



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.870 of 2010

and

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

Kuttiraj @ Ramasamy ... Appellant / Appellant / Defendant

-Vs-

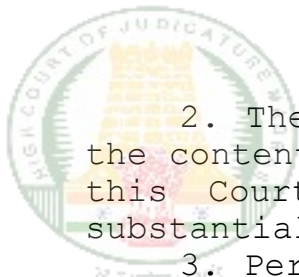
Karuppaiyee Ammal ... Respondent / Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, set aside the judgment and decree passed in A.S.No.89 of 2008 dated 06.03.2010 on the file of the Subordinate Judge, Sankarankovil, Tirunelveli District, confirming the decree and judgment passed in O.S.No.60 of 2007, dated 26.08.2008 on the file of the Principal District Munsif Court, Sankarankovil, Tirunelveli District.

For Appellant : Mr.S.Palanivelayutham
For Respondent : Mr.S.Ramesh @ Ramiah

JUDGMENT

The defendant in O.S.No.60 of 2007 on the file of the Principal District Munsif Court, Sankarankoil, is the appellant in this second appeal. The respondent herein filed the said suit for declaration and permanent injunction in respect of the suit second schedule. The suit second schedule appears to be a pathway. The appellant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. On the side of the plaintiff, her husband was examined as P.W.1. Iyyanar Konar was examined as P.W.2. Ex.A1 to Ex.A9 were marked. The defendant examined himself as D.W.1 and one Vadivel was examined as D.W.2. Ex.B1 and Ex.B2 were marked. The commissioner's report and plan were marked as court exhibits 1 & 2. After consideration of the evidence on record, the trial court came to a finding that the suit second schedule absolutely belongs to the plaintiff. Therefore, the suit was decreed as prayed for. Challenging the same, the defendant filed A.S.No.89 of 2008 before the Sub Court, Sankarankoil. The first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, the second appeal came to be filed. Though the second appeal was filed way back in the year 2010, till date, it has not been admitted.



2. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to admit this second appeal after formulating the substantial question of law and take it up for disposal later.

3. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law arises for consideration.

4. After carefully considering the rival contentions and going through the evidence on record, I am more than satisfied that the issue falls purely on appreciation of facts. The courts below have adopted the correct approach and no substantial question of law arises for consideration. The second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

To

1.The Subordinate Judge, Sankarankovil,
Tirunelveli District.

2.The Principal District Munsif Court,
Sankarankovil, Tirunelveli District.

Copy To

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

+1 CC to M/s.S.RAMESH @ RAMIAH, Advocate (SR-8563[F] dated 25/02/2022)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-8851[F] dated 25/02/2022)

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23.02.2022

_RD(10.03.2022) 2P 7C