

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.999 of 2016  
and  
C.M.P.No.20545 of 2016

The President,  
Indiampalayam Panchayat,  
Indiampalayam,  
Sathyamangalam Taluk, Erode District.

Appellant/7<sup>th</sup>  
Defendant

Vs

1. Kamatchi 1<sup>st</sup> respondent/Plaintiff
2. The District Collector,  
Erode - 638 011, Erode District.
3. The Revenue Divisional Officer,  
Gobichettipalayam,  
Erode District.
4. The Tahsildar,  
Sathyamangalam Taluk Office,  
Sathyamangalam,  
Erode District.
5. Thangaraj
6. Muthusamy
7. The Block Development Officer,  
Sathyamangalam Panchayat Union,  
Sathyamangalam, Erode District

..Respondents 2 to 7/  
Defendants 1 to 6

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 07.10.2015 made in A.S.No.30 of 2014 on the file of the Sub Court, Sathyamangalam, reversing the judgment and decree dated 17.03.2014 made in O.S.No.202 of 2010 on the file of the District Munsif, Sathyamangalam.

For Appellant .. Mr.N.Manokaran  
For Respondents .. Mr.S.Kamadevan for R1

#### JUDGMENT

By consent, the appeal itself is taken up for disposal.

2.The 7<sup>th</sup> defendant, who suffered a decree at the hands of the lower appellate Court, which in turn, reversed the reasoned judgment and decree of the trial Court, is the appellant herein. The appeal has been filed by raising the following substantial questions of law:

(a)Whether the first appellate Court is right in decreeing the suit filed by the plaintiff for permanent injunction especially when the evidence on record would ipso facto prove that the drainage was closed as early as in the year 2002 itself?

(b)Whether the first appellate Court has committed an error in ignoring the evidence of D.W.1 and the revenue documents marked as Exs.B1 to B7 in the absence of any other contra evidence to prove the land use pattern?

(c)Whether the first appellate Court is correct in ignoring the physical features elicited in Ex.C1 and Ex.C2 particularly when the plaintiff has failed to file any objection to the report and plan?

(d)Whether the judgment and decree of the first appellate Court is vitiated for non-compliance of the mandate of Section 96 and Order 41 Rules 31 and 33 C.P.C. before reversing the well-considered judgment of the trial Court?

3.The suit property is the assignment granted in favour of the vendor of the first respondent/plaintiff under the Natham Land Tax Scheme at free of cost for the purpose of constructing a house. The plaintiff has been running a barber shop in the suit property. The sum and substance of the case of the plaintiff in the suit filed for permanent injunction is that the defendants are interfering with the possession and enjoyment of the plaintiff without authority of law.

4.The written statement of the 3<sup>rd</sup> defendant has been adopted by defendants 1, 2 and 6. The 7<sup>th</sup> defendant, who is incidentally the appellant herein, has stated in the written statement that there are two drainages available. Even according to the plaintiff, the drainage running within the suit property has been in existence from time immemorial. It is the

plaintiff's vendor who unlawfully purchased the suit property and constructed the barber shop over the drainage. There is no north south drainage to the east of Nambiyur Road as shown in the plaint plan. In the written statement filed by the other defendants, it has been stated that inasmuch as the assignment itself has been violated, power is available to cancel it. The plaintiff has closed the existing drainage, which resulted in health hazards. Therefore, on the instruction of defendants 3 and 6, the 7<sup>th</sup> defendant has taken action.

5.The trial Court, placing reliance upon the report of the learned Advocate Commissioner, who found the existence of the drainage through the suit property coupled with the admission made by the plaintiff, dismissed the suit by holding that even according to her, the existence of the drainage is not in dispute even at the time of filing the suit. The lower appellate Court reversed the judgment and decree of the trial Court, on the premise that from the documents, it appears that the 7<sup>th</sup> defendant/appellant has acted on the instigation of defendants 4 and 5, who are the private defendants. Reliance has been made on Exs.A3 and A5 viz., the notice issued by the plaintiff followed by a police complaint. Challenging the same, the present appeal has been filed.

6.Mr.N.Manokaran, learned counsel appearing for the appellant submits that the findings of the lower appellate Court being the final Court of fact and law are not based upon the materials available on record. It merely reversed the judgment and decree of the trial Court based upon Exs.A3 and A5 without any basis. The admission is the best part of evidence, particularly, even according to the plaintiff, there exists a drainage through the suit property, the lower appellate Court ought not to have granted the decree.

7.Mr.S.Kamadevan, learned counsel appearing for the first respondent submits that the title of the plaintiff is not in dispute. Except the Tahsildar, no other person has got into the box. The lower appellate Court has correctly considered Exs.A3 and A5 coupled with the evidence of P.Ws. 1 and 2. Thus, no interference is required as reliance has also been made on the newly constructed drainage.

8.Under Section 96 of the Code of Civil Procedure, the first appellate Court is the final Court of fact and law. Therefore, it is expected to consider the entire materials available on record, both oral and documentary and then to give a clear finding as to how the trial Court is correct or wrong as the case may be. The duty of the lower appellate Court becomes more when it seeks to reverse the judgment and decree of the trial Court. This position has been very often reiterated by the Apex Court in number of decisions.

9. In the case on hand, the trial Court has dismissed the suit on the premise that the plaintiff, having accepted the existence of the drainage, has not established her case. Reliance has been made on the admission made by the plaintiff coupled with the report of the learned Advocate Commissioner. Evidence of the Advocate Commissioner was also taken into consideration. The fact that even at the time of purchase of the suit property by the plaintiff, there was an existence of drainage and the same was also taken note of. Unfortunately, the lower appellate Court totally disregarded the admission of the plaintiff coupled with the report of the learned Advocate Commissioner. On the contrary, it made reliance upon Exs.A3 and A5 which are nothing but the documents emanated from the plaintiff as against defendants 4 and 5. Incidentally, the case of the official defendants was also not taken into consideration. It is the case of the official defendants viz., defendants 1, 2, 3 and 6 that action is sought to be initiated by the appellant/7<sup>th</sup> defendant in view of the report of the Health Officer, which occasioned due to the obstruction to the flow of drainage water. Dispute is not per se between the plaintiff on the one side and defendants 4 and 5 on the other side, though it is one of the contentions of the plaintiff. It is much larger. Therefore, the lower appellate Court, in the considered opinion of this Court, has not exercised its function which is required to be done under Section 96 C.P.C. The lower appellate Court committed further error in not coming to the conclusion as to how the trial Court has committed wrong.

10. In such view of the matter, the judgment and decree of the lower appellate Court stands set aside and the matter is remitted back to the lower appellate Court for fresh consideration. The lower appellate Court is directed to decide the appeal on merits, without being influenced by any of the observations made in this appeal, within a period of four months from the date of receipt of a copy of this judgment. Accordingly, the substantial question of law (d) is answered in favour of the appellant and against the first respondent.

11. In the result, the second appeal is allowed. The judgment and decree of the lower appellate Court stand set aside by remitting the appeal for fresh hearing and the appeal shall be disposed of by way of a reasoned judgment. No costs. Consequently, connected miscellaneous petition is closed.

s/d-  
Assistant Registrar (CS-IV)

//True Copy//

Sub-Assistant Registrar

To

1. The Subordinate Judge,  
Sathyamangalam.

2. The District Munsif,  
Sathyamangalam.

+1 CC to Mr. N. Manokaran, Advocate sr 2429

+1 CC to Mr. S. Kamadevan, Advocate sr 1804

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