

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2017

PRONOUNCED ON:06.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.645 of 2011

&

M.P.No.1 of 2011

The President,
Nunakadu Panchayat,
Nunakadu,
Thiruthuraipoondi Taluk

... Appellant/1st Respondent
1st Defendant

Vs.

1.Arulmigu. Selliamman Thirukovil, 1st Respondent/Appellant/
by its Fit Person, Plaintiff
Ezhilur Village,
Thiruthuraipoondi Taluk.

2.A.T.Manickam ... 2nd Respondents/2nd Respondent/2nd
Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 03.12.2010 passed in A.S.No.76 of 2009 on the file of the Subordinate Court, Mannargudi reversing the judgment and decree dated 09.09.2009 passed in O.S.No.74 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi.

For Appellant : Mr.A.Sundaravadhanan
For Respondents : No appearance

J U D G M E N T

Challenge in this second appeal is made by the first defendant against the Judgment and decree dated 03.12.2010 passed in A.S.No.76 of 2009 on the file of the Subordinate Court, Mannargudi reversing the judgment and decree dated 09.09.2009 passed in O.S.No.74 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi.

2.The Second Appeal has been admitted and the following substantial question of law is formulated for consideration in this Second Appeal:

(a)Whether the judgment and decree of the first appellate court in accepting the plaintiff's case are based upon the perverse

findings and conclusions and misdirected against the evidence on record?

3.The suit has been laid by the plaintiff for declaration and permanent injunction.

4.The suit is laid in respect of the fishery right in the suit tank. The plaintiff claims confirmation of fishery right in the suit tank based upon the proceedings of the District Collector dated 04.05.1967 marked as Ex.A1. It is found that on a perusal of Ex.A1, as rightly put forth by the appellant's counsel, the fishery right in respect of the suit tank as such had not been conferred on the plaintiff by the District Collector and on the other hand, the fishery right in respect of the suit tank and the other tanks had been recognised only in favour of the villagers of Nunakkadu in common with the condition that the sale of the fishery right of the tanks, utilisation of the income for the purpose of all the local temples as well as for the Sellihaman Koil of Ezhilur village and the proceedings also further provides that the maintenance of the said tank should be attended to by the Nattamaikarars of Nunakkadu village and that proper accounts for all the receipts and expenditure in that behalf should be maintained by the village Nattamaikarars. Therefore, when the basis on which the plaintiff claims fishery right over the suit tank namely Ex.A1, does not grant such right to the plaintiff temple and on the other hand the right has been recognised only in favour of the villagers of Nunakkadu village, the edifice on which, the plaintiff has built up the suit, goes out. In such view of the matter, as rightly put forth by the appellant's counsel when the other evidence projected by the plaintiff are stated to be in continuation of Ex.A1 and when in particular Ex.A1 does not grant any fishery right of the suit tank to the plaintiff as seen above, it could be seen that the other documents projected by the plaintiff would be of no avail to sustain the plaintiff's case.

5.That apart, it is also found from the documents marked as Exs.B1 & B2 dated 13.08.2002 and 29.03.2002 being the proceedings of the District Collector and the Block Development Officer, that the fishery right has been given only to Nattamaikarars for a particular period and thereafter, the fishery right had been granted only to the first defendant/appellant. It could therefore be seen that when the proceedings marked as Exs.B1 & B2 had not been challenged in any manner known to law and when as per the same, the fishery rights in respect of the suit tank had been given to the appellant, the claim of the plaintiff that still it has got fishery right over the suit tank as such cannot be accepted.

6.In this connection, it is also contended by the appellant's counsel that in respect of the other tanks claiming fishery right against the appellant, the courts below have held in favour of the appellant and in this connection, the judgment and decree passed in the other suits had been marked as Exs.B3 to B6. On the side of the appellant, in this second appeal also, the appellant's counsel has relied upon the decision of this court dated 30.03.2009 rendered in S.A. No.634 of 2007, as regards the upholding of the entitlement of the appellant panchayat in respect of the fishery rights over the tank vested with the panchayat and the same would also fortify the entitlement of the panchayat to claim the fishery rights.

