natural water course available in the village had been destroyed and damaged by the selfish motives of Defendants 3 to 6 for whom Defendant-7, the Panchayat President has helped in the illegalities. Just because he is the Panchayat President does not mean that he has the power (right) to damage the water course in the village, misusing his official position for his selfishness in collusion with the



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Defendant-3 to Defendant-6. Being an elected President, he is able to manipulate officials, the Block Development Officers, who is the Ex-Officio Chairman of Sankarapuram Panchayat Union.

29. The written statement of Defendant-7 and Defendant-8 states that the larger interest of the villagers had been protected by laying a road. Road in the village can be laid with least damage to the irrigation to the water channel by taking lands from those persons who are ready to donate lands for public causes. Instead, a short cut method is adopted by the Panchayat President by destroying the water course available in the village which benefits about 50 farmers down the stream as per the letter under Ex.B-4 addressed by the Defendant-2 to the Defendant-1. The learned District Munsif failed to consider those materials, he had picked and chose a particular portion in the cross examination, where the Plaintiff admitted that he depends on Seshasamuthiram lake for his irrigation for his Patta land. That cannot be a ground to dismiss the suit. The Plaintiff had approached the Court as he suffered damage during rainy season on account of water not draining down the channel but entering the fields of Plaintiff, is the specific case of the Plaintiff both in the pleadings as well as in the evidence. However, the learned Principal District Munsif lost sight of the same, thereby the issue was



answered against the Plaintiff.

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30. While discussing the issue-3 that the Defendant-3 to Defendant-6 were unnecessary parties to the suit, the learned District Munsif had observed that the Panchayat President for the Chozhampattu Panchayat individually is Defendant-6 and he is in his official capacity as Defendant-7. As per the written statement filed by the Defendant-6 he claims that the *Pootai*, *Poikunam*, *Sembarampattu*, *Nedumaanoor* are four lakes which were connected through this odai by name (tz;zhd; Xil) Dhobi stream which drains into the Mutha River and during rainy season, the stream will drain the water from these four lakes. The above four lakes drains water into Mutha River and in a year roughly for 4 to 5 months, water from this stream would be utilised by the farmers down stream to irrigate their lands. Also in his written statement he had stated that there had been check dam built across this stream and in the course of time it was worn out due to lack of maintenance. But he was unable to furnish details of the same. Without causing any difficulties to the beneficiaries of the stream, the road had been laid is the pleading of the Defendant-6. That was accepted by the learned Principal District Munsif and answered the Issue-3 that Defendants 3 to 6 are not necessary parties. While answering the issue-2, the learned Principal District Munsif had answered



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issue-2 against the Plaintiff that he himself had admitted that he is dependent upon water from the Seshasamuthiram lake to irrigate his Patta land.

Therefore, he had answered issue-2 against the Plaintiff.

31. D.W-1 in his evidence had stated that the Odai Poramboke land belongs to the Revenue Department of the Government. Without causing any loss or damage to the people in the village, the road had been laid for the larger interest of the people. Based on evidence of D.W-1, the learned Principal District Munsif had answered Issue-4 against the Plaintiff. Based on answering the Issues 1 to 4, the suit was dismissed. The learned Principal District Munsif failed to consider the evidence of the Plaintiff in full wherein he had stated that during rainy season, since the draining of channel down the stream had been affected the water enters his Patta land. That much evidence is available. It is in the evidence of the Plaintiff that the Defendant-3 to Defendant-6 colluded together thereby laying a road close to his Patta land. It is the evidence available that Plaintiff is in enjoyment of the property in S.No.318/14, 318/15 which are on both sides of the *Odai Poramboke*. Therefore, the *Odai Poramboke* runs in between Plaintiff's Patta land. It is common sense that if the channel is damaged or destroyed, naturally water from the channel enters Patta land on both sides. The learned Principal District



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Munsif without analyzing those evidence had, based on the evidence of the D.W-1, the Official witness and based on pick and choose part of the cross examination where Plaintiff had stated that he is not dependent on those channel, he is dependent only on Seshasamuthiram lake for his irrigation purposes, dismissed the suit for mandatory injunction. The damage caused to the Plaintiff is available in the deposition of the Plaintiffs in his examination in chief itself which was lost sight by the learned Principal District Munsif. The Plaintiff as P.W-1 admits in cross examination that he is enjoying part of the *Eri poramboke* for his cultivation. That cannot be a ground to deny the relief sought by the Plaintiff.

