

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :21.03.2018
PRONOUNCED ON:13.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.2285 & 2286 of 2003

S.A.No.2285 of 2003

1.E.T.Rajappan

2.E.T.Arumugam

3.E.T.Vellingiri (Deceased)

[Memo is recorded.Third appellant died.
Memo dated 12.03.2018(present in court)
appellants 1 and 2 are recorded as L.R's
of the deceased 3rd appellant vide order of
Court dated 12.03.2018 in S.A.Nos.2285
of 2003]

Vs.

... Appellants/Defendants

E.C.N.Maraiyan

... Respondent /Plaintiff

S.A.No.2286 of 2003

1.E.T.Vellingiri (Deceased)

2.E.T.Rajappan

3.E.T.Arumugam

..Appellants/Defendants

[Memo is recorded. First appellant died.
Memo dated 12.03.2018(present in court)
appellants 2 and 3 are recorded as L.R's
of the deceased first appellant vide order of
Court dated 12.03.2018 in S.A.Nos.2286
of 2003]

Vs.

E.C.N.Maraiyan

... Respondent/Plaintiff

Prayer S.A.No.2285 of 2003: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.77 of 2003 on the file of the Principal District Judge, Coimbatore dated 21.08.2003 by reversing the judgment and decree passed in O.S.No.127 of 1999 in the file of District Munsif, Mettupalayam dated 04.03.2003.

Prayer S.A.No.2286 of 2003: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.78 of 2003 on the file of the Principal District Judge, Coimbatore dated 21.08.2003 by reversing the judgment and decree passed in O.S.No.3 of 2000 in the file of District Munsif, Mettupalayam dated 04.03.2003.

For Appellants : Mr.V.Radhakrishnan, SC
for M/s. S.Kadarkarai

For Respondent : Mr.R.Thiagarajan, SC
for M/s.R.N.Amarnath

C O M M O N J U D G M E N T

Second appeal Nos.2285 of 2003 and 2286 of 2003 are directed against the judgment and decree dated 21.08.2003 passed in A.S.Nos.77 of 2003 and 78 of 2003 respectively on the file of the Principal District Court, Coimbatore reversing the judgment and decree dated 04.03.2003 passed in O.S.Nos.127 of 1999 and 3 of 2000 on the file of the District Munsif, Mettupalayam

2. Both O.S.Nos.127 of 1999 and 3 of 2000 had been laid by the respondent/plaintiff for permanent injunction.

3.The case of the Respondent/plaintiff in both the suits in brief is that the suit properties involved in the suits belonged to the Public Works Department, Bhavanisagar and the suit properties were leased out to the plaintiff by the Public Works Department in the years 1983 and 1988 respectively and since then, it is only the plaintiff, who has been in peaceful possession and enjoyment of the suit properties and the plaintiff based on the lease, had been paying the lease amount to the Public Works Department, Bhavanisagar and the defendants/appellants, who are brothers, are jointly owing the lands situated on the eastern side of the suit properties and the suit properties are situated in between the Bhavani river and the defendants lands and therefore, the defendants approached the plaintiff, to sell the suit properties to them, to which, the plaintiff refused and enraged over the same, the defendants attempted to interfere with the plaintiff's possession and enjoyment of the suit properties to which they are not entitled to and the defendants with ulterior motive also

filed a Caveat petition alleging that they are in possession and enjoyment of the suit properties with a view to prevent the plaintiff from obtaining any order from the court and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs against the defendants.

4.The case of the appellants/defendants in brief is that the suits laid by the plaintiffs are not maintainable either in law or on facts. It is true that the suit properties belonged to the Public Works Department, Bhavanisagar and however, it is false to state that the plaintiff has taken the suit properties on lease from the Public Works Department during 1983 and 1988 and it is false to state that the plaintiff has been enjoying the suit properties as a lessee and paying the lease to the Public Works Department and the plaintiff had never, at any point of time, enjoyed the suit properties and the oil engine located in the suit properties belong to the defendants and the defendants own land in survey No.737/2C which is situated to the east of the suit properties and the suit properties as well as the defendants' own lands in survey No.737/2C are being irrigated through the existing underground pipeline which run in SF No.s735, 736 and 758/1B and to the defendants' own lands in SF Nos.737/2C and again the pipeline run from SF No.737/2C to the suit survey numbers through open channel and the Advocate Commissioner has also noted the existing physical features obtaining in the suit properties and filed his report and plan. The case of the plaintiff that the defendants approached the plaintiff for selling the suit properties is false and invoked for the purpose of the case and it is false to state that the defendants attempted to interfere with the plaintiff's possession and enjoyment of the suit properties and as the suit properties are in the possession and enjoyment of the defendants, there is no scope for any interference as put forth in the plaint. Anticipating that the plaintiff may take action against the defendants in respect of the suit properties, the defendants have filed the Caveat Petition and the plaintiff is not in possession and enjoyment of the suit properties and hence the suits laid by the plaintiff are liable to be dismissed.

