

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.08.2017

Coram

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.1435 of 2004

1.Rengaraj .. Appellant/1st Defendant

/versus/

1.Adaikkalam

2.Siluvaimauthu

(Representing for themselves and on behalf
of the Christian Community of Thuraimangalam
Village being Member of Perambalur Panimadha Parish)

3.Ramasamy

.. Respondents 1 & 2 /
plaintiffs 3rd Respondent/
2nd Defendant

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the District Judge's Court at Perambalur dated 27.10.2003 in A.S.No.14 of 2003 confirming the judgment and decree of the District Munsif Court at Perambalur, dated 11.02.2003 in O.S.No.194 of 1996.

For Appellant :Mr.Valliappan
For Respondents :No appearance

J U D G M E N T

The suit is filed in the representative capacity by two villagers alleging that the suit property is used by them as burial ground.

2. The Courts below have erroneously entertained the suit, without impleading the local authority, who is the appropriate authority under law to maintain the burial ground and identify the burial ground.

3. Since both the Courts have failed to appreciate the correct legal position, this Second appeal has been filed raising the following Substantial Question of Law for consideration:

(i)Whether in law the respondent, who violates the provisions of Municipality Act is entitled to the equitable relief of Injunction to use the suit property as a

burial ground?

(ii) Have not the Courts below committed an error in granting injunction when the appellants who have their property adjacent to the Road have a right to use the road poramboke at all points to reach the Highways?

4. Now, it is seen from the Court records that the persons, who have initiated the suit, are arrayed the respondents 1 and 2 herein and they are not residence of that place anymore and no one else in the villages is interested to continue the suit. Further more, it is represented by the learned counsel appearing for the appellant that the entire stretch of land, which is the subject matter of the suit, has now been taken over by the Highways Department and service road has been laid. To that effect, photos are shown to the Court across the bar.

5. Apart from these reasons, this Court finds that the suit is hopelessly barred for non-joinder of necessary parties and unfortunately, the Courts below have over looked the legal position leading to this second appeal. Hence, the suit is found to be a frivolous suit, bad for want of cause of action as well as non-joinder of necessary parties. The judgment and decree of the courts below is liable to be set aside.

6. Accordingly, the second appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The District Judge, Perambalur
The District Munsif, Perambalur.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.56480

S.A.No.1435 of 2004

SSI (CO)
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