

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1548 of 2011

Subramaniya Pillai

.. Petitioner

Vs.

1.Munirathinam
2.Padmanabhan
3.Ravi
4.Rangan
5.V.Kasthuri
6.Sundari
7.Lalitha

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 16.08.2010 made in C.M.A.No.01 of 2006 on the file of the Sub Court, Ranipet, in reversing the fair and decretal order dated 31.12.2004 made in I.A.No.169 of 1995 in O.S.No.198 of 1977 on the file of the District Munsif Court, Sholinghur.

For Petitioner : Mr.A.Gouthaman

For R2, 4 & 6 : No Appearance

For R1,3,5, & 7 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 16.08.2010 made in C.M.A.No.01 of 2006 on the file of the Sub Court, Ranipet, in reversing the fair and decretal order dated 31.12.2004 made in I.A.No.169 of 1995 in O.S.No.198 of 1977 on the file of the District Munsif Court, Sholinghur.

2. The petitioner is the fourth defendant in O.S.No.198 of 1977, third respondent in I.A.No.169 of 1995 and first respondent in C.M.A.No.01 of 2006. The first respondent herein is the legal heir of one Perumal Pillai. Originally, the above said suit was filed by Perumal Pillai against Narayanasamy Pillai and four others. The said Narayanasamy Pillai/first defendant died. The sixth defendant Sivagami Ammal was brought on record as legal representative of first defendant as per the order dated 03.01.1997 made in I.A.No.109 of 1996.

WEB COPY

3. The plaintiff/Perumal Pillai filed the above suit for declaration of his easementary right to use and enjoy the channel marked as A to G and for consequential injunction, mandatory

injunction and for damages till the channel is restored. The third defendant filed written statement on 07.07.1978 and is contesting the suit. The said suit was decreed, against which, the petitioner and other defendants filed A.S.No.138 of 1980 and the same was dismissed on 19.12.1990. Challenging the same, the petitioner and other defendants filed S.A.No.1750 of 1991, which was also dismissed on 25.02.1991.

4. As per the decree passed, the Trial Court had restored the channel in O.E.P.No.8 of 1982 dated 12.03.1992. After dismissal of the second appeal, the said Perumal Pillai filed I.A.No.169 of 1995 under Order 20 Rule 12 of C.P.C., for directing the petitioner and other defendants to pay a sum of Rs.87,000/- to the first respondent and one Ayyammal with subsequent interest at 6% per annum from the date of petition till the date of realization, amended as per the order dated 10.06.1998 made in I.A.No.172 of 1998. According to the said Perumal Pillai, the channel was restored only on 12.03.1992 and the respondents therein are liable to pay mesne profits from the date of filing of the suit on 19.07.1977 till the date of realization on 12.03.1992.

5. According to Perumal Pillai, the property is measuring 1 Acre 62 cents of wet lands and they would have cultivated three bogums per year, they would have got 90 bags of paddy i.e., at the rate of 30 bags per bogum. After expenses, the said Perumal Pillai will get 60 bags of paddy per year and for a period of 14 1/2 years, he would have got 870 bags of paddy and he would have got the price of paddy at the rate of Rs.100/- per bag. The said Perumal Pillai died pending I.A.No.169 of 1995 and the first respondent and one Ayammal were brought on record as legal heirs of Perumal Pillai. The third defendant Vasudeva Pillai and Sivagami Ammal are legal representatives of the first defendant/Narayana Pillai, who also died. The respondents 3 to 7 herein were impleaded as legal heirs of the third defendant Vasudeva Pillai.

6. The said Vasudeva Pillai/third defendant before his death filed counter affidavit in I.A.No.169 of 1995 and the same was adopted by 6th defendant/Sivagami Ammal. According to them, Perumal Pillai was cultivating the land by taking water in the well in S.No.117. The entire extent of 1 Acre 62 cents was being cultivated by Perumal Pillai and there was no loss caused to him. He had plenty of water and he had cultivated entire land. The sagupadi

adangal for the entire period, which was produced by the petitioner and other defendants would show that at no point of time, the suit land remained uncultivated.

7. The third defendant Vasudeva Pillai filed additional counter affidavit and submitted that he is the only legal heir of the deceased Narayana Pillai and knowing fully well that first respondent/petitioner in the application added some more persons calling them as legal representatives of Narayana Pillai.

8. Before the learned Judge, first respondent himself examined as P.W.1 and Kathirvelu/fifth defendant was examined as P.W.2 and marked one document as Ex.A1. The petitioner himself examined as R.W.1, second respondent was examined as R.W.2, Babu and Venkatesa pillai were examined as R.W.3 & R.W.4 respectively and marked three documents as Exs.B1 to B3.

