

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1276 of 2000
and
CMP.Nos.487 of 2015 & 3294 of 2018

1. Kolandasamy
2. Ponnusamy ... Appellants/Plaintiffs 1 & 3

Vs.

1. Chenniappa Gounder
2. Gandhi @ Kalyana kumar
3. Muthusamy Gounder ... Respondents/Defendants 1 to 3
4. Valliammal
5. Thilagavathy
6. Minor Radhamani ... Respondents/Plaintiffs 4 to 6

Second Appeal is filed under Section 100 C.P.C. against the Judgement and Decree of the learned Principal District Judge, Erode in A.S.No.86 of 99 dated 29.09.1999 preferred against the Judgment and Decree of the learned District Munsif of Perundurai in O.S.No.155 of 1995 dated 31.08.1998.

For Appellants : Mr.Kaithamalai Kumaran
For RR 1&2 : Mr.V.Lakshmi Narayanan
For Mr.M.Guruprasad
For RR 3 to 6 : Given Up (Vide EB)

J U D G M E N T

The appellant filed a petition under Order 23 Rule 3(b) read with Section 151 of CPC.

2. The brief facts as set out in the petition are as follows:

The appellants have filed a suit for declaration declaring that the appellants and the respondents are entitled to use the "B" schedule property by taking men, cattle-carts, tractors to the respective lands and for consequential permanent injunction. After trial, the Trial Court dismissed the suit holding that the appellants/plaintiffs have no title over the property. Aggrieved by the same, the appellants/plaintiffs filed an appeal, before the Lower Appellate Court. The Lower Appellate Court confirmed the findings of the trial court and dismissed the suit. As against the concurrent findings, the present second appeal is filed.

3. The present petition is filed under Order 23 Rule 3 (b) of CPC seeking permission of this Court to withdraw the suit and to file a fresh suit on the same cause of action, to permit the appellant for claiming easementary rights.

4. Mr.Lakshmi Narayanan, the learned counsel appearing for the respondent/defendant would submit that, initially the suit was filed for claiming his title over the property on par with the respondent/defendant. The Lower Appellate Court confirmed the title in favour of the defendant and rejected the claiming title by the plaintiff. Already both the Courts below arrived at a conclusion that the respondents have no title over the property. Now, the present petition is filed under Order 23 Rule 3 (b) on the same cause of action and it is not permissible one. However, the learned counsel accepted, that if the appellants/plaintiffs wants to file a fresh suit for establishing their right to use the pathway through easementary rights, it will be a different cause of action. Accordingly, permission may be granted to the appellant/plaintiff to institute a fresh suit on different cause of action.

5. I have heard the rival submissions made by the learned counsel appearing for the appellants as well as the respondents and perused the present petition which has been filed by the appellant. After accepting the title in favour of the defendant, the decree of proof for claiming the easementary rights is a different cause of action and pleadings.

6. The learned Senior Counsel appearing for the appellant accepted the submission made by the learned counsel for the respondent. Accordingly, liberty is granted to the appellants to file a suit before the Competent Civil Court and liberty is granted to the respondents/defendants to raise all their objections in the suit that is to be filed by the appellant, if cause of action arose.

7. With the above observation, the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

msm

To

1. The Principal District Judge,
Erode.

2. The District Munsif,
Perundurai.

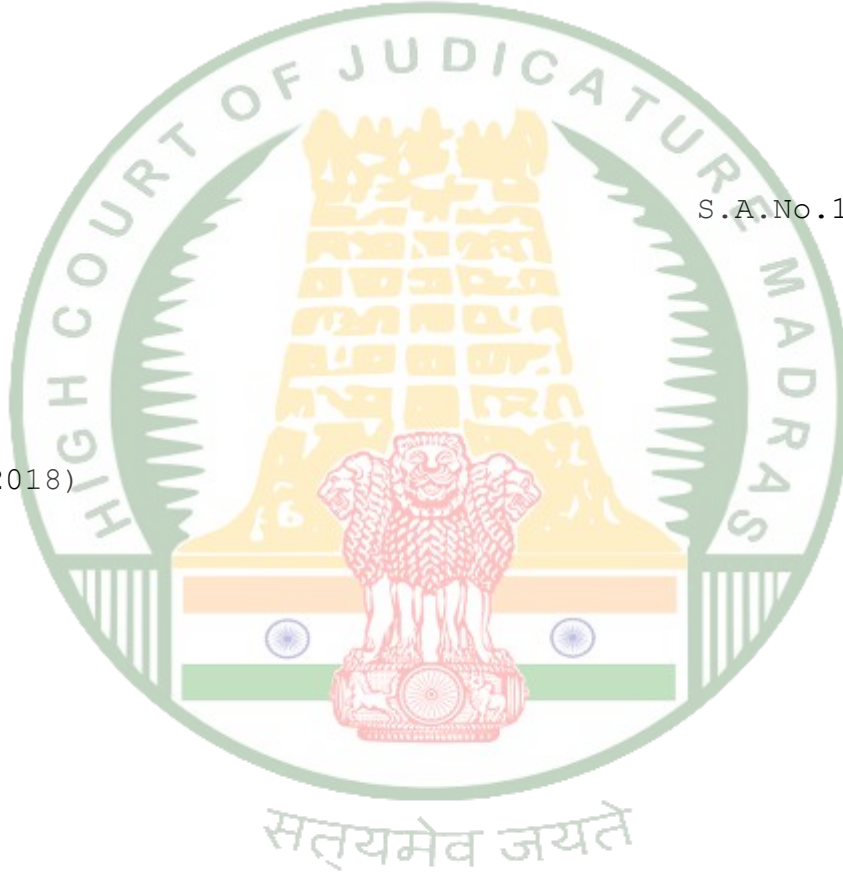
3. The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 17525.

+1 CC to Mr.M. Guruprasad, Advocate sr 17841.

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CNR (CO)
SP(12/04/2018)



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