



S.A.Nos.1497 to 1501 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:29.09.2023

Delivered on: 24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.Nos.1497,1498,1499,1500 and 1501 of 2007

S.A.No.1497 of 2007

1. R.Adhilakshmi (died)

2.S.Shanthi

3.S.Jayaprakash

4.S.Vijayakumar

5.Minor T.Vivekanandan
rep by his guardian & maternal uncle
S.Jayaprakash

6.S.R.Sivakumaran

7.R.Ramkumari

... Appellants

A6 & 7 are brought as legal heirs
of the deceased A1 vide Court order
dated 24.02.2023 made
in C.M.P.No.13304 and 13305 of 2016



S.A.Nos.1497 to 1501 of 2007

Vs.

WEB COPY

- 1.K.N.P.Ravindran
 - 2.Vasuki
 - 3.K.P.S.Rajaganesan
 - 4.R.Vaishnavi
 - 5.S.Subramani
 - 6.Premalatha
 - 7.P.Sundaram Chettiar
 - 8.Vijayalakshmi
 - 9.Lakshmiammal
 - 10.Dhanam
 - 11.Sarasu
 - 12.N.Vijayalakshmi
 - 13.N.Nandakumar
 - 14.Sarala
 - 15.Maheshwari
 - 16.Akilandeswari
- 2/25



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17.K.Srimathi

18.Hemalatha

19.Banurekha

20.Thilagavathi

21.Vasudevan

22.Megala

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.10.2007 made in A.S.No.84 of 2005 on the file of learned Additional Sub Judge, Salem reversing the judgment and decree dated 31.03.2005 made in O.S.No.143 of 1993 on the file of Principal District Munsif, Salem.

For Appellants : Mr.T.P.Manoharan, Senior Counsel
for
Mr.K.P.Jotheeswaran

For Respondents : Ms.M.Pavithra
for
Mr.P.J.Rishikesh
M/s.Rugan & Arya for R1 to 8

No Appearance for R9,10,14 to 16 , 20 and
R21



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S.A.No.1498 of 2007

1. R.Adhilakshmi (died)

2.S.Shanthi

3.S.Jayaprakash

4.S.Vijayakumar

5.Minor T.Vivekanandan
rep by his guardian & maternal uncle
S.Jayaprakash

6.S.R.Sivakumaran

7.R.Ramkumari

... Appellants

A6 & 7 are brought as legal heirs
of the deceased A1 vide Court order
dated 24.02.2023 made
in C.M.P.No.13306 and 13307 of 2016

Vs.

1.P.Sundaram Chettiar

2.The Salem Corporation
rep by its Commissioner
Salem-636 001

4/25



S.A.Nos.1497 to 1501 of 2007

3.The Commissioner of Town & Country Planning
807, Anna Salai, Chennai-600 002

4.The Joint Director of Town & Country Planning
and Member Secretary, Salem local planning Authority
4/711, Sait Extension
Venkatesapuram
Salem-636 007

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.10.2007 made in A.S.No.85 of 2005 on the file of learned Additional Sub Judge, Salem reversing the judgment and decree dated 31.03.2005 made in O.S.No.173 of 1997 on the file of Principal District Munsif, Salem.

For Appellants : Mr.T.P.Manoharan, Senior Counsel
for
Mr.K.P.Jotheeswaran

For Respondents : Mr.P.J.Rishikesh
for
M/s.Rugan & Arya for R1

Mrs.Devi, SC for R2

S.A.No.1499 of 2007

1. R.Adhilakshmi (died)

2.S.Shanthi

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S.A.Nos.1497 to 1501 of 2007

WEB COUNCIL

3.S.Jayaprakash

4.S.Vijayakumar

5.Minor T.Vivekanandan
rep by his guardian & maternal uncle
S.Jayaprakash

6.S.R.Sivakumaran

7.R.Ramkumari
A6 & 7 are brought as legal heirs
of the deceased A1 vide Court order
dated 24.02.2023 made
in C.M.P.No.13308 and 13309 of 2016

... Appellants

Vs.

1.K.N.P.Ravindran

2.Vasuki

3.S.Subramani

4.Premalatha

5.K.P.S.Rajaganesan

6.R.Vaishnavi

7.Vijayalakshmi

6/25



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8.Lakshmiammal

9.Dhanam

10.Sarasu

11.N.Vijayalakshmi

12.N.Nandakumar

13.Sarala

14.Maheshwari

15.Akilandeswari

16.K.Srimathi

17.Hemalatha

18.Banurekha

19.Thilagavathi

20.Vasudevan

21.Megala

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.10.2007 made in A.S.No.87 of 2005 on the file of learned Additional Sub Judge, Salem reversing the judgment and decree dated 31.03.2005 made in O.S.No.159 of 1993 on the file of Principal

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S.A.Nos.1497 to 1501 of 2007

District Munsif, Salem.
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For Appellants : Mr.T.P.Manoharan, Senior Counsel
for
Mr.K.P.Jotheeswaran

For Respondents : Mr.P.J.Rishikesh
for
M/s.Rugan & Arya for R1 to 7

No Appearance for R9,14 to 16,18,20,21

S.A.No.1500 of 2007

1. R.Adhilakshmi (died)

2.S.Shanthi

3.S.Jayaprakash

4.S.Vijayakumar

5.Minor T.Vivekanandan
rep by his guardian & maternal uncle
S.Jayaprakash

6.S.R.Sivakumaran

7.R.Ramkumari

... Appellants

8/25



S.A.Nos.1497 to 1501 of 2007

A6 & 7 are brought as legal heirs
of the deceased A1 vide Court order
dated 24.02.2023 made
in C.M.P.No.13312 and 13313 of 2016

Vs.