32. The Hon'ble Supreme Court in the decision reported in **(2006) 6 SCC 543 in *Susetha vs. State of Tamil Nadu and others*** had held as follows:

“Held – it was not a case where resurrection of said tank should be directed. However, direction made to State and Gram Panchayath to see that other tanks in and around the village were properly maintained, there was no water shortage and ecology was preserved.

B. Environment Protection and Pollution Control – Sustainable development – Doctrine of – Implementation of – Held, said doctrine although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

C. Environment Protection and Pollution Control – Public trust doctrine – Held, alienation of the property held as a public trust is not necessarily prohibited in Intellectuals Forum case – However, emphasis had been made therein for a high degree of judicial scrutiny in such cases.”



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33. In the above decision of the Hon'ble Supreme Court, the Appeal by the Appellant was dismissed. At the same time, the Hon'ble Supreme Court had issued direction to all the States and Union Territories in India directing them to preserve water bodies thereby preserving ecology. In the said decision, Doctrine of Sustainable Development and implementation of the same was issued stating that the Doctrine of Sustainable development and Environment Protection and Pollution Control is not an empty slogan. It is to be implemented taking a pragmatic view and not on *ipse dixit* of the Court. The above decision was based on the earlier ruling of the Hon'ble Supreme Court reported in *(1997) 3 SCC 549 [Animal and Environment Legal Defence Fund v. Union of India]*; *(1997) 3 SCC 715 [M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India]*; *(2006) 3 SCC 549 [Intellectuals Forum vs. State of A.P.]*; *AIR 1993 Cal 215 [People United for Better Living in Calcutta vs. State of West Bengal]*; *(2006) 5 SCC 47 [T.N. Godavarman Thirumulpad (99) vs. Union of India]* and *AIR 2005 Mad 311 [L.Krishnan vs. State of T.N.]*

34. The Hon'ble First Bench of this High Court in the case of *L.Krishnan vs. State of T.N.* reported in *AIR 2005 Mad 311* had issued



directions to the State Government to protect the environment and to remove the encroachments in water bodies in the light of the earlier decisions of the Hon'ble Supreme Court reported in *(1997) 3 SCC 715 [M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India]*. The relevant portion is extracted as under:

“13. In *M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India*, 1997 (3) SCC 715 (vide para – 10) the Supreme Court observed:

"Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.”

35. The above case in *L.Krishnan vs. State of T.N.* reported in *AIR*

2005 Mad 311 arose out of an encroachment in a water body in Thatchur Village, Kallakurichi Taluk, Villupuram District. The then Kallakurichi Taluk



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now is a District. In the present case, the subject matter of dispute arose from the same Taluk in a different village. That shows the authorities have scant regard for the judgment of the High Court and the Hon'ble Supreme Court. The same error is committed by the authorities. The directions given by the Hon'ble Supreme Court to protect the environment is thrown to the winds which is highly condemnable. The conduct of the officials in this case the Defendants 6, 7 and 8 particularly Defendants 6 to 8 had filed written statement that they are unnecessary parties. The written statement filed by the 8th Defendant is found contrary to the directions issued by the Hon'ble Supreme Court reported in *(1997) 3 SCC 715 [M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India]* and the judgment of this High Court in the case of *L.Krishnan vs. State of T.N.* reported in *AIR 2005 Mad 311*.