5.It is found that O.S.Nos.127 of 1999 and 3 of 2000 were separately tried by the trial court and accordingly, it is seen that in support of the case of the plaintiff in O.S.No.127 of 1999, P.Ws.1 and 2 were examined. Exs.A1 to A9 were marked and on the side of the defendants' D.Ws.1 to 4 were examined and Exs.B1 to B8 were marked. Exs.C1 and C2 were also marked. In O.S.No.3 of 2000, in support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A11 were marked. On the side of the defendants', D.Ws.1 to 4 were examined. Exs.B1 to B5 were marked.

6. On a consideration of the oral and documentary evidence

adduced by the respective parties and the submissions made, the trial court was pleased to dismiss both the suits laid by the plaintiffs. The first appellate court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court in both the suits and by way of allowing the appeals preferred by the plaintiff, decreed the suits as prayed for. Aggrieved over the same, the present second appeals have been preferred.

7. At the time of admission of the second appeals the following substantial question of law was formulated for consideration.

"Is not the judgment of the lower appellate court granting a decree for injunction by reversing the judgment of the trial court is opposed to the material evidence available on record."

8. Though, it is found that the suits laid by the plaintiff were separately tied and separate oral and documentary evidence had been adduced by the respective parties in the above said suits i.e. in O.S.Nos.127 of 1999 and 3 of 2000, it is found that most of the evidence, both oral and documentary adduced by the respective parties in both matters, being one and the same and accordingly, it is found that the second appeals could be disposed of on the basis of the evidence adduced in both matters as referring to the exhibits marked in O.S.No.127 of 1999. The documents relied upon by both the parties marked in O.S.No.127 of 1999 are also relied upon by the parties in O.S.No.3 of 2000 as the same had been again marked in the subsequent suit.

9. The suits have come to be laid by the plaintiff for the relief of permanent injunction. It is not in dispute that the suit properties involved in the matter belonged to the Public Works Department and accordingly, it is found that both the plaintiff as well as the defendants are claiming only the right to be in possession and enjoyment of the suit properties on one premise or the other and contesting the claim of the rival party as such. The plaintiff's claims to be in the possession and enjoyment of the suit properties by way of lease arrangement from the Public Works Department and it is stated that the plaintiff has taken the lease of the suit lands during 1983 and 1988 from the Public Works Department and enjoying the same by paying lease etc., to the Department and according to the plaintiff, inasmuch as the defendants attempted to interfere with his possession and enjoyment of the suit properties, he has been necessitated to lay the suits for appropriate reliefs.

10. Per contra, it is the case of the defendants that the case of the plaintiff that he has been possession and enjoyment of the suit of properties as the lessee from the Public Works Department is false and plaintiff has never been in possession and enjoyment of the suit property at any point of time as

pleaded and on the other hand, it is only the defendants, who are in possession and enjoyment of the suit properties along with their own properties and irrigating all the properties by way of common pipe lines as noted by the Advocate Commissioner in his plan and report and hence, it is stated that the plaintiffs are not entitled to obtain the reliefs of permanent injunction as prayed for.

11. In the light of the above defence projected by the defendants particularly alleging that the plaintiff has never been in possession and enjoyment of the suit properties at any point of time and the plea of lease arrangement projected by the plaintiff is also false, it is for the plaintiff to establish that, as pleaded, he has taken the suit properties on lease from the Public Works Department and accordingly, enjoying the suit properties as put forth by him.

