



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)Nos.682 & 683 of 2010 and

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

WEB COPY

S.A. (MD)No.682 of 2010

Saathar

... Appellant / Appellant /
Plaintiff
Vs.

1. Ilango

2. Tamil Selvan

3. Isaiselvan

4. Durairaj

... Respondents / Respondents /
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 23.11.2009 in A.S.No.33 of 2009 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree dated 21.10.2008 in O.S.No.319 of 2004 on the file of the Additional District Munsif Court, Sankarankovil.

For Appellant : Mr.F.X.Eugene

For R-1 to R-3 : Mr.S.Ramesh @ Ramaiah

For R-4 : No appearance.

S.A. (MD)No.683 of 2010

Saathar

... Appellant / Appellant /
Defendant

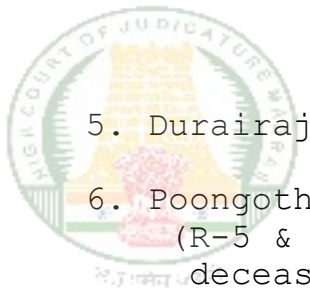
Vs.

1. Rakkammal (Died)

2. Ilango

3. Tamil Selvan

4. Isaiselvan



5. Durairaj

6. Poongothai

(R-5 & 6 were brought on record as LR's. of the deceased R-1 vide Order dated 31.01.2020 in C.M.P.(MD)Nos.681, 683 & 686 of 2020)

... Respondents / Respondents /
Plaintiffs

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 23.11.2009 in A.S.No.28 of 2009 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree dated 21.10.2008 in O.S.No.432 of 2004 on the file of the Additional District Munsif Court, Sankarankovil.

For Appellant : Mr.F.X.Eugene

For R-2 to R-4
& R-6 : Mr.S.Ramesh @ Ramaiah

C O M M O N J U D G M E N T

Heard the learned counsel on either side.

2. S.A.(MD)No.682 of 2010 arises out of O.S.No.319 of 2004 on the file of the Additional District Munsif, Sankarankovil. S.A.(MD) No.683 of 2010 arises out of O.S. No.432 of 2004 on the file of the very same Court.

3. O.S.No.319 of 2004 was filed by the appellant herein for the relief of permanent injunction. The other suit was filed by the respondents herein for the relief of declaration, recovery of possession and mandatory injunction. Since both the suits pertained to the same property, they were tried together. The appellant herein was examined as P.W.1. One Chellathurai was examined as P.W.2. Ex.A.1 to Ex.A.6 were marked. The third defendant Isaiselvan in O.S. No.319 of 2004 was examined as D.W.1. Ex.B.1 to Ex.B.9 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. Surveyor's plan was marked as Ex.C.3. After considering the evidence on record, the trial Court by judgment and decree dated 21.10.2008 dismissed the suit filed by the appellant herein and decreed the suit filed by the respondents herein. Aggrieved by the same, the appellant herein, filed A.S.Nos.28 and 33 of 2009 before the Sub Court, Sankarankovil. By the impugned judgment and decree dated 23.11.2009, both the appeals were dismissed and the decision of the trial Court was confirmed. Challenging the same, this second appeal came to be filed.

4. Though both the second appeals were filed way back in the year 2010, only notice was ordered and they have not been admitted till date.



5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memoranda of grounds and called upon this Court to frame the substantial questions of law and admit these appeals and take them for disposal later.

6. Per contra, the learned counsel for the respondents submitted that no substantial question of law arises for consideration.

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

8. The appellant herein purchased a piece of land under Ex.A.1 dated 03.11.2000. A reading of the schedule set out therein would clearly show that the land purchased by the appellant is comprised in Survey No.1266/2. On the other hand, the property purchased by the father of respondents 2 to 4 under Ex.B.1 dated 12.12.1977 is comprised in Survey No.1266/1.

9. I carefully went through the contents of the Advocate Commissioner's report and plan and also the surveyor's plan which were marked as Ex.C.1 to Ex.C.3. The disputed property is actually comprised only in Survey No.1266/1B2. The father of respondents 2 to 4 had purchased the property in the year 1977, while the appellant purchased the property only in the year 2000 under Ex.A.1. A look at the boundary description set out in Ex.A.1 would show that the western boundary for the appellant's property was shown as the property belonging to Ramasamy Asari. Therefore, by no stretch of imagination, the appellant herein could not have put up any bore well or any other construction on the suit property. That is why, the Courts below after a careful perusal of the entire evidence on record and also the Advocate Commissioner's plan came to the conclusion that the appellant's suit has to be dismissed and the respondent's suit has to be decreed.

10. No substantial question of law arises for determination. Therefore, the decision of the Courts below are confirmed and both the second appeals are dismissed. Since the appellant is running brick kiln business and is critically dependant on the bore well put up in the suit property, I grant six months time to the appellant to remove the same. No costs. Consequently, connected miscellaneous petition is closed.

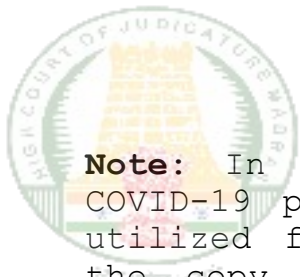
Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar (CS)



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,
Sankarankovil.
2. The Additional District Munsif,
Sankarankovil.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.F.X.EUGUNE, Advocate (SR-11431[F] & SR-11432[F]dated 11/03/2022)

S.A. (MD) Nos. 682 & 683 of 2010
10.03.2022

MGJ(08.04.2022) 4P 7C