



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

S.A. (MD)No.155 of 2010

1. Kesavan
2. Porchelvi
3. Thiruchelvan
4. Arul Chelvi
5. Muthuselvi
6. Thamarai Selvi

... Appellants / Appellants /  
Plaintiffs

Vs.

1. S.Thyagarajan ... Respondent No.1 / Respondent No.1/  
Defendant No.1
2. The State of Tamil Nadu,  
Rep. By District Collector,  
Thanjavur. ... Respondent No.2 / Respondent No.2/  
Defendant No.2

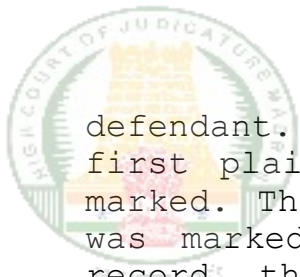
**Prayer:** Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 18.08.2009 made in A.S.No.93 of 2007 on the file of the learned Principal Subordinate Judge, Kumbakonam, partly reversing the Judgment and Decree dated 23.06.2006 made in O.S.No.197 of 2005 on the file of the I Additional District Munsif Court, Kumbakonam and allow this second appeal.

|                |                                             |
|----------------|---------------------------------------------|
| For Appellants | : Mr.G.Mohan Kumar                          |
| For R-2        | : Mr.R.Ragavendran,<br>Government Advocate. |
| For R-1        | : Mr.K.Sekar                                |

### J U D G M E N T

Heard the learned counsel appearing for the appellants and the learned Government Advocate appearing for the second respondent and the learned counsel appearing for the first respondent.

2. The plaintiffs in O.S.No.197 of 2005 on the file of the I Additional District Munsif, Kumbakonam, are the appellants in this second appeal. The suit was for declaration that the plaintiffs are entitled to the suit property and consequently, to direct the second defendant by mandatory injunction to measure the suit property. The first defendant, a private individual filed written statement contending that the suit was bad for non-joinder of necessary party as the Assistant Director of Survey was not impleaded as a



defendant. Based on the rival pleadings, issues were framed. The first plaintiff examined himself as P.W.1 Ex.A.1 to Ex.A.17 were marked. The first defendant examined himself as D.W.1. No document was marked on his side. After consideration of the evidence on record, the trial Court vide judgment and decree dated 23.06.2006 dismissed the suit. Aggrieved by the same, the plaintiffs filed A.S.No.93 of 2007 before the Principal Sub Court, Kumbakonam. The first appellate Court by the impugned judgment and decree dated 18.08.2009 partly allowed the appeal. The relief of declaration was granted while the relief of mandatory injunction was denied. Challenging the same, this second appeal came to be filed.

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

" i) Whether the first appellate Court was right in rejecting the prayer for mandatory injunction on the ground of non-joinder of necessary parties ignoring Section 80(1) (c) of C.P.C?

ii) Whether the first appellate Court was right in giving a finding regarding non-joinder of necessary parties when there is no issue to that effect? "

4. The first appellate Court had granted the relief of declaration to the plaintiffs. This has not been questioned by the defendants by filling any cross appeal. This finding has become final. When the principal relief has been granted, the ancillary relief should have also been granted as a matter of course. Like a calf following the mother cow, grant of consequential relief follows the grant of main relief. In this case, the reason for denying the ancillary relief was because the concerned survey official was not impleaded as a defendant. This reason is too flimsy. The first appellate Court failed to note that the District Collector has been made as a party. The survey official is subordinate to the District Collector, when the plaint satisfies the requirement set out in Section 80(1)(c), the plaintiffs could not have been non-suited on the ground of non-joinder. It is also to be noted that this was not framed as an issue at all. Both the substantial questions of law are answered in favour of the appellants. The impugned judgment and decree passed by the first appellate Court is modified. The second appeal is allowed. The suit is decreed as prayed for. No costs.

Sd/-

Assistant Registrar (CS-III)

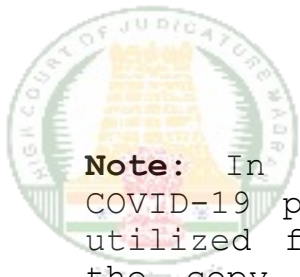
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/ /2022

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



**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 Principal Subordinate Judge,  
Kumbakonam.
2. The I Additional District Munsif,  
Kumbakonam.
3. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.G.MOHAN KUMAR, Advocate ( SR-6899[F] dated 17/02/2022 )

+1 CC to M/s.SPL GP ( SR-7115[F] dated 18/02/2022 )

S.A. (MD) No.155 of 2010  
17.02.2022

SS (CO)  
KB (04.03.2022) 3P 7C