12. The plaintiff examined as P.W.1 in both the suits, during the course of cross examination, has admitted that he has not filed the lease deeds executed by the Public Works Department in his favour for taking lease of the properties and further, according to him, apart from the lease receipts marked in the suits, there is no other material placed by him to evidence that he has been in possession and enjoyment of the suit properties. At this juncture, it is to be noted that the plaintiff was, at one point of time, the Panchayat President of the suit village. Further according to the plaintiff, during course of cross examination, he has admitted that he has not filed any adangal extract to establish that he has been in possession and enjoyment of the suit properties by cultivating the same and it has been admitted by the plaintiff that the suit properties or lands could be irrigated only from the Bhavani river and also admitted that if Bhavani river is used for irrigation, water tax should be paid and admitted that he has not filed any water tax receipts to show that he had been irrigating the suit lands utilising Bhavani river. Further, as per the report and plan of the Advocate Commissioner, it is found that two oil engines are available in the suit properties, one oil engine is defunct and the other oil engine is functioning and the plaintiff during the course of cross examination has admitted that he has not filed any document to show that oil engines located in the suit properties were acquired by him. Further, the plaintiff would claim that the neighboring land owners are aware as to who is in possession and enjoyment of the suit properties, however, the plaintiff has not chosen to examine the said persons to sustain his case.

13. In the light of the above said evidence of the plaintiff, it is evident that other than the lease receipts marked by the plaintiff, there is no material worth acceptance to hold that the plaintiff had taken the suit properties on lease from the

Public Works Department and following the same, enjoying the suit properties as the lessee of the Public Works Department. Further to evidence that the plaintiff is in physical possession and enjoyment of the suit properties and engaged in the cultivation of the same as put forth by him, the adangal extracts maintained by the Department concerned had not been chosen to be secured and produced in the suits. It is admitted that except Bhavani river, there is no other source for irrigating the suit lands. If that be so, if really, the plaintiff had engaged in the cultivation of the suit properties by way of utilizing the Bhavani river, as admitted by the plaintiff, he would have paid necessary water charges with reference to the same. However, the necessary water tax receipts has not been filed in the suits. No reason has been adduced by the plaintiff for the same. Though the plaintiff would claim that he has been in possession and enjoyment of the suit properties by installing oil engines and drawing water from Bhavani river through the aid of oil engines, there is no proof placed to show that the oil engines available in the suit properties are belonging to the plaintiff. As above seen, the neighboring land owners have not been examined in support of the plaintiff's case for the reasons best known to the plaintiff, though the plaintiff would claim that the neighboring land owners are aware as to which party is in possession and enjoyment of the suit properties.

14. P.W.2 examined on behalf of the plaintiff is the Inspector working in Public Works Department and he would depose that based on the lease arrangement, the plaintiff has been in possession and enjoyment of the suit lands and he would also say that lease receipts have been issued in favour of the plaintiff. However, during the course of cross examination, he would admit that to evidence that the suit lands has been leased to the plaintiff by the Department, there is no lease deed and according to P.W.2 other than Ex.A6 series, he has not filed any document to show that the plaintiff has been in possession and enjoyment of the suit properties. Further, P.W.2 has also admitted that for irrigating the suit lands from Bhavani river, he is not aware as to who has been paying the water tax charges, with reference to the same and that apart, P.W.2 has also admitted that to evidence that the suit properties are in possession and enjoyment of a particular person and the crops raised therein, there are documents available in the department. It is thus found that the evidence of P.W.2 seems to be based only on the lease arrangement said to have been effected by the Department in favour of the plaintiff. However, the fact remains that other than the lease receipts, a few in numbers marked in the suits, there is no acceptable and reliable material to show that it is only the plaintiff who has been in actual peaceful possession and enjoyment of the suit properties by cultivating the same and the plaintiff has not chosen to file

the best documents to evidence the same, such as, lease deeds, adangal extracts, water tax receipts and also not chosen to examine the neighboring land owners. When according to P.W.2, there are vital and crucial documents available in the Department to show that the plaintiff had been taken the lease of the suit properties several years, it does not stand to reason, as to why the said documents to sustain his case or the plaintiff's case, other than marking the lease receipts, had not been summoned and produced. No doubt, the plaintiff has also chosen to mark the extract from the Public Works Department lease register as Ex.A6 series as if, his name has been entered in token of his having taken the lease of the suit lands. But, when according to the plaintiff as well as P.W.2, there are lease deeds executed in favour of the plaintiff for taking the lease of the suit lands, neither the plaintiff nor P.W.2 has shown interest to produce the said lease deeds. However, they had chosen to remain content only by marking the lease receipts and certain entries/extracts in the Public Works Department lease Register marked as Exs.A1 series and A6 series respectively and thus, it is found that, when other vital and crucial documents are available to establish the physical possession and enjoyment of the suit properties, despite the same, plaintiff has not chosen to produce and mark the same and as rightly argued, it is not the case of the plaintiff or P.W.2 that the abovesaid vital and crucial documents to establish the physical possession and enjoyment of the suit lands by the plaintiff are not available. On the other hand, according to them, they are very much available and in such view of the matter, the plaintiff having come forward with the suits seeking the equitable relief of permanent injunction, it does not stand to reason as to why the plaintiff should feel shy in producing the said documents to sustain his case and in such view of the matter, it is seen that merely from the lease receipts Ex.A1 series and the extracts of the Public Works Department lease register, we cannot safely conclude that the plaintiff is in physical possession and enjoyment of the suit lands and cultivating the same as put forth by him.

