



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.664 of 2016  
and C.M.P.No.12441 of 2016

M.Perumal Udayar (Since deceased)

1.C.Rasambal

2.C.Natarajan

3.E.Vimala

4.R.Umarani

... Appellants/Appellants 2 to 4/  
Plaintiffs 2 to 4

Vs.

1.The Government of Tamil Nadu  
Rep by the District Collector of Namakkal  
Collectorate Building, Tiruchengode Road  
Nallipalayam Post, Namakkal Taluk and District

2.The Assistant Director of Land Survey  
and Records, Namakkal  
Collectorate Bilding, Tiruchengode Road  
Nallipalayam Poist, Namakkal Taluk  
Namakkal District

3.The Tahsildar of Namakkal  
Namakkal Taluk, Namakkal District

4.The Revenue Inspector of Sendamangalam  
Sendamangalam, Namakkal Taluk,  
Namakkal Taluk,  
Namakkal District

5.The Village Administrative Officer of Periyakulam  
Periyakulam Post, Sendamangalam via  
Namakkal Taluk,  
Namakkal District

... Defendants/Respondents/Respondents

PRAYER: The Second Appeal has been filed under Section 100 of  
the Civil Procedure Code to set aside the decree and judgment



dated 10.02.2016 passed in A.S.No.11 of 2012 by the Subordinate Judge, Namakkal confirming the decree and judgment dated 03.01.2012 passed in O.S.No.454 of 2006 by the Principal District Munsif, Namakkal.

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For Appellants : Mr.D.Shivakumaran  
For Respondent : Mr.P.Harish, Govt.Advocate

## J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the plaintiffs have preferred the above Second Appeal.

2. The plaintiffs filed a suit for declaration declaring that the respondent officials are not entitled to lay a cart track enrouting the irrigation channel in S.No.131/1 Periyakulam Village, Namakkal Taluk and for a consequential injunction from laying the cart track. Before the Trial Court, the official respondents filed a written statement that the suit property is a poromboke land belonging to the Government. The plaintiffs have encroached the canal on both sides. The encroachments hinders the flow of water particularly during the winter season through the channel. Therefore, they have decided to remove the encroachment and widen the channel and they have no intention to lay the cart track through the channel. Further, for laying the cart track, there shall be a proposal and financial sanction. Since there is no proposal to lay a cart track in S.No.131/1 there is no cause of action for the plaintiffs to maintain the suit.

3. The Trial Court framed appropriate issues. The Advocate Commissioner was appointed to find out the physical features, wherein he has reported that there were encroachments on the water channel. The Village Administrative Officer who deposed as D.W.1 had also categorically deposed that the respondent have no proposal to lay a cart track and only they are going to remove the encroachment on the channel on both the sides. Considering the materials placed before it, the Trial court dismissed the suit holding that the plaintiffs are not entitled to the relief sought for. Aggrieved over the same, plaintiffs filed an appeal, the Appellate Court confirmed the decree and judgment of the Trial Court and dismissed the same. Aggrieved over the same, the present Second Appeal has been preferred.

4. Learned counsel for the plaintiffs would contend that



the Village Administrative Officer had measured the property without notice to them and stated that they are going to lay a cart track over the channel, which has given cause of action for the plaintiffs to prefer the suit. In so far as the channel is used for irrigating their lands, laying a cart track destroying the channel will definitely give rise to a cause of action and they have the legal right to file a suit. The Courts have failed to consider the issue in proper perspective and held that the suit land belongs to the Government and they can deal with it in the manner known to them. It is also submitted by the learned counsel for the plaintiffs that as long as the channel is maintained and no cart track is laid over it there is no grievance. But at the same time, the learned Government Advocate Mr.P.Harish contended that the evidence of D.W.1 as well as the report filed by the Advocate Commissioner clearly shows that on either side of the channel there were encroachments which hinders the free flow of water during the winter season. The FMB and 'A' Register produced before this Court clearly shows that land in S.No. 131/1 is classified as "Vaikal". Now that it is mutually agreed by both the parties that the encroachment over the channel can be removed by taking appropriate measurements putting the appellants on notice. Further, Government has filed a status report affirming that they are not going to lay a cart track over the channel. The status report is taken on file. In view of the affirmation made in the status report that no such cart track is going to be laid on the channel and that the encroachments will be removed after putting up the appellants on notice, I do not find any reason to interfere with the concurrent findings of the Courts below.

The Second Appeal is dismissed with the following observations:

1. The respondent shall not lay a cart track in the irrigation channel.
2. The appellants/plaintiffs shall not object the removal of the encroachment and widening of the channel as per the measurements to be taken by the official.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kpr



To

1.The Subordinate Judge,  
Namakkal.

2.The Principal District Munsif,  
Namakkal.

Copy To

The Section Officer,  
VR Section, High Court,  
Madras.

+1cc to Mr.D.Shivakumaran, Advocate SR.No.67024  
+1cc to the Government Pleader SR.No.67619

S.A.No.664 of 2016  
and C.M.P.No.12441 of 2016

AK(CO)  
GN(06/06/2022)