



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.379 of 2007

Rajamanicka Padayachi ... Appellant/Appellant/Plaintiff

-Vs-

Ramasami Padayachi (Deceased)

1.Kuppusamy Padayachi

2.Kalyani Ammal

3.Achiyammal

4.Thamizharasi

5.Mallika

6.Asaitambi

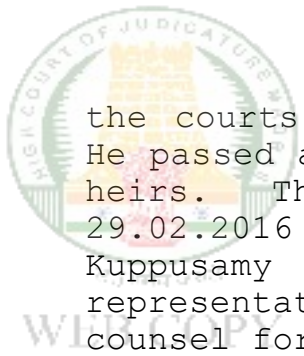
7.Govindaraju ... Respondents/Respondents 2 to 7 and 9/
Defendants 2 to 7 and 9

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.124 of 2005, dated 19.04.2006 on the file of the Additional Sub Judge, Kumbakonam and confirming the Judgment and Decree dated 24.01.2004 in O.S.No.712 of 1993, on the file of the Court of the Principal District Munsif Court, Kumbakonam by allowing this second appeal.

For Appellant	: Mr.Gomathi Sankar for Mr.M.V.Krishnan
For R1	: Died
For R2, R3 & R5	: Dismissed
For R6	: Mr.Rajagopalan for Mr.R.Devaraj
For R4 & R7	: No appearance

JUDGMENT

The plaintiff is the appellant in this second appeal. It is a suit for recovery of possession. The appellant had lost before both



the courts below. Kuppusamy Padayachi figured as D2 in the suit. He passed away on 08.02.2012. He left behind as many as five legal heirs. The counsel for Kuppusamy Padayachi had filed a memo on 29.02.2016 in this regard. In the said memo, the demise of Kuppusamy Padayachi as well as the details regarding legal representatives have been set out. The memo was also served on the counsel for the appellant. But till date, no steps have been taken.

2.The learned counsel for the appellant would state that in fact, he prepared the necessary affidavit and sent the same to the appellant. But the appellant because of his old age and other reasons, is unable to take steps.

3.I am not satisfied with the said explanation. We are now in April 2021. Information was conveyed to the appellant full five years and two months ago. There can be no justification in not taking steps for such a long period. Therefore, the appeal is dismissed as abated as against R1-Kuppusamy Padayachi.

4.The appeal had been dismissed as against R2, R3 & R5 vide order dated 21.02.2020. No steps has been taken for setting aside the said order till date. Therefore, there are only three respondents left against whom, the appeal can be prosecuted. They are R4-Thamizharasi, R6-Asaithambi & R7-Govindaraju. It is seen from a mere look at the cause title that the entire family of Thyagaraja Padayachi have been impleaded in the proceedings. Kalyani Ammal is the wife of Thiyagaraja Padayachi. Achiyammal, Thamizharasi and Mallika are the daughters of Thiyagaraja Padayachi. Asaithambi is the son of Thiyagaraja Padayachi. When the appeal had abated as against wife and two daughters of Thiyagaraja Padayachi, the question of permitting the appellant to proceed against the remaining daughter and son of Thiyagaraja Padayachi cannot arise. The decree as far as the legal heirs of Thiyagaraja Padayachi are concerned is an indivisible decree. Therefore, it is not possible for this Court to permit the appellant to proceed only against R4 & R6. Therefore, on the ground of indivisibility of the decree, since the decree has been final as against the other legal heirs of Thiyagaraja Padayachi, the appeal stands dismissed as against R4 and R6 also. That leaves me only with the seventh respondent-Govindaraju.

5.Though the second appeal is of the year 2007, till date, it has not been admitted. No substantial question of law has been framed for determination. The suit was originally filed against as many as seven defendants. Following the demise of the first defendant-Ramasamy Padayachi, eight and ninth defendants came on record. D8-Ramamirtham died during the pendency of the suit. When the dismissal of the suit against the remaining defendants has been confirmed, the question that arises for consideration is whether interference should be made as regards R7-Govindaraju alone. It is

<https://www.judiciary.gov.in/> were four items of properties. Regarding Item



Nos.1 and 2, the Courts below have given a finding that it is the appellant who is in possession and enjoyment. That leaves us only the remaining two items 3 and 4. Though in the plaint pleadings, it is stated that the third item is in possession of Ramaswamy Padayachi and the fourth item is in possession of legal heirs of Thiagaraja Padayachi, in the prayer, no such specific relief has been sought for. That apart, the Appellate Court has given a finding that the suit itself is barred by limitation. The defendants had obtained patta even as early as in the year 1980. But the suit itself came to be filed only in the year 1993 by projecting the cause of action as if encroachment took place in the year 1992. Since the Appellate Court has given a finding that the suit is barred by limitation, I am of the view that no interference is really called for. No substantial question of law arises for determination. The second appeal itself is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif, Kumbakonam.

2.The Additional Sub Judge, Kumbakonam.

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V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to Mr.R.DEVARAJ, Advocate (SR-16596[F] dated 20/04/2021)

+1 CC to Mr.M.V.KRISHNAN, Advocate (SR-16345[F] dated 19/04/2021)

Judgment made in
S.A. (MD)No.379 of 2007
19.04.2021

KM(01.06.2021) 3P 7C