



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.711 of 2010

WEB COPY

1.Pitchai

2.Pitchammal

3.Malliga

4.Pitchai Murugan

5.Subbuthayammal

... Appellants / Appellants /
Plaintiffs 2 to 6

-Vs-

1.Thirumalaikolunthu

2.Packiyam @ Ramalingam

3.Thangam

4.The District Collector,

Virudhunagar District Collector Office,

Virudhunagar District.

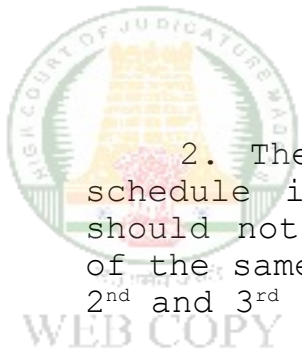
... Respondents / Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree in A.S.No.25 of 2007, dated 31.12.2009 on the file of the Sub Court, Srivilliputhur, Virudhunagar District confirming the judgment and decree in O.S.No.329 of 1999, dated 21.03.2006 on the file of the Additional District Munsif Court, Srivilliputhur, Virudhunagar District.

For Appellants	: Mr.R.Aravindan
For R1 & R2	: Mr.A.Murugan for Mr.V.Pavel
For R3	: no appearance
For R4	: Mr.Raghavendran Government Advocate

JUDGMENT

The plaintiffs in O.S.No.329 of 1999 on the file of the Additional District Munsif Court, Srivilliputhur are the appellants in this second appeal.

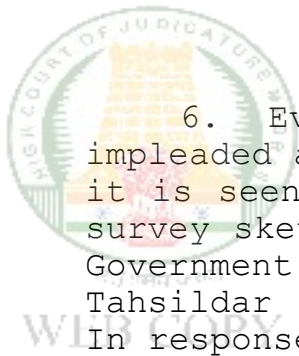


2. The suit was filed for declaring that the suit 2nd and 3rd schedule items belong to the plaintiffs and that the defendants should not interfere with the plaintiff's possession and enjoyment of the same. The plaintiff also wanted the encroachment in the suit 2nd and 3rd schedule to be removed.

3. The case of the plaintiff is that the suit 2nd and 3rd schedule form part of the suit 1st schedule. It originally belonged to Parvathy Ammal. The said Parvathy Ammal sold the same to Muthusamy Pillai on 11.05.1931 Muthusamy Pillai in turn sold it to his wife Ponnammal. Ponnammal had two sons namely Subramaniapillai @ Veluchamy and Ponnusamy. The parents passed away. The southern portion was enjoyed by Veluchamy. The northern portion was enjoyed by Ponnusamy. According to the plaintiffs, Veluchamy Pillai had set apart 6 feet wide pathway for his personal access. The plaintiffs 2 to 6 are the children of Veluchamy Pillai. The defendants 1 to 4 are residing in the vicinity. The allegation of the plaintiffs was that the defendants are trying to encroach upon the 6 feet wide pathway that was maintained by the plaintiffs for their own use. It was further alleged that the encroachment have been committed thereon. Seeking declaration and removal of the encroachment, the suit was filed. The contesting defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed as many as six issues. During the pendency of the suit, Veluchamy Pillai passed away. His son / second plaintiff examined himself as P.W.1. A junior assistant working in the office of the Tahsildar, Rajapalayam was examined as P.W.2. The first defendant examined himself as D.W.1. Ex.A1 to Ex.A9 were marked. Ex.B1 & Ex.B2 were also marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C1 to Ex.C3. After considering the evidence on record, the trial court by judgment and decree dated 21.03.2006 dismissed the suit. Challenging the same, the plaintiffs filed A.S.No.25 of 2007 before the Sub Court, Srivilliputhur. By the impugned judgment and decree dated 31.12.2009, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. Though the second appeal was filed as early as in the year 2010, only notice was ordered and it has not been admitted till date.

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 frame the substantial question of law and admit the appeal and then take it up 'for disposal'.

5. Per contra, the learned counsel appearing for the private respondents as well as the learned Government Advocate appearing for R4 submitted that no substantial question of law arises for consideration.



6. Even though the District Collector, Virudhunagar was impleaded as 4th defendant, no written statement was filed. However, it is seen that the revenue official was examined as P.W.2 and the survey sketch was also marked. I therefore called upon the learned Government Advocate to obtain a report from the jurisdictional Tahsildar and also make available the relevant revenue documents. In response to the same, the learned Government Advocate today filed a report bearing Na.Ka.No.A4/4332/2022, dated 21.04.2022 given by the Tahsildar, Rajapalayam. The relevant government record, survey sketches including 'A' register enclosed along with the said report. Even though Order 7 Rule 3 states that where the subject matter of the suit is an immovable property and in case such property can be identified by numbers in a record of settlement or survey, the plaintiff shall specify such numbers, in this case, survey numbers have not at all been given.

7. Since the defendants have not disputed the identity of the property, I do not want to non-suit the plaintiff on this ground. The courts below have concurrently rendered a finding that the plaintiff has not established that the suit schedule 2 and 3 belong to him exclusively. The first appellate court is the final court of fact and the appellants have not been able to demonstrate that the said findings are erroneous or perverse. Be that as it may, the survey sketch marked before the court below as well as the revenue record now made available before me clearly indicate that Survey No.220 was later sub-divided into Survey Nos.220, 258, 259, 260, 261, 262, 263, 264 & 265 under Natham Land Survey and Settlement Scheme Survey No.265/4 has been classified as pathway. Survey No.265/3 has been shown as a vacant site and classified as Government Poromboke. It is now seen that the suit schedules 2 and 3 correspond to Survey Nos.265/3 and 265/4. Thus, the findings of the courts below are very much in consonance with the revenue records now made available before me. No substantial question of law arises for consideration. The second appeal is dismissed. However, I must observe that encroachments cannot be permitted in both the survey numbers. No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Sub Judge,
Srivilliputhur, Virudhunagar District.

2.The Additional District Munsif,
Srivilliputhur,
Virudhunagar District.

Copy To:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.V.PAVEL, Advocate (SR-20814[F] dated 25/04/2022)

+1 CC to M/s.SPL.GP (SR-21012[F] dated 25/04/2022)

S.A.(MD)No.711 of 2010
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