



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.09.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD) .No.216 of 2015

1. The State of Tamil Nadu,
through its District Collector,
Kanniyakumari District
at Nagercoil.

2. The Tahsildar,
Vilavancode Taluk,
Kanniyakumari District. ... Appellants/ Appellants
/Defendants

Vs.

Sathia Das ... Respondent/Respondent/
Plaintiff

PRAYER : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.112 of 2005 dated 25.09.2007 on the file of the Subordinate Court, Kuzhithurai confirming the Judgment and Decree in O.S.No.470 of 1999 dated 01.09.2004 on the file of the I Additional District Munsif Court, Kuzhithurai by allowing this Second Appeal.

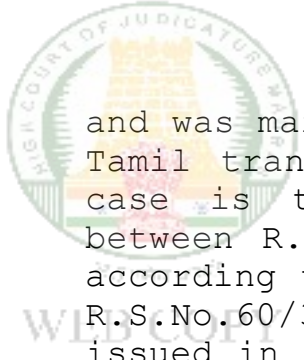
For Appellants : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

For Respondent : Mr.R.Nandakumar

J U D G M E N T

The respondent in this Second Appeal filed O.S.No.470 of 1999 on the file of the learned I Additional District Munsif, Kuzhithurai, seeking the relief of declaration and permanent injunction in respect of 'B' schedule property.

2. The 'B' schedule property measures about 21¼ cents and is
<https://hcservices.in/hcservices/> S.No.60/2. The plaint averment is to the effect
that this property was purchased by the grandfather of the
plaintiff on 10.12.1919. This Sale Deed is a registered document



and was marked as Ex.A.1. Ex.A.1 Sale Deed is in Malayalam and the Tamil translation was marked as Ex.A.2. The plaintiff's specific case is that this 'B' schedule property is lying sandwiched between R.S.No.60/1 and R.S.No.60/3. There is no doubt that even according to the Government, the land comprised in R.S.No.60/1 and R.S.No.60/3 belongs to the plaintiff. In fact Patta has been issued in favour of the plaintiff in respect of those lands. The grievance of the plaintiff is that without notice to him, the 'B' schedule property was erroneously classified as Odai Poramboke. That furnished the cause of action for instituting the present suit proceedings.

3. The learned I Additional District Munsif decreed the suit as prayed for, by Judgment and Decree dated 01.09.2004. The Government filed A.S.No.112 of 2005 before the Subordinate Court, Kuzhithurai. The lower appellate Court dismissed the appeal filed by the Government by Judgment and Decree dated 25.09.2007. Aggrieved by the same, this Second Appeal has been filed.

4. This Court admitted the Second Appeal on the following substantial questions of law:-

"1. Whether the suit is hit by limitation on the part of plaintiff as the suit is filed after a long delay of resurvey?

2. Whether the Courts below have considered that the suit property was classified as poramboke?

3. Whether there is non-appreciation of the evidence and the documents produced by the defendants?"

5. Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondent.

6. As rightly contended by the learned counsel appearing for the respondent, the suit instituted by the respondent can be said to be hit by limitation only if it is demonstrated that resurvey was done after giving notice to the respondent. In this case, there is nothing on record to show that the respondent was put on notice before the resurvey was done. Therefore, this Court has no difficulty in coming to the conclusion that the suit is not hit by limitation.

7. Again as rightly pointed out by the learned counsel appearing for the respondent, the appellants did not file the old survey sketch in respect of the property in question. This aspect of the case has been specifically dealt with in paragraph No.12 of the Judgment of the lower Appellate Court. It is pertinent to mention here that an application for filing old survey sketch was



filed and permission was granted. But even though such permission was granted, the appellants failed to mark such a old survey sketch. The deposition of D.W.1, the Government official has also been extracted verbatim. He had frankly admitted that he was not even aware of the older survey numbers which correlate to the present survey number in R.S.60/2. The lower Appellate Court therefore gave a specific finding that since the old survey sketch was not filed or marked by the Government, it was not possible to accept their stand that 'B' schedule property is actually an Odai Poramboke.

8. Thus this aspect of the matter was also specifically considered by the Courts below. The Courts below had found in favour of the plaintiff only after appreciating the evidence and documents filed by the appellants herein. In fact this Court will have to remark that questions 2 and 3 framed by this Court are not really substantial questions of law. In any event, this Court has no hesitation in answering all the aforesaid substantial questions of law against the appellants herein. There is no merit in this Second Appeal.

9. As a result, the Second Appeal stands dismissed. The Judgment and Decree passed by the learned Subordinate Judge, Kuzhithurai, in A.S.No.112 of 2005, dated 25.09.2007, stands confirmed. No costs.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kuzhithurai.
2. The I Additional District Munsif,
Kuzhithurai.
3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

S.A.(MD).No.216 of 2015

18.09.2017

+1cc to M/s.Special Government Pleader,SR.No. 79739

+1cc to Mr.R.Nandakumar, Advocate, SR.No. 79712

pmu

KK/RP/SAR-2/16.07.2018/3P-7C/