



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.862 of 2007

WEB COPY

Rengasamy (Died)

1. Ananthalakshmi
2. Arulmozhi
3. Savithiri
4. Usharani
5. Minor Ilamaram

(Rep. By his mother, guardian and
the third appellant Savithiri)

... Appellants / Respondents /
Defendants

Vs.

Govindammal,
W/o. Dharmalinga Velalar,
Rep. By his Power of Attorney Agent
Chidambaram.

... Respondent / Appellant /
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.2 of 2006 dated 01.09.2006 on the file of the I Additional Sub Court, Pattukkottai, reversing the Judgment and Decree passed in O.S.No.125 of 1982 dated 28.09.2000 on the file of the District Munsif, Pattukkottai and to allow the second appeal.

For Appellants : Mr.K.K.Ramakrishnan

For Respondent : No appearance.

J U D G M E N T

The defendants in O.S.No.125 of 1982 on the file of the District Munsif Court Pattukkottai, are the appellants herein.

2. The suit was for permanent injunction restraining the defendants from interfering with the plaintiff's right to use the suit cart track. The suit was dismissed by judgment and decree dated 28.09.2000. However, the plaintiff filed A.S.No.2 of 2006 before the Sub Court, Pattukkottai. The first appellate Court by the impugned judgment and decree dated 01.09.2006 set aside the decision of the trial Court and decreed the suit as prayed for, by allowing the appeal. Challenging the same, the defendants have filed this second



appeal.

3. This second appeal was admitted on the following substantial questions of law:-

" 1. Whether the judgment and decree of the first appellate Court is beyond the scope of the order of remand dated 30.01.1999 passed by the High Court in S.A.No.1131 of 1987?

2. Whether the lower appellate Court has committed an error in law in holding that the respondent / plaintiff was entitled to an easement of necessity without giving a specific finding as to whether there was unity of title in respect of the properties of the appellant / defendant and respondent / plaintiff at any point of time? "

4. When the matter was taken up for hearing, it was submitted that the plaintiff/ respondent herein has since passed away. However, the learned counsel appearing for the respondent has not furnished the details of the legal heirs of the plaintiff. The appellants cannot get along with the second appeal because the respondent is not more. They are not in a position to file petition for bringing the legal heirs on record.

5. Therefore, this second appeal is closed and the appellants are at liberty to revive the second appeal as and when the legal heirs of the plaintiff file E.P. for enforcing the decree against them. I make it clear that since the legal heirs of the respondent have not come on record and since the learned counsel appearing for the respondent has not furnished the details to the appellants herein, the appellants will not be faulted for having violated the impugned judgment and decree. No costs.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The I Additional Sub Judge,
Pattukkottai.
2. The District Munsif,
Pattukkottai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-32460[F] dated
25/10/2021)

S.A.(MD)No. 862 of 2007
21.10.2021

_RD/UV(09.11.2021) 3P 6C