36. In spite of the said direction issued by the Hon'ble Supreme Court in the public interest litigation, it is found that in Tamil Nadu the authorities, those who are in the administration in charge of protecting the natural resources, are not protecting the natural resources thereby we face drought as well as floods in both the seasons. We observe in our daily life that water courses are altered or damaged or destroyed for the selfishness of the people in



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Power either as President or as Chairman of Municipality or as Corporations or as administrators. In and around Chennai also, we find similar activities by the real estate sharks in collusion with the party in power, thereby during rainy season we suffer floods which could have been protected in water bodies. Due to encroachment in water bodies, the floods affect daily life of the citizens of the State. The draining of water to the rivers or streams or into the sea is affected by the growth of real estate.

37. From daily news from the newspapers and other media we find that there were even murders committed for demand on real estate to convert the Government land into Patta land misusing the official position. Here is the case of glaring example that the Defendant-3 to Defendant-6 in collusion with Defendant-6 who is holding the official position of the Defendant-7 having altered the *Odai Poramboke* for their selfishness which affects the livelihood of the farmers down the stream. The Plaintiff had not approached the Court for irrigation purposes, instead he had approached the Court as he suffered the damage because of the conduct of Defendants 1 to 9. The Executive Engineer/D.W-3 deposed that Ex.B-4 was issued by him as Executive Engineer to the District Collector complaining the conduct of the Defendant-7 to Defendant-9. Therefore, that itself is sufficient for the learned District



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Munsif to protect the interest of the farmers. We depend upon farmers for our daily food requirements. We cannot remain mute spectators for the conduct of a few selfish individuals who misuse their official position, ignoring the larger interest of the society and the farming community. For farming we need water resources. When water resources are damaged, the future generations also will suffer water scarcity.

38. The aggrieved Plaintiff had approached the learned III Additional District Judge, Kallakurichi, by filing Appeal in A.S.No.89 of 2004. The learned III Additional District Judge, Kallakurichi in judgment in A.S.No.89 of 2004 dated 24.08.2012 had in the course of discussion on re-appreciation of evidence, on point for determination-1, found from the evidence available before the learned Principal District Munsif, Kallakurichi that the Defendants had admitted in their evidence that the said channel (*Odai Poramboke*) connects Seshasamuthiram lake also and Kodi Neer Chozhampattu, Atru Neer which drains into the Muktha river. Therefore, the contention of the Plaintiff that he is affected by the conduct of the Defendant-3 to defendant-9 is found reasonable by the learned III Additional District Judge. In the cross examination, the Plaintiff admits that he depends on Seshasamuthiram lake for his farming activities. That does not mean he is not dependent on this channel.



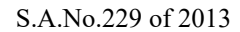
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Through this channel only the water is stored in Seshasamuthiram lake, after the rainy season for the rest of the year. For agricultural purposes, the Plaintiff and other farmers depend upon Seshasamuthiram lake for their cultivation. That does not mean he is exclusively dependent upon Seshasamuthiram lake and not dependent upon this *Odai Poramboke* for irrigation. Therefore, the learned III Additional Judge had in the course of discussion of evidence found that the Plaintiff is also one among the beneficiary of the Odai and he had been affected by the conduct of the Defendant-1 to Defendant-9. The learned III Additional District Judge also relied on the Advocate Commissioner's report under Ex.C-1 and Ex.C-2 and Executive Engineer's report under Ex.B-4 and it clearly states that the conduct of the Defendants affected the irrigation down the stream for about 50 farmers. The learned III Additional District Judge also found that the Defendant-6 to Defendant-8 had passed resolution to put up or lay road on the stream *Odai Poramboke*. As per the resolution passed by the Respondent-7, Ex.B-1 is the A-Register of the village wherein the description of the property for the suit property is mentioned as *Odai Poramboke* (channel belonging to the Government). The learned III Additional District Judge also found from the evidence of D.W-1 to D.W-3 that they had not obtained permission from the higher Officials of the Revenue Department for laying the road or damaging or destroying or altering the channel. The