9. The learned Judge, considering all the averments made in the affidavit, counter affidavit, oral and documentary evidence, Exs.B1 and B2/sagupadi adangal, dismissed the application filed by Perumal Pillai holding that Perumal Pillai cultivated the land and did

not suffer any loss and therefore, he is not entitled to any mesne profit.

10. Against the said order of dismissal dated 31.12.2004 made in I.A.No.169 of 1995, C.M.A.No.01 of 2006 was filed by the first respondent.

11. The learned Appellate Authority considered all the materials on record, order of the learned Judge and judgment made in O.S.No.198 of 1977, wherein an Advocate Commissioner was appointed and the Commissioner has stated that the first respondent was not able to cultivate the southern portion of two plots in the land, due to damages of channel, the first appeal in A.S.No.138 of 1980 and the second appeal in S.A.No.1750 of 1991 filed by the petitioner and other defendants were dismissed confirming the judgment of the Trial Court. Further, the learned Appellate Judge taking into consideration the extent of two plots in southern portion of the property as per the report of the Advocate Commissioner filed in O.S.No.198 of 1977 and in view of the findings rendered in O.S.No.198 of 1977, which was confirmed in the first and second appeals, held that the petitioner and other

respondents in I.A.No.169 of 1995 are liable to pay a sum of Rs.29,000/- towards damages with interest at 6% to the first respondent from the date of filing of the petition till the date of realization and by the judgment and decree dated 16.08.2010, partly allowed C.M.A.No.1 of 2006.

12. Against the said Judgment and decree dated 16.08.2010 made in C.M.A.No.01 of 2006, the present Civil Revision Petition is filed by the petitioner/fourth defendant.

13. Heard the learned counsel for the petitioner and perused the materials available on record.

14. The learned counsel appearing for the petitioner contended that the learned Appellate Judge has failed to consider the patta, chitta and adangal filed by the petitioner and other defendants and on assumption, directed the petitioner and others to pay a sum of Rs.29,000/- together with interest. The learned Appellate Judge has failed to see that the first respondent failed to prove the loss of income accrued to him. The learned Appellate Judge has mis-understood the Commissioner's report and plaint and

had come to erroneous conclusion that two plots were uncultivated. The learned Appellate Judge failed to see that the adangal produced by the petitioner includes cultivation of two plots in the southern side of the suit property also, for which, the learned Appellate Judge fixed the mesne profit. The learned Appellate Judge on guess work fixed mesne profit at Rs.29,000/-.

15. Though notice was served on the respondents 2, 4 and 6 and their names were printed in the cause list, there is no representation on behalf of them either in person or through counsel. No notice was served to the respondents 1, 3, 5 and 7.

16. The first respondent claimed mesne profit of Rs.87,000/- and has given calculation as to how he suffered loss and as to how he is entitled to the said amount. On the other hand, the petitioner and other respondents filed sagupadi adangal and contended that the first respondent has cultivated the entire extent of the suit property and therefore, he is not entitled to any mesne profit.

17. The learned trial Judge accepting the sagupadi adangal filed by the petitioner and other respondents, dismissed I.A.No.169

of 1995. On appeal, the learned Appellate Judge based on the judgment passed in O.S.No.198 of 1977 and report of the Advocate Commissioner filed in the suit, held that the first respondent is entitled to mesne profit in respect of the lands in two plots on the southern side of the suit property.

18. From the materials available on record, it is seen that the learned Trial Judge failed to consider the findings in the judgment passed in O.S.No.198 of 1977, which was confirmed by this Court in S.A.No.1750 of 1991. The learned Appellate Judge has correctly appreciated the facts and the findings in the judgment passed in O.S.No.198 of 1977 has become final. As the same has been confirmed by this Court in S.A.No.1750 of 1991, the petitioner and other respondents are not entitled to re-agitate the matter.

19. The learned Appellate Judge has also considered the entire extent of the land and extent of the two plots in the southern side of the suit property, which could not be cultivated by the first respondent and directed the petitioner and other respondents to pay a sum of Rs.29,000/- together with interest at 6% from the date of petition till the date of realization. In the circumstances, there is no

illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 16.08.2010.

