



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD) No.105 of 2010

and

M.P.(MD) No.1 of 2010

WEB COPY

E.Kathiresan

.. Appellant/Appellant/
Plaintiff

-vs-

1.S.Thamilarasan

2.Naganathan (Died)

3.S.Annathurai

4.M.Naganathan

5.Panchayat Union President,
Anjamadai, Kachaan Panchayath,
Through its President.

.. Respondents/Respondents/
Defendants

6.Mari

7.Maruthupandi

8.Latha

.. Respondents

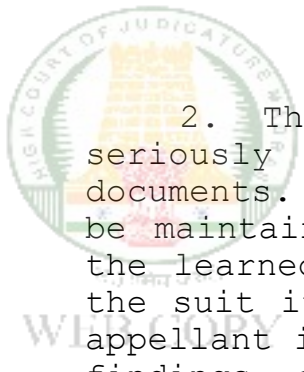
[RR6 to 8 are *suo motu* impleaded as LR's of the
deceased 2nd respondent vide Court order dated
03.03.2022 made in S.A.(MD) No.105 of 2010]

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree in A.S.No.18 of 2008 dated 28.07.2009 on the file of the Sub Court, Paramakudi, confirming the judgment and decree in O.S.No.62 of 2006 dated 29.01.2008 on the file of the District Munsif Court, Paramakudi.

For Appellant	:	Mr.A.Sivaji
For R5	:	Mr.R.Ragavendran
RR1 & 6 to 8	:	Service awaited
Respondent-2	:	Died
For RR3 & 4	:	No appearance

JUDGMENT

The plaintiff in the suit is the appellant in this Second Appeal. The plaintiff sought declaration and permanent injunction in respect of the suit property which according to him is his private patta property. The stand of the defendants was that it is a public pathway. The Courts below have concurrently held against the plaintiff. The Courts below went more by the proceedings dated 18.11.1994 issued by the Assistant Collector, Paramakudi and the survey sketch (Ex.B1).



2. The learned counsel appearing for the appellant would seriously impeach the value that can be attached to the said documents. However, when I pointed out that the suit itself may not be maintainable, because the Government was not added as a party, the learned counsel submitted that he may be permitted to withdraw the suit itself. Since the suit suffers from a formal defect, the appellant is permitted to withdraw the suit itself. All the adverse findings against the appellant stand vacated because I have permitted withdrawal of the suit itself. The appellant is at liberty to file a fresh suit on the same cause of action. The Second Appeal stands disposed of. All the contentions of the appellant are left open. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

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 Subordinate Judge, Paramakudi.
- 2.The District Munsif, Paramakudi.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A. SIVAJI, Advocate (SR-17719[F] dated 11/04/2022)
+1 CC to M/s.SPL.GP. (SR-18379[F] dated 12/04/2022)

S.A. (MD) No.105 of 2010
08.04.2022

RK(03/06/2022) 2P 7C