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Executive Engineer's report under Ex.B-4 was relied by the learned III Additional District Judge, which is the letter addressed by the Executive Engineer to the District Collector reporting the damage caused to the irrigation channel which results in denial of water to about 50 villagers down the stream. Also the learned III Additional District Judge had relied on the Commissioner's Report under Ex.C-1 and Ex.C-2 wherein it is clearly stated 'ABCD' is the portion damaged by the conduct of Defendants and the channel having been destroyed as such, the Plaintiff will not be able to irrigate the water using the water from the channel. The learned III Additional Judge in the concluding portion of the judgment in Appeal had clearly stated that the learned District Munsif failed to appreciate properly the entire evidence of Plaintiff as P.W-1. The evidence available through the Court pointed out by the Advocate Commissioner, whose reports were marked as Ex.C-1 and Ex.C-2 and the document under Ex.A-1 to Ex.A-8 and the documents under Ex.B-1 and Ex.B-4 which proves the claim of the Plaintiff in the plaint. Therefore, the learned III Additional District Judge, Kallakurichi in his judgment in A.S.No.89 of 2004 dated 24.08.2012 had set aside the judgment of dismissal and decreed the suit. The same is found acceptable and it is a well reasoned judgment on proper appreciation of evidence since the learned Principal District Munsif failed to consider the entire materials available before him



39. It is not the case of the Plaintiff that he is not dependent upon the *Odai Poramboke* for his irrigation requirements. In his cross examination he had admitted that he used to take water from Seshasamuthiram lake also. The same Seshasamuthiram lake is dependent on the very same water channel *Odai Poramboke* to store water during the rainy season which is used after rainy season for some more period for irrigation. The very particular admission that he is dependent on Seshasamuthiram lake alone was taken instead of considering the totality of evidence by P.W-1.

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ignoring the pleading of the ordinary villager as a farmer who is dependent on the farming activities for his livelihood and not dependent upon taxpayers money as salary which is the case of the Defendants 1, 2, 7 and 8. The persons in authority who are expected to protect the water resources available in nature in the villages in rural part of India are as custodians of natural resources. However, on the contrary they are hand in glove with selfish individuals and destroy the natural resources. The learned III Additional District Judge also found from the evidence that the village having passed a resolution to lay the road over the *Odai Poramboke* had not obtained appropriate sanction from the appropriate Authorities concerned and that itself is illegal. Even otherwise when the Defendants claim that they are within their powers to lay roads as they wish, it is for the Court to protect the illiterate, semi illiterate ordinary farmer who had knocked at the doors of the Court to protect not only his right, to protect not only his livelihood but also as citizen of this country to protect the water courses to avoid water scarcity in future.

41. It is to be noted that our state is a water drought state dependent upon only on rains for farming activities. Therefore, as individuals, we are expected to protect water courses. But contrary, we see everyday in and around Chennai, natural water courses are damaged and destroyed. For



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example, the road connecting Tambaram to Old Mahabalipuram road is laid by encroaching and destroying four major lakes by the State itself. The Pallikaranai Marsh land on the southern fringes of Chennai city is encroached by State for putting up Railway Stations in Velachery, Perungudi, Tharamani and for laying the part of the 200 feet four lane road connecting Tambaram with Old Mahabalipuram Road. In the outer fringes of the Chennai Metropolitan city, we find that Engineering Colleges and other educational institutions are built up encroaching lakes which were lakes till late 80s. Because of which we had been facing flood during rainy seasons in and around Chennai. These are all the consequences of interfering with the natural flow of water to streams, lakes and tanks which were protected by our ancestors when they were farmers.