15.The other documents relied upon by the plaintiff for sustaining his possession and enjoyment of the suit properties are Exs.A7 to A9, in particular, Ex.A8 which is the letter dated 05.10.2001 sent by the Assistant Engineer, Public Works Department to Tahsildar, Mettupalayam. It is found that, by way of the said letter, it has been informed that the plaintiff has been leased out the suit properties. However, as rightly put forth, by way of the said letter, it cannot be considered safely that the plaintiff is in actual physical possession and enjoyment of the suit properties as claimed by him. As above stated, to establish the above said facts, though the best evidence and documents are available still for the reasons best known to the plaintiff, he has not chosen to place the same for

the consideration of the Court. Further, it is seen that Ex.A8 is found to have emanated after the institution of the suit and in such view of the matter, it is seen that no safe reliance could be placed upon the said document as well as Ex.A7 to hold that the plaintiff is in physical possession and enjoyment of the suit properties. Ex.A9 is the proceeding of the Tahsildar, Mettupalayam and the said proceeding has come to be issued based on the demand of the first defendant to levy water tax penal charges in respect of the suit lands in his favour. On that representation of the first defendant, it is found that the Tahsildar, Mettupalayam has, based on Ex.A8 letter dated 05.10.2001 as well as Ex.A7 letter dated 02.12.2001, opined that the suit lands had been only leased out to the plaintiff and further also noting that as the parties are vying with each other for claiming to be in possession and enjoyment of the suit properties and already the suits in O.S.No.127 of 1999 and 3 of 2000 are pending before the Civil Courts, accordingly rejected the request of the first defendant to levy the water tax penal charges in his name in respect of the suit lands. The abovesaid proceeding of the Tahsildar, Mettupalayam dated 08.03.2002, having come in to the existence after the institution of the suit and based upon the letter of the Assistant Engineer, Public Works Department dated 05.10.2001 marked as Ex.A8 and another letter of the Assistant Engineer, Public Works Department dated 02.12.2001 marked as Ex.A7, it is found that, based on the abovesaid documents, in whole, we cannot safely hold that the plaintiff is in possession and enjoyment of the suit lands particularly, in physical possession and enjoyment of the suit lands on the date of the suit and earlier to the institution of the suit. It is thus found that the trial court has rightly not placed reliance upon the abovesaid documents Exs.A7 to A9 for upholding the plaintiff's case. On the other hand, the first appellate court seems to have relied mainly upon those documents and thereby set aside the well considered judgment and decree of the trial court on an erroneous approach of the matter.

16.It is found that, on the basis of the representation given by the first defendant to issue water tax penal charges in his name, in respect of the suit lands, the suit properties had been personally inspected by the Revenue Inspector concerned and on an inspection of the suit properties, it is found that he has submitted his report to his next higher authority which has come to be marked Ex.B6. The author of Ex.B6 has examined as D.W.4. On a perusal of Ex.B6, it is found that the Revenue inspector namely D.W.4, on the inspection of the suit properties found that it is only the defendants who are in possession and enjoyment of the suit lands along with other their own patta own lands situated in survey No.737/2C and irrigating the patta lands as well as the suit lands with the aid of Bhavani river by taking the water from Bhavani reiver through the underneath pipeline laid under the suit lands which extend even to the

patta lands to the defendants as well as the pipelines again extending from the patta lands to the suit lands through the open channel system and accordingly, also noted that the oil engine fitted in the suit lands is being utilised for drawing water from the Bhavani river for irrigating the suit lands as well as the patta lands of the defendants. In the light of the above said report of the Revenue Inspector, which has been prepared following the spot inspection of the suit properties, it is evident that it is only the defendants who are in actual physical possession and enjoyment of the suit properties and accordingly, it is found that the defendants are drawing water from the Bhavani river with the aid of oil engine functioning in the suit lands and taking water from the Bhavani river through the underneath pipelines to their patta lands through the suit lands and again from the patta lands to the suit lands through open channel system and by way of the same, the defendants have clearly established that the suit properties are only in their physical possession and enjoyment. That apart, it is also found that the defendants have marked the tax charges paid by them for drawing water from the Bhavani river for irrigating the suit lands as well as their patta lands, which have come to be marked as Ex.B4 series and by way of the said documents, it is found that the defendants and their predecessors in interest are drawing water from the Bhavani river through the pipelines imbedded underneath the suit lands to their patta lands and vice versa and accordingly it is seen that adequate and convincing documents are placed by the defendants to establish their possession and enjoyment of the suit properties.

