



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.797 of 2010

WEB COPY

1.The Commissioner,
Panchayat Union,
Karaikkal Road,Kumbakonam.

2.The Assistant Engineer (R.D),
Panchayat Union,
Karaikkal Road,Kumbakonam.

3.The Tahsildar,
Thiruvidaimarudur,
Cutchery Road,
Thiruvidaimarudur,Kumbakonam.

4.The District Collector,
Cutchery Road,
Thanjavur District.

... Defendants / Respondents /
Appellants

-Vs-

1.Padmanabhan

2.Kaliyamoorthy

3.Malarvizhi

4.Sivaramakrishnan

... Plaintiffs / Appellants /
Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.06.2010 made in A.S.No.8 of 2010 on the file of the Additional Sub Court, Kumbakonam reversing the well considered judgment and decree dated 12.11.2009 made in O.S.No.275 of 2007 on the file of the Principal District Munsif Court, Kumbakonam.

For A1 & A2 : Mr.K.M.Vijayakumar
For A3 & A4 : Mr.R.Ragavendran
Government Advocate
For R2 to R4 : Mr.K.Govindarajan

JUDGMENT

The defendants in O.S.No.275 of 2007 on the file of the Principal District Munsif, Kumbakonam, are the appellants in this second appeal.



2. The said suit was filed by the respondents herein for forbearing the appellants from laying any road on their patta lands. The plaintiffs made it clear that if the road were to come up on the channel bund, they will not have any objection. Their grievance was that the defendants should not lay any road on their private lands. The defendants filed written statement categorically stating that if they proposed to lay road on the patta lands of the plaintiffs, then, proper proceedings under the Land Acquisition Act will be taken and without doing so, they will not lay any road as apprehended by the plaintiffs. The trial court dismissed the suit on the ground that no cause of action arose. Aggrieved by the same, the plaintiffs filed A.S.No.8 of 2010 before the Additional Sub court, Kumbakonam. The first appellate court chose to decree the suit in terms of the undertaking given by the defendants. Challenging the same, this second appeal came to be filed.

3. In my view, this second appeal is not maintainable. What is under challenge is virtually a consent decree. The first appellate court has merely endorsed the stand taken by the defendants in their written statement. Therefore, the defendants cannot feel aggrieved. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional Sub Court, Kumbakonam.

2.The Principal District Munsif Court, Kumbakonam.

Copy To

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

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-8545[F] dated 24/02/2022)

S.A.(MD)No.797 of 2010
23.02.2022

_RD(10.03.2022) 2P 6C