42. Due to greed of the real estate sharks these had been damaged. With the result of that we are dependent upon neighbouring states after rainy season for our agricultural activities. Thereby creating rift between neighbouring States under the guise of water dispute. The substantial question of law that the learned first Appellate Court Judge failed to consider the evidence of the Plaintiff that he is dependent upon Seshasamuthiram lake for his irrigation and Therefore, the granting of decree is against the evidence



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cannot at all be accepted. The line of arguments of the learned Counsel for the Appellant, the Defendant-3 and Defendant-4 in the suit is found unacceptable.

It is to be noted that in the written statements filed by Defendant-3 and Defendant-4 they had claimed that they are not interested parties in the suit and that they are unnecessary parties. If they are unnecessary parties to the suit, they ought to have remained *ex parte*.

43. The learned Principal District Munsif in the discussion to Issue 3 had clearly answered the Issue-3 in favour of the Defendants 3 to 6 that they are unnecessary parties to the suit. If that be so, the Second Appeal itself is not maintainable. When they are unnecessary parties, they ought not to have filed Second Appeal. Whether the Plaintiff is relying on Sesha samuthiram Eri for his irrigation purpose or *Odai Poramboke* water from the stream for his irrigation is not a concern for the Defendants 3 to 6 as per the written statement. Instead they have agitated the decree granted in favour of the Plaintiff in the Appeal, proves the Plaintiff's case that the Defendants 3 to 6 colluded and caused damage to the *Odai Poramboke*. The conduct of the Defendants 3 to 6 cannot at all be appreciated. They having filed the written statement originally that they are unnecessary parties and now filing this Second Appeal is unacceptable. If they are not interested they should not have



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agitated by way of Second Appeal they should have remained indifferent.

Instead they have taken pains to set aside the decree passed by the learned first Appellate Court in favour of Plaintiff. It is to be noted that the conduct of the Defendants 3 to 8 are illegal in the light of the letter addressed by the Executive Engineer, P.W.D to the District Collector reporting complaining about conduct of the Defendant-7 and Defendant-8 in damaging the stream that was irrigating and helping the farming community about 50 families who are dependent on the water from the stream for their farming activities.

44. The learned first Appellate Court Judge had found out from the evidence that the Defendant-7 and Defendant-8 had not obtained prior permission from the Authorities concerned to alter the water course and lay the road. Therefore, picking up of a portion of the evidence that the Plaintiff was relying on the Seshasamuthiram lake for his irrigation is not against the Plaintiff. The Plaintiff in the plaint averments as well as in his evidence had clearly stated that he was relying upon the water from the *Odai poramboke* which has branching channels on both sides in S.No.318/14 and 318/15 which were his Patta lands. Other than rainy season, during the drier months when the water through the channel is stored in Seshasamuthiram lake, he used that for his irrigation requirements. Instead of appreciating the totality of the



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circumstances, the attempt of Defendant-3 and Defendant-4 as Appellants stating that the learned first Appellate Judge failed to consider the admission of the Plaintiff that he is dependent on Seshasamuthiram lake for irrigation purposes and thereby suit for mandatory injunction cannot be decreed or need not be ordered is found unreasonable and condemnable.

45. The learned first Appellate Court Judge had properly appreciated the evidence in the proper perspective and had on the totality of the circumstances, particularly the evidence of P.W-1, in evidence of Advocate Commissioner Ex.C-1 and Ex.C-2 and Ex.B-1 and Ex.B-4 had clearly granted the decree. Even otherwise as Court of law, the Court is duty bound to protect water courses under the Article 51-A(g) of the Constitution of India and as per 73rd Amendment – 1992 of the Constitution of India to Article 243-G of the Constitution of India (Powers, authority and responsibilities of Panchayats) and as per the judgment of the Hon'ble Supreme Court reported in **(2006) 6 SCC 543** in the case of ***Susetha vs. State of Tamil Nadu and others*** directing all the States and Union territories to protect water courses and direction to the Courts throughout India not to grant any relief to encroachers in water courses. Therefore, **the substantial question of law-1 is answered against the Appellants 3 and 4.**



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46. The judgment of the learned first Appellate Court in paragraph 13 to 22 clearly states that the Defendants have not obtained prior permission from the higher Authorities to alter the water courses. With the misuse of Official position Defendant-6 Panchayat President as the Defendant-7 had passed a resolution. Therefore, the claim that on the larger interest, the road was laid cannot be accepted in the light of the reported decision of the Hon'ble Supreme Court in **(2006) 6 SCC 543** in the case of ***Susetha vs. State of Tamil Nadu and others*** and the reported decision of the Hon'ble First Bench of this High Court in the case of ***L.Krishnan vs. State of Tamil Nadu*** in **2005 (4) CTC 1**.