17.No stopping there, in this matter, the Advocate Commissioner has inspected the suit properties and filed his report and plan marked as Exs.C1 and C2. On a perusal of Exs.C1 and C2 in detail, it is found that the Advocate Commissioner has noted that of the two oil engines located in the suit lands, only one is functioning and also noted that the water is being drawing from the Bhavani river through the pathway located in the suit lands and accordingly, the water is being taken to the patta lands of the defendants, by way of underneath pipelines and again from the patta lands of the defendants to the suit lands through pipelines and through open channel system and thus the physical features noted by the Advocate Commissioner obtaining in the suit properties and the patta lands of the defendants seen cumulatively would go to expose that inasmuch as the suit properties are being enjoyed and irrigated by the defendants along with their patta lands situated in survey No.737/2C and accordingly, irrigating all the lands by way of drawing water from the Bhavani river through the underneath pipelines as well as the open channel system laid in the lands, it is found that the abovesaid features noted by the Advocate Commissioner coupled with the features noted by the Revenue

Inspector as depicted in Ex.B6 go to show without any doubt that it is only the defendants, who is in physical possession and enjoyment of the suit properties. However, the first appellate court on the footing that, as the Advocate Commissioner had noted that the plantain crops available in the suit lands as well as the patta lands of the plaintiff and as no plantain crops were available in the defendants' patta lands at that point of time, on that basis, proceeded to hold that the plantain crops raised in the suit lands should have been only by the plaintiff. However, as rightly argued, the above reasoning of the first appellate court seems to be unacceptable as the same has been inferred by the first appellate court without considering the other physical features noted by the Advocate Commissioner as obtaining in the locality and accordingly, it is found that as the defendants are drawing water from the Bhavani river for irrigating the suit lands as well as the patta lands in unison, they are accordingly, paying necessary tax charges which could be evidenced from Ex.B4 series.

18.The plaintiff was present during the inspection of the suit properties by the Advocate Commissioner and also to the physical features as seen and detailed in the report and plan of the Advocate Commissioner, it appears that the plaintiff has not put forth any objection to the report and plan of the Advocate Commissioner. That apart, the plaintiff, during the course of his evidence has only stated that the features noted by the Advocate Commissioner, as regards the drawing of the water from Bhavani river through the underneath pipelines, by way of the oil engine located in the suit lands to the patta lands of the defendants and vice versa from the patta lands of the defendants to the suit lands, by way of open channel system are incorrect and that apart did not endeavor or take further steps to issue a fresh Commission to inspect the suit properties for ascertaining that it is only he, who has been drawing water from the Bhavani river for irrigating the suit lands as well as his own patta lands. Thus, impliedly, it is found that the plaintiff has accepted the Advocate Commissioner's report and plan and accordingly, when it is prima facie established that it is only the defendants, who are in actual physical possession and enjoyment of the suit properties as well as their other patta lands by cultivating the same with the aid of Bhavani river and drawing the water through the pipeline laid underneath the suit lands as well as their patta lands and vice versa, it is seen that unable to resist the same, the plaintiff has not endeavored to establish that is only he who has been irrigating the suit lands with the aid of Bhavani river. As above seen, if really, the plaintiff had been irrigating the suit lands using Bhavani river, he would have paid necessary tax charges in connection with the same. However, according to the plaintiff, he has not filed any tax charges for drawing water from Bhavani river and this would only go to establish that inasmuch as the suit lands

are not under the cultivation of the plaintiff, it is found that the plaintiff has not chosen to place any acceptable and reliable materials to sustain his case.

