

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1550 of 2003

- 1.The State of Tamil Nadu,
Rep. by the District Collector,
Erode District.
- 2.The Superintending Engineer,
Public Works Department,
Salem.
- 3.The Executive Engineer,
Public Works Department,
Mettur. Appellants/Defendants

Vs.

- 1.S.Sundara Reddiar (Died) ...Respondent/Plaintiff
- 2.M.Vivekanandan
- 3.R.Venkateshwari
- 4.R.Parvadhavardhini
- 5.S.Indhumathi
- 6.S.Deepa
- 7.S.Gokula Krishnarayan
- 8.S.Bama Rukmani ... Respondents

[Respondents 2 to 8 brought on record as LRs' of the deceased sole respondent viz., S.Sundara Reddiar vide order of Court dated 04.12.2019 made in CMP.No.5657, 5663 and 5664 of 2019 in SA.No.1550 of 2003 (GKIJ)]

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 22.03.1999 made in A.S.No.121 of 1998 on the file of the learned Subordinate Judge, Bhavani, Erode District, reversing the Judgment and Decree dated 04.08.1998 made in O.S.No.554 of 1995 on the file of the learned Additional District Munsif Court, Bhavani.

For Appellants : Mr.S.Jagannathan
Government Advocate (C.S.)

For R1 & R4 : Died

For R2, R3, R5
to R8 : Notice served - No appearance

J U D G M E N T

This appeal has been filed as against the Judgment and the Decree dated 22.03.1999 made in A.S.No.121 of 1998 on the file of the learned Subordinate Judge, Bhavani, Erode District, reversing the Judgment and Decree dated 04.08.1998 made in O.S.No.554 of 1995 on the file of the learned Additional District Munsif Court, Bhavani.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3.The case of the plaintiffs in brief is that the suit property is the ancestral property of the plaintiff and by virtue of the family partition, the suit property was allotted in favour of the plaintiff and ever since from the date of the partition the plaintiff is in possession and enjoyment of the suit property. The revenue records also mooted in his name and he is paying the tax to the suit property. The local name of the suit survey filed is also called as "Kilakkathiyan Thottam". The mettur west irrigation channel is under the control of the defendants and it is comprised in Survey No.36 running from north south on the western side of the suit property and there is an west east pallam situated on the northern side of the suit property. In order to avoid soil erosion on the north western side of the suit property the plaintiff put up a ridge along with water channel and there are about 15 various types of trees were grown up by the plaintiff in the suit property which belonged to the plaintiff. The trees situated in the suit property are absolutely belonged to the plaintiff. The Government has also put up a drinking water borewell pipe in S.F.No.36. When the plaintiff objected about putting up the numbers for the trees in the suit property, the third defendant by the communication dated 21.06.1995 rejected the ownership of those trees against the plaintiff. Hence, the suit for declaration and permanent injunction has been filed.

4.The third defendant resisted the plaintiff's case by filing written statement stating that the mettur west bank canal was formed in S.F.No.36 of Neringipettai Village, Bhavani Taluk during the year 1954-1955. The canal bank is on a higher level than the fields belonging to the plaintiff. The trees claimed by the plaintiff are situated in the levels between 0.5 Metre to 1.50 Metre above the level of his field. The trees are actually standing only on the canal bank slopes. The trees numbering 15 were grown up by the Public Works Department and maintained by the defendants. Therefore, the defendants have absolute power and they are the competent authorities for the trees grown up by them and prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and two documents were marked as Ex.A.1 and Ex.A2. On the side of the defendants D.W.1 was examined and did not mark any documents. The Commissioner's report, plan and FMB were marked as Ex.C1 to Ex.C3. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial court dismissed the suit filed by the plaintiff. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.121 of 1998 before the Subordinate Court, Bhavani, Erode District. The first appellate Court on appreciating the materials placed on records, allowed the appeal and decreed the suit in favour of the plaintiff. Challenging the same, the defendants have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:-

- "a) Whether the Lower Appellate Court is right in decreeing the suit?
- b) Whether the Lower Appellate Court is correct in holding that the trees are standing in S.F.No.34?"

7. Heard Mr.S.Jagannathan, learned Government Advocate (C.S.) appearing for the appellants.

8. The plaintiff owned the land comprised in S.No.34 and it was allotted in his favour by the partition among the family members. The mettur west irrigation channel is comprised in S.No.36 running north to south of the western side of the suit property belongs to the plaintiff. In order to reduce the soil erosion on the north-western side of the water channel the trees were developed to prevent the soil erosion. Subsequently, those trees were planted by the defendants and maintained by them. While being so, the plaintiff filed a suit for declaration that declaring those trees were planted by him and maintained by him and as such all the trees are belonged to the plaintiff. Even according to the plaintiff the defendants passed an order dated 21.06.1995, thereby the request of the plaintiff to remove the numbers for the trees was rejected and thereby denied the plaintiff's title over the suit property. The plaintiff marked the tax receipt as Ex.A1 and the communication dated 21.06.1995 received from the defendants was marked as Ex.A2. The Advocate Commissioner's report, his plan and FMB were marked as Ex.C1 to Ex.C3.

9. On perusal of the Advocate Commissioner's report it is seen that on the western side of the defendants land, the water channel running from north to south and in order to prevent the soil erosion there are 12 trees were planted and

it is situated on the boundary of the land comprised in S.No.36. Though the plaintiff claimed ownership of the trees, he failed to produce any piece of evidence to show that those trees were planted and maintained by the plaintiff. Even according to the plaintiff, the trees were numbered by the Public Works Department and also they rejected the claim of the plaintiff. Therefore, the trial Court has rightly dismissed the suit filed by the plaintiff. Unfortunately the first appellate court wrongly concluded that the trees were belonged to the plaintiff and the trees were situated at the boundary of the land comprised in S.No.34. Admittedly, on the western side of the water channel the plaintiff's land is situated and the water channel is situated in the land comprised in S.No.36. Therefore, the finding of the first appellate court is perverse and against the evidence on record. As if, this Court has no other option to interfere with the finding of the first appellate court. In view of the above discussion all the substantial questions of law, formulated by this Court in the Second Appeal, are answered as against the plaintiff and in favour of the defendants.

10. Accordingly, the Second Appeal is allowed. The judgment and decree dated 22.03.1999 made in A.S.No.121 of 1998 passed by the learned Subordinate Judge, Bhavani, Erode District is set aside and the Judgment and Decree dated 04.08.1998 made in O.S.No.554 of 1995 passed by the learned Additional District Munsif Court, Bhavani is restored. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Bhavani, Erode District.

2.The Additional District Munsif Court, Bhavani.

3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Special Government Pleader SR.No.9465

S.A.No.1550 of 2003

SR(CO)
GMY(20/08/2020)