47. Particularly from the evidence of D.W-2 when he had not obtained prior permission from the higher Authorities concerned for destroying the water course and in the light of Ex.C-1 and Ex.C-2 which clearly states that in two places, the village road had damaged the stream, *Odai Poramboke*, the claim of the Defendant-3 to Defendant-6 that the Plaintiff had not filed the suit under Order 1 Rule 8 of CPC does not affect the Plaintiff. The Plaintiff had instituted the suit on his own behalf as he is affected by the conduct of the Defendant-3 to Defendant-8. Since he was affected, he has given a complaint to Defendant-1 and Defendant-2. Since,



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they did not act on the complaint, he was forced to give statutory notice under Section 80 of CPC under Ex.A-6 to Defendants 1, 2, 6 to 8. Even after statutory notice, there was no response from the Respondents which forced the Plaintiff to approach the Court. The Plaintiff had clearly stated in his evidence that during rainy season the stream unable to drain rain water into Mutha river. Therefore, it floods the Patta lands of the Plaintiff in S.Nos.318/14, 318/5 which are on the two sides of the channel.

48. By common sense, a prudent man can appreciate this fact for which the Plaintiff need not institute a suit under Order 1 Rule 8 of CPC seeking mandatory injunction. Ignoring the consequences faced by the persons who are affected by the damage caused to the water channel, the Defendant-3 to Defendant-6 had misused the official position of the Defendant-6 as President Defendant-7. The substantial question of law-2 is answered against Appellant. The learned first Appellate Court Judge is justified in granting a decree for mandatory injunction in the absence of suit being under Order 1 rule 8 when road was laid in the larger interest of the public, the road was not laid as per law by obtaining proper approval/sanction from the higher Authorities. Therefore, the finding of the learned III Additional District Judge, Kallakurichi, Villupuram District, is found justified. Accordingly, **the**



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substantial question of law-2 is answered against Appellants.

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In the result, **this Second Appeal is dismissed with the heavy cost of Rs.2,00,000/- (Rupees Two Lakhs) to be paid by the Defendant-3 to Defendant-6 viz., Appellants and Respondents 4 & 5 to the Plaintiff in O.S.No.483 of 1998/first Respondent herein.** The judgment and decree dated 24.08.2012 passed in A.S.No.89 of 2004 by the learned III Additional District Court, Kallakurichi, Villupuram is confirmed. The suit in O.S.No.483 of 1998 on the file of the Principal District Munsif Court, Kallakurichi is decreed. Consequently, connected miscellaneous petition is closed.

The District Collector, Kallakurichi District, is directed to remove the road laid on the *Odai Poramboke* and restore the water channel and check dam to protect the interest of the farmers as per the reported decision of the Hon'ble Supreme Court in **(2006) 6 SCC 543** in the case of ***Susetha vs. State of Tamil Nadu and others*** and the reported decision of the Hon'ble First Bench of this High Court in the case of ***L.Krishnan vs. State of Tamil Nadu*** in **2005 (4) CTC 1.**

21.12.2024

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SATHI KUMAR SUKUMARA KURUP, J.,

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To

1. The III Additional District Court,
Kallakurichi, Villupuram.
2. The Principal District Munsif Court,
Kallakurichi.
3. The Section Officer,
V.R. Section,
High Court Madras.

Judgment in

S.A.No.229 of 2013

21.12.2024