19. It is only the party, who seeks the equitable relief of injunction, who has to establish his case by proving that the properties in dispute are in his physical possession and enjoyment of the same on the date of the suit. When the plaintiff claims that the suit lands are in his possession and enjoyment, on the basis of the lease arrangement with the Public Works Department and when the same is disputed by the defendants by contending that the suit lands are only in their possession and enjoyment and despite the above stand of the defendants, the plaintiff having not come forward with acceptable and reliable materials other than marking certain lease receipts and extracts in the Public Works Department Register and when even according to the plaintiff as well as P.W.2, there are other vital and crucial documents available for establishing the physical possession and enjoyment of the suit properties by the plaintiff, it does not stand to reason as to why the plaintiff had not endeavored to secure and produce the said documents to establish his case. That apart, on the features available in the suit lands as well as the defendants' lands situated adjacent thereto, it is seen that it is only the defendants, who are in possession and enjoyment of the suit lands as well as their patta lands by jointly irrigating the same with the aid of Bhavani river through the underneath pipeline as above discussed and as the suit lands never been under the cultivation of the plaintiff, the plaintiff has been unable to point out any features available to the Commissioner to establish his possession and enjoyment of the suit lands particularly, that it is he, who has been irrigating the same along with this patta lands. Thus, it is found that plaintiff has miserably failed to establish his case that he has been in physical possession and enjoyment of the suit properties on the date of the filing of the suit and thus , it is seen that the plaintiff would not entitled to obtain the equitable relief of permanent injunction.

20. However, it is contended by the plaintiff's counsel that the defendants have not established as to, in what capacity they had been paying the water tax charges in respect of the suit lands and hence their case should not be accepted. However, the plaintiff having come forwarded with the suits seeking for specific reliefs, should stand or fail on the strength of his own case. He cannot be allowed to pick holes in the defendants' case and thereby endeavor to succeed in his case without proof by placing reliable and convincing materials with reference to the same. Such being the position, it is found that even assuming for the sake of arguments that the defendants' version could not be accepted as such, still the plaintiff having laid the suit and seeking the reliefs prayed for, should establish

his case for his entitlement to the reliefs sought for by placing the materials worth acceptance and in so far as this case is concerned, the plaintiff having failed to do the same, it is found that the first appellate court has, on an erroneous appreciation of the materials placed on record, without considering the same in the proper perspective both factually as well as legally set aside the well considered judgment and decree of the trial court and in such view of the matter, the judgment and decree of the first appellate court cannot be allowed to sustain any further.

21.The counsel for the defendants in support of his contentions, placed reliance upon the decisions reported in 2017 (7) SCC 694 [Agnigundala Venkata Ranga Rao Vs. Indukuru Ramachandra Reddy (dead) by legal representatives and others] and 2008 (6) MLJ 597 [Udhayakumar and others Vs. Krishnamoorthy @ S.K.Moorthy] and the counsel for the plaintiff, in support of his contentions placed reliance upon his decisions reported in

(1)2008 (3) CTC 597 [K.M.A.Wahab and 5 others Vs. Easwaran and another]

(2)2015 (13) SCC 673 [Zarif Ahmad (dead) through legal representatives and another Vs. Mohd. Farooq]

(3)2017 (7) SCC 694 [[Agnigundala Venkata Ranga Rao Vs. Indukuru Ramachandra Reddy (dead) by legal representatives and others]

(4)2008 (6) MLJ 597 [Udhayakumar and others Vs. Krishnamoorthy @ S.K.Moorthy]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case at hand.

22.For the reasons aforesaid, it has to be held that the judgment and decree of the first appellate court in accepting the plaintiff's case and granting the decree in favour of the plaintiff as prayed for by reversing the well considered judgment and decree of the trial court is found to be not on the proper appreciation of the materials and evidence available on record and in such view of the matter, the judgment and decree of the first appellate court do not merit acceptance and liable to be set aside and accordingly the substantial question of law formulated in the second appeal is answered in favour of the defendants and against the plaintiff.

22.In conclusion, the judgment and decrees dated 21.08.2003 passed in A.S.Nos.77 of 2003 and 78 of 2003 respectively on the file of the Principal District Court, Coimbatore are set aside

and the judgment and decrees dated 04.03.2003 passed in O.S.Nos.127 of 1999 and 3 of 2000 on the file of the District Munsif, Mettupalayam are confirmed and accordingly, the second appeals are allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Principal District Court,
Coimbatore.
2. The District Munsif,
District Munsif Court,
Mettupalayam.
3. The Section Officer,
VR Section,
High Court, Madras 104.

+1 CC to Mr.S. Kadarkarai, Advocate sr 27395.

+2 Ccs to Mr.R.N. Amarnath, Advocate sr 27556 & 27557

S.A.Nos.2285 & 2286 of 2003

NM(CO)
SP(30/05/2018)

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