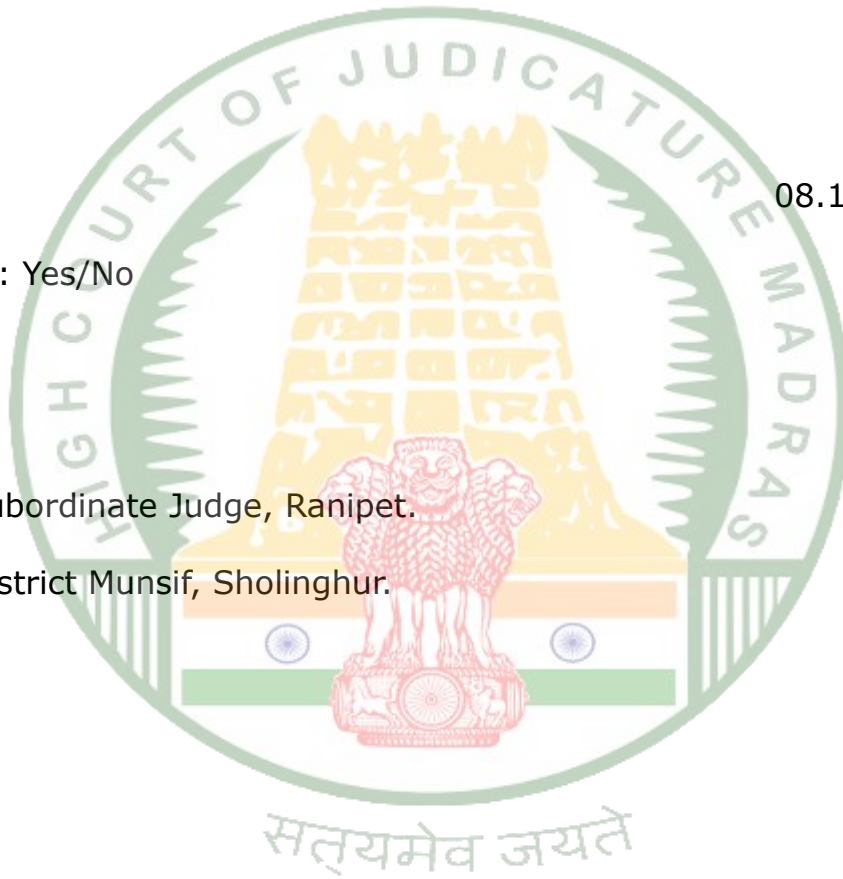
20. In the result, the Civil Revision Petition is dismissed. No costs.

08.11.2017

Index : Yes/No
dm/kj

To

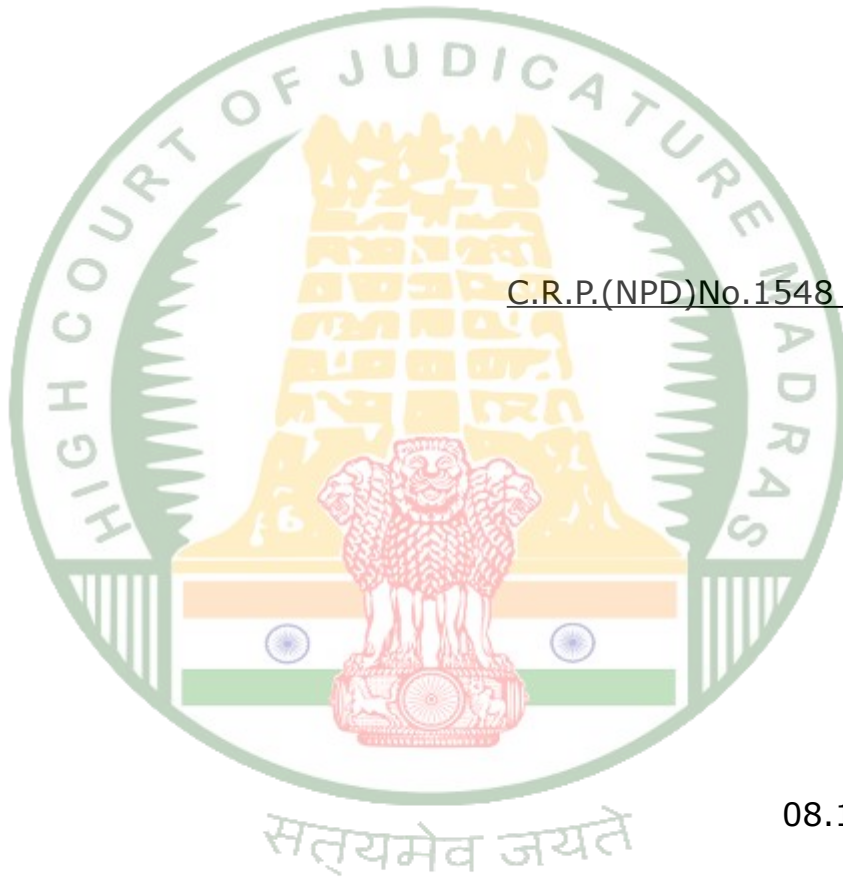
- 1.The Subordinate Judge, Ranipet.
- 2.The District Munsif, Sholinghur.



WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(NPD)No.1548 of 2011

08.11.2017

WEB COPY