7.It is thus found that, as rightly argued by the appellant's counsel, the first appellate court has not properly appreciated the evidence on record and misdirected itself both on the questions of facts and law and wrongly invoking Section 132 of the Tamil Nadu Panchayats Act, which is found to be not applicable to the facts and circumstance of the present case inasmuch as no fishery right had been granted to the plaintiff under Ex.A1 erred in upholding the plaintiff's case without giving cogent, acceptable reasonings and conclusions in reversing the judgment and decree of the trial court.

8.In the light of the above reasons, the substantial question of law formulated in this second appeal is answered in favour of the appellant and against the plaintiff/first respondent.

9.In conclusion, the the Judgment and decree dated 03.12.2010 passed in A.S.No.76 of 2009 on the file of the Subordinate Court, Mannargudi are set aside and the judgment and decree dated 09.09.2009 passed in O.S.No.74 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi are confirmed. Accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dn
To

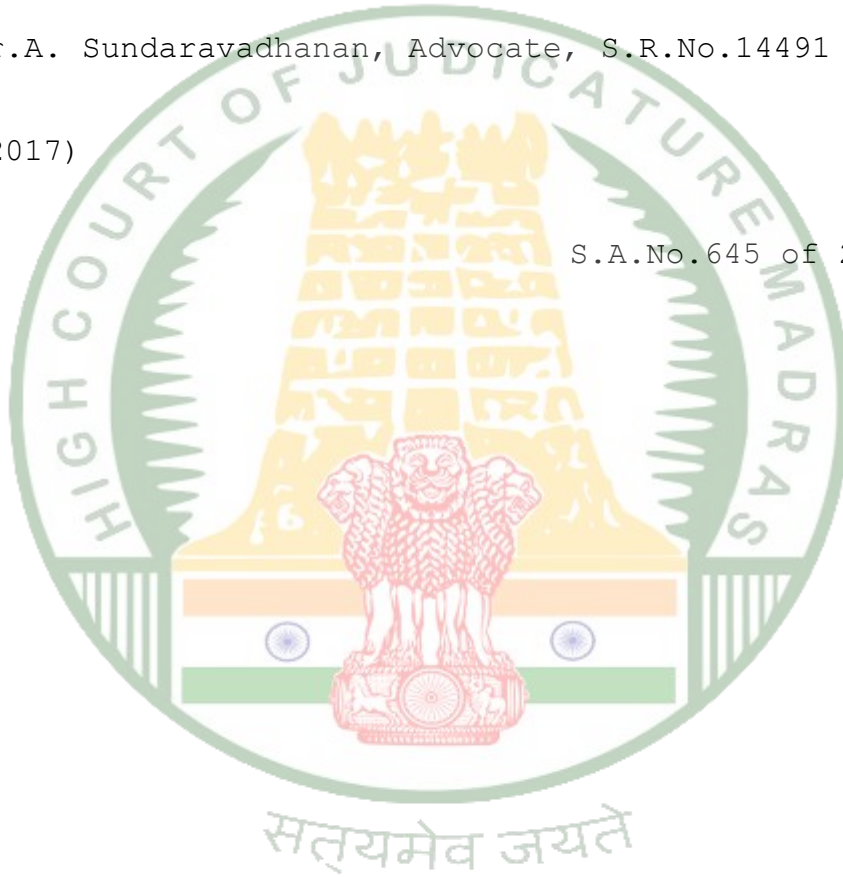
1.The Subordinate Court,
Mannargudi

2.The District Munsif Court,
Thiruthuraipoondi

+lcc to Mr.A. Sundaravadhanan, Advocate, S.R.No.14491

rsy(CO)
md(21/03/2017)

S.A.No.645 of 2011



WEB COPY