



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.373 of 2011

and

M.P.(MD)No.2 of 2011

Keelakadayam Panchayat,
Rep. by President,
K.Vijayarani,
Ambasamudram Taluk,
Tirunelveli District.

... Appellant/Appellant/Defendant

Vs.

Samuel Nadar (Died)

1.Chellathai

2.Rathinapushpam

3.Vimala

4.Selvan

5.Backiaraj @ Devaraj

6.Johnsigh

... Respondents/Respondents/Plaintiffs

(CAUSE TITLE ACCEPTED VIDE ORDER DATED 29.6.11 AND MADE IN MP(MD)

NO.2/11 IN SASR.NO.27475/11)

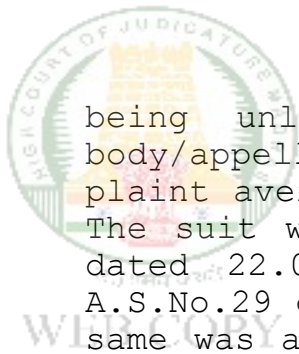
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.29 of 1994 on the file of the Sub Court, Ambasamudram, dated 28.02.2011 confirming the judgment and decree in O.S.No.346 of 1990 on the file of the Principal District Munsif Court, Ambasmudram dated 22.08.1994.

For Appellant : Mr.N.Muthu Vijayan,
Special Government Pleader.

For Respondents : Mr.J.Barathan
For Mr.T.R.Jeyapalam for R4
No appearance for R2, 3, 5 and 6.

JUDGEMENT

The defendant in O.S.No.346 of 1990 on the file of the Principal District Munsif Court, Ambasmudram is the appellant in this second appeal. One Samuel Nadar filed the said suit against the appellant/panchayat seeking the relief of permanent injunction in respect of the suit well. The suit well is comprised in R.S.No.324/1A in Keelakadayam village. According to the plaintiff, the well belongs to him and few other co-owners and that they are



being unlawfully restrained by the local body. The local body/appellant/panchayat filed written statement controverting the plaint averments and contended that the suit well is a public well. The suit was decreed by the trial Court vide judgement and decree dated 22.08.1994. Aggrieved by the same, the panchayat filed A.S.No.29 of 1994 on the file of the Sub Court, Ambasmudram and the same was also allowed. Aggrieved by the same, the plaintiff filed S.A.(MD)No.288 of 2005 and the matter was remanded. After remand, the first appeal filed by the local body was dismissed on 28.02.2011. Challenging the same, this second appeal came to be filed.

2.The second appeal was admitted on the following substantial questions of law:-

"1) Whether the Courts below have erred in decreeing the suit without considering the plea of Res-Judicata regarding the suit schedule property?

2) Whether the Courts below have given perverse finding when the respondent does not have any title or possession on the date of filing of suit? and

3) Whether the Courts below have erred in not taking into consideration Ex.B1 the suit instituted in representative capacity by the plaintiff therein?"

3.The learned Special Government Pleader appearing for the appellant/panchayat reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law formulated in this second appeal in favour of the appellant and set aside the impugned judgment and decree and allow this second appeal.

4.Per contra, the learned counsel appearing for the legal representatives of the deceased/plaintiff submitted that no substantial question of law arises for consideration.

5.I carefully considered the rival contentions and went through the evidence on record. The only issue that calls for determination is whether the suit well is a public well or private well. In support of their contention that it is a public well, the appellant had marked Ex.B1/judgment and decree dated 17.10.1960 made in O.S.No.50 of 1958 on the file of the District Munsif Court, Ambasmudram. The said suit in O.S.No.50 of 1958 was filed for declaration that the plaintiffs are entitled to use the water in the well comprised in R.S.No.324/1A. In other words, the subject matter of the present suit and the subject matter of O.S.No.50 of 1958 are one and the same. In the said judgment, the learned District Munsif Judge, Ambasmudram had given a categorical finding that the suit well is a public well vesting in Keelakadayam panchayat. Even though Ex.B1 was marked before the Court below, the Courts below ignored the same on the ground that the present plaintiff/Samuel



Nadar was not a party to the said suit. This approach is clearly erroneous. The cause title of O.S.No.50 of 1958 is as under:-

- 1.Arumuga Nadar
- 2.Veerabahu Nadar
- 3.Madakkanu Nadar,
- 4.Kadarkarai Nadar
- 5.Subramania Nadar
- 6.Annamalai Nadar
- 7.Arumuga Nadar alias Arunchala Nadar
- 8.Mary Pushpam ... Plaintiffs.

Plaintiffs permitted to sue on behalf of themselves and also as representatives of the pattadars, landlords and the other owners of S.Nos.322/2 and 324/1 of Keela Kadayam Village by order dated 05.02.1959 on I.A.1032 of 1956.

Versus

*Keela Kadayam Panchayat through its President ...
Defendant"*

This is more than sufficient to show that the suit was filed on behalf of all the pattatdars, landlords and other owners of R.S.No.324/1 of Keelakadayam village. The suit was filed in a representative capacity by virtue of the order dated 05.02.1959 in I.A.No.1032 of 1958. A finding that the suit well is a public well in such a suit is clearly binding on the present plaintiffs also. The binding effect of Ex.B1 was ignored by the Courts below. The substantial questions of law are therefore answered in favour of the appellant/panchayat. The judgment and decree passed by the Courts below are set aside and the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

22/02/2022

Sub Assistant Registrar(CS)

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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,
Ambasamudram.
- 2.The Principal District Munsif,
Ambasamudram.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A. (MD) No.373 of 2011
14.02.2022

MGJ(22.02.2022) 4P 5C