



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.531 of 2010

Thiruvavaduthurai Adheenam

Rep. By its Adheenakartha

Shri Ambalavana Desika Paramasara Swamigal,

Thiruvavaduthurai,

Myladuthurai Taluk,

Nagapattinam District.

(Name of the Adheena Kartha (appellant) is

substituted vide Order dated 11.02.2022)

... Appellant / Appellant / Plaintiff

Vs.

1. State of Tamil Nadu,

Rep. by the District Collector,

Kokirakulam,

Tirunelveli District.

2. The Superintending Engineer,

Public Works Department,

Palayamkottai,

Tirunelveli District.

3. The Junior Engineer,

Public Works Department,

Ambasamudram Main Road,

Tahsildar Office Campus,

Ambasamudram.

4. The Rural Development Officer,

Panchayat Union,

Brahmadesam Road,

Ambasamudram.

5. The President,

Panchayat Board,

Sivanthipuram,

Tirunelveli District.

... Respondents / Respondents /
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 16.04.2009 passed in A.S.No.86 of 2005 by the Sub Court, Ambasamudram, confirming the Judgment and Decree passed in O.S.No.515 of 2000 dated 21.03.2005 passed by the Principal District Munsif, Ambasamudram.

For Appellant

: Mr.B.Brijesh Kishore



For R-1 to R-3 : Mr.N.Muthu Vijayan,
Special Government Pleader.

For R-4 & R-5 : Mr.Pala Ramasamy

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J U D G M E N T

The plaintiff in O.S.No.515 of 2000 on the file of the Principal District Munsif, Ambasamudram, is the appellant in this second appeal.

2. The suit was filed in respect of a tank known as Alankari Amman Kulam comprised in Sivanthipuram Village, Ambasamudram Taluk. The suit tank has been described as the second schedule property. It appears that the tank was originally owned by the appellant Adheenam. However following the promulgation of Inam Abolition Laws, issuance of patta for water bodies in favour of private entities stood prohibited. It appears that the tank was originally managed by the local body. At present it is vested with the Public Works Department. The grievance of the appellant is that the local body as well as the Government departments put up buildings in the water catchment area near the tank. They also turned a blind eye to private parties committing encroachment. It is specifically mentioned that brick kilns have been put up in the water catchment areas. Therefore, O.S.No.515 of 2000 came to be filed for passing a decree of mandatory injunction for removal of the offending constructions and also for passing a decree of permanent injunction restraining the defendants from in any manner either to encroach or diminish the second schedule lands which would lead to diminutions of the usual supply of water for irrigating the first schedule lands. Written statements were filed controverting the plaint averments. Based on the rival pleadings, issues were framed. On the side of Adheenam, one Nallasivan Pillai was examined as P.W.1. Ex.A.1 to Ex.A.6 were marked. On the side of the defendants, one witness was examined. Ex.B.1 to Ex.B.5 were marked. An Advocate Commissioner was appointed and his report was marked as Ex.C.1. Surveyor plan was marked as Ex.C.2. After considering the evidence on record, the trial Court by judgment and decree dated 21.03.2005 partly decreed the suit. Relief was granted to ensure the mamool supply of water for irrigation purposes. However, the prayer for removal of the offending constructions was rejected. Aggrieved by the same, the plaintiff filed A.S.No.86 of 2005 before the Sub Court, Ambasamudram. Cross appeal was also filed. By the impugned judgment and decree dated 16.04.2009, the decision of the trial Court was confirmed and the appeal as well as the cross appeal were dismissed. Challenging the same, this second appeal came to be filed.



3. The second appeal was admitted on 08.03.2022 on the following substantial question of law:-

" Whether the Courts below were justified in denying the relief of mandatory injunction on the ground of non-joinder of necessary parties and for the reason that the buildings were put up after getting approval from the local body? "

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and modify the impugned judgment and decree passed by the Courts below and decree the suit as prayed for in *toto*.

5. Per contra, the learned Government Advocate as well as the learned counsel appearing for the fourth and fifth respondents submitted that the impugned judgment and decree do not warrant any interference.

6. I carefully considered the rival contentions and went through the evidence on record.

7. It is true that the appellant has not been granted ownership patta in respect of the suit tank. But the appellant definitely has *locus standi* to maintain the suit because the first schedule lands belonging to the appellant are being irrigated only with the water drawn from the suit tank. That apart, it is the constitutional duty of the defendants to maintain the water body in question in good condition. They should not only ensure that the extent of the water body does not suffer any diminution but also to ensure the natural flow of water into the tank is not impeded in any manner. In this case, in the water catchment areas, constructions have been allowed to come up. This is plainly illegal. Mere grant of approval would not in any way confer sanctity on the construction. Constructions for residential or commercial purposes can come up only on lands that are appropriate for such use. Water catchment areas cannot be used for putting up such superstructures.

8. The Courts below took note of the fact that the Government departments have put up constructions and since public interest will be affected, mandatory injunction was not issued. For the very same reason, I also reluctantly sustain the same insofar as the Government buildings are concerned. But such protection cannot extend to private encroachments. It is now stated that following the directions from the Hon'ble First Bench, eviction notices have been issued to as many as eighteen encroachers. The defendants are directed to pursue the matter and take it to its logical conclusion. The defendants are directed to ensure that all the private encroachments are removed from the suit tank and the water catchment



areas. The substantial question of law is answered in favour of the appellant and the impugned judgment and decree is modified.

9. The learned Special Government Pleader submitted that Alangari Amman temple is also located in the vicinity. The defendants ought to know that Parliament has passed Places of Worship (Special Provisions) Act, 1991. The said statute grants protection to all the religious structures that were in existence as on 15.08.1947.

10. The tank itself is known as Alankari Amman Kulam. The suit tank has been named after the temple. Therefore, the defendants are restrained from touching the temple. It is well known that even though patta for water bodies cannot be issued in the name of private parties, temples are excepted. Hundreds of tanks are in existence in front of temples. Obviously, patta will stand in the name of the concerned temple. With this clarification, this second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

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 Sub Judge,
Ambasamudram.
2. The Principal District Munsif,
Ambasamudram.
3. The District Collector,
Kokirakulam,
Tirunelveli District.
4. The Superintending Engineer,
Public Works Department,
Palayamkottai,
Tirunelveli District.

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



5. The Junior Engineer,
Public Works Department,
Ambasamudram Main Road,
Tahsildar Office Campus,
Ambasamudram.

6. The Rural Development Officer,
Panchayat Union,
Brahmadesam Road,
Ambasamudram.

Copy to:

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-12619[F] dated
17/03/2022)

+1 CC to M/s.SPL GP (SR-12460[F] dated 16/03/2022)

S.A.(MD)No.531 of 2010
15.03.2022

Rk(31.03.2022) 5P 11C