



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.1052 of 2007
and M.P.No.1 of 2007

1.Chinna Pillai
2.Palanisamy

... Defendants/Respondents/Appellants

Versus

Thangarasu

...Plaintiff/Appellant/Respondent

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.100 of 2006 dated 30.03.2007 on the file of Additional Sub Court, Vridhachalam, reversing the judgment and decree dated 14.03.2006 in O.S.No.66 of 2002 on the file of District Munsif Court, Vridhachalam.

For Appellant	: Mr.V.Raghavachari
For Respondent	: No appearance

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree dated 30.03.2007 passed by the learned Additional Subordinate Judge, Vridhachalam in A.S.No.100 of 2006, reversing the finding of the trial Court (District Munsif Court, Vridhachalam) dated 14.03.2006 in O.S.No.66 of 2002.

2. The appellants are the defendants in the suit in O.S.No.66 of 2002 on the file of District Munsif Court, Vridhachalam. The respondent is the plaintiff in the above suit. The suit was filed for declaration and for permanent injunction pertaining to two schedule of properties viz., Item No.1 and Item No.2

3. The case of the respondent/plaintiff is that he is the absolute owner of the suit schedule properties and that the defendants have laid a canal in a Government poramboke land, which is the suit schedule property. However, the same has been disputed by the appellants/defendants in their written statement.



4. Issues were framed by the trial Court and after trial, the suit in O.S No.66 of 2002, filed by the respondent/plaintiff, was decreed in favour of the plaintiff insofar as Item No.1 property is concerned and the relief of declaration and injunction was granted in respect of the said property. However, insofar as Item No.2 is concerned, the suit was dismissed. Aggrieved by the rejection of the prayer of permanent injunction for Item No.2 property, the respondent/plaintiff preferred a regular first appeal before the Additional Sub Court, Vridhachalam in A.S.No.100 of 2006. By a judgment and decree dated 30.03.2007, the lower appellate Court viz., Additional Subordinate Court, Vridhachalam, reversed the judgment and decree dated 14.03.2006 passed by the trial Court in O.S.No.66 of 2002, by granting the relief of permanent injunction also in favour of the respondent/plaintiff in respect of Item No.2 property also, as sought for by the plaintiff. Aggrieved by the same, the present second appeal has been filed by the defendants in O.S.No.66 of 2002.

5. This Court, at the time of admitting the Second Appeal on 26.10.2007, formulated the following substantial questions of law:-

- i) When the plaintiff has no right, title and interest over the suit Item No.2, is the lower appellate Court justified in decreeing the suit?
- ii) Whether the suit is not bad for non-joinder of necessary parties?

6. The trial Court rejected the prayer of permanent injunction insofar as Item No.2 property is concerned on the ground of non-joinder of necessary parties. Admittedly, even according to the respondent/plaintiff, Item No.2 property is a poramboke land and it is owned by the Government. However, since the respondent/plaintiff has not made the Government as a party defendant in the suit, the trial Court has rejected the prayer of the respondent/plaintiff insofar as Item No.2 property is concerned.

7. The contention of the respondent/plaintiff, as seen from the plaint, is that the appellants/defendants have laid a drainage canal in the suit schedule property illegally in the Government land. However, as seen from the written statement filed by the appellants/defendants, the same is disputed and they have also pleaded that due to non-joinder of necessary parties, the suit has to be dismissed.



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8. The appellants/defendants have taken a consistent stand in their pleadings as well as in their oral evidence that since the respondent/plaintiff has not made the Government as a party defendant in the suit, no relief can be granted in favour of the respondent/plaintiff for Item No.2 property.

9. The trial Court, after giving due consideration to the pleadings as well as the evidence available on record, has correctly come to the conclusion that when the respondent/plaintiff has himself pleaded that the Item No.2 property is owned by the Government, no relief can be granted in the suit without impleading the Government as a party in the suit.

10. Further, as seen from the deposition of the respondent/plaintiff, he himself has admitted that Item No.2 property belongs to the Government and everyone has the right of easement over the same as it is used as a pathway. Only after giving due consideration to the aforesaid factors, the trial Court has rejected the relief insofar as the Item No.2 property is concerned. However, by judgment and decree dated 30.03.2007 by the lower appellate Court in A.S.No.100 of 2006, the finding of the trial Court has been reversed. Even though the lower appellate Court in its judgment and decree, which is under challenge in the present second appeal, has given a categorical finding that Item No.2 property is owned by the Government, no proper reasons have been assigned in the impugned judgment and decree for reversing the finding of the trial Court despite the admitted fact that the suit Item No.2 property is a Government land and the respondent/plaintiff has not made the Government as a party defendant in the suit. The Government is certainly a necessary party for the effective adjudication of the suit and when the respondent/plaintiff has himself admitted in his oral evidence that Item No.2 property belongs to the Government and everyone has the right of easement over the same and it is being used as a pathway, this Court is of the considered view that the lower appellate Court ought not to have reversed the findings of the trial Court by granting the relief of permanent injunction to the respondent/plaintiff in respect of Item No.2 property. By total non-application of mind to the evidence available on record and that too, when the respondent/plaintiff has himself admitted that Item No.2 property is a Government land and it is being enjoyed in common, the lower appellate Court ought not to have reversed the findings of the trial Court, when the Government is not a party to the suit as they are a necessary party and without their presence, there cannot be any effective adjudication. The trial Court has rightly considered all the aforementioned factors and only thereafter rejected the relief sought for the respondent/plaintiff.



11. Insofar as the Item No.2 property is concerned, as observed above, by total non-application of mind, the lower appellate Court has erroneously reversed the findings of the trial Court. Hence the substantial questions of law, formulated by this Court on 26.10.2007, are answered in favour of the appellants/defendants by holding that for non-joinder of necessary party, viz., the Government, in the suit in O.S.No.66 of 2002, the relief of permanent injunction sought for by the respondent/plaintiff insofar as Item No.2 schedule property is concerned, cannot be granted in his favour.

12. Accordingly, the Second Appeal is allowed by setting aside the judgment and decree passed by the learned Additional Sub Court, Vridhachalam in A.S.No.100 of 2006 and thereby confirming the judgment and decree passed by the District Munsif Court, Vridhachalam in O.S.No.66 of 2002 dated 14.03.2006. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Additional Subordinate Judge,
Vridhachalam

2.The District Munsif, Vridhachalam

Copy to:

The Section Officer,
VR Section,
High Court of Madras

+1CC to Mr.V.Raghavachari, Advocate, Sr.No.40882

S.A.No.1052 of 2007

RP (CO)

K.RK. (28.10.2021)

K.RK. (22.11.2021)