1.K.N.P.Ravindran

2.Vasuki

3.K.P.S.Rajaganesan

4.R.Vaishnavi

5.S.Subramani

6.Premalatha

7.P.Sundaram Chettiar

8.Vijayalakshmi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.10.2007 made in A.S.No.83 of 2005 on the file of learned Additional Sub Judge, Salem reversing the judgment and decree dated 31.03.2005 made in O.S.No.368 of 2002 on the file of Principal District Munsif, Salem.

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S.A.Nos.1497 to 1501 of 2007

For Appellants : Mr.T.P.Manoharan, Senior Counsel
for
Mr.K.P.Jotheeswaran

For Respondents : Mr.P.J.Rishikesh
for
M/s.Rugan & Arya for R1 to 8

S.A.No.1501 of 2007

1. R.Adhilakshmi (died)

2.S.Shanthi

3.S.Jayaprakash

4.S.Vijayakumar

5.Minor T.Vivekanandan
rep by his guardian & maternal uncle
S.Jayaprakash

6.S.R.Sivakumaran

7.R.Ramkumari

A6 & 7 are brought as legal heirs
of the deceased A1 vide Court order
dated 24.02.2023 made

... Appellants

10/25



S.A.Nos.1497 to 1501 of 2007

in C.M.P.No.13310 and 13311 of 2016

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Vs.

1.Lakshmiammal

2.Dhanam

3.Sarasu

4.N.Vijayalakshmi

5.N.Nandakumar

6.Sarala

7.Maheshwari

8.Akilandeswari

9.K.Srimathi

10.Hemalatha

11.Banurekha

12.Thilagavathi

13.VAsudevan

14.Megala

15.P.Ravindran

11/25



S.A.Nos.1497 to 1501 of 2007

16.Vasuki

17.Subramani

18.Premalatha

19.Rajaganesan

20.Vaishnavi

21.Vijayalakshmi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.10.2007 made in A.S.No.144 of 2006 on the file of learned Additional Sub Judge, Salem reversing the judgment and decree dated 31.03.2005 made in O.S.No.159 of 1993 on the file of Principal District Munsif, Salem.

For Appellants : Mr.T.P.Manoharan, Senior Counsel
for
Mr.K.P.Jotheeswaran

For Respondents : Mr.P.J.Rishikesh
for
M/s.Rugan & Arya for R15 to 18

No Appearance for R8,12,13,15 to 21

R1 to 7, 9 to 11 given up

Not ready notice regarding R14.

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COMMON JUDGMENT

These five Second Appeals have been preferred against the common judgment in A.S.Nos.83, 84, 85, 87 of 2005 and A.S.No. 144 of 2006. A.S.No.84 was filed for declaration and permanent injunction. A.S.No.87 of 2005 and 144 of 2006 was filed for permanent injunction and delivery of possession. A.S.Nos.83 and 85 of 2005 was filed for declaration and permanent injunction. The issues being common in all the suits viz., O.S.Nos.368 of 2002, 143 of 1993, 173 of 1997, 159 of 1993, the appeals were heard together and decided in and by a common judgment rendered by the Additional Sub-Judge, Salem on 23.10.2007. The short question involved in these appeals are revolving around a scheme formulated by the Salem Municipality under the name and style of “Periyeri Town Planning Scheme”. The plaintiffs in all the suits claiming that there was a 40 ft. scheme road intended for the use of public and that the defendants had no right over the same, prayed for the respective reliefs as set out here in above.



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2. The Trial Court, in and by a common judgment dated 31.03.2005 held that there was no 40 ft road existing as alleged by the plaintiffs and without any acquisition of private land, the road could not have been formed by the Municipality. Ultimately, the Trial Court held that the plaintiffs in O.S. No.143 of 1993 had failed to establish their alleged right over the 0.21 cents Scheme road and dismissed the said suit and granted decree in O.S.No.159 of 93 as it was proved that the property was not a road and similarly O.S.No.173 of 1997 and O.S.No.368 of 2002 were also decreed as prayed for.

3. The five Appeal Suits were filed by the aggrieved parties in the respective suits and the First Appellate Court, after discussing the pleadings and evidence of the parties held that even in 1979, a 40 feet road was recognized by the predecessors in interest of the subject property and proceeded to hold that the appellants had established the existence of the 40 feet road and reversed the findings of the Trial Court in so far as four appeals viz., A.S.Nos. 83, 84, 85 and 87 of 2005 and Appeal Suit in 144 of 2006



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alone was dismissed.

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4. Aggrieved by the said common judgment passed by the First Appellate Court, the above five appeals have been preferred raising various grounds. At the time of admission of the above appeals, the following substantial questions of laws were framed in each Appeals:

S.A.No.1497 of 2007

“ The Second Appeal is admitted on the following substantial questions of law:

“1. When admittedly the then Salem Municipality had not proceeded with “the Periyeri Town Planning Scheme”, not acquired any land under the L.A.Act and not laid the roads contemplated in it, in view of Sec.38 r/w.Sec.125(2) of the TNT&CP Act, the said Scheme had not lapsed in 3 years from 1969 i.e in 1973 itself and all the lands covered under the said Scheme, including the suit property were not released therefrom and consequently, was the Court below right in giving contrary findings and allowing the Appeals?

2.Whether the claim made by the 1st



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respondent and his family they are not owners of the suit property and execution of Ex.B.3 Gift deed in favour of the 2nd respondent , would not destroy their claim that the suit property is a scheme road and make their suit filed to declare so, unmaintainable?”

S.A.No.1498 of 2007

“ The Second Appeal is admitted on the following substantial questions of law:

“1. When admittedly the then Salem Municipality had not proceeded with “the Periyeri Town Planning Scheme”, not acquired any land under the L.A.Act and not laid the roads contemplated in it, in view of Sec.38 r/w.Sec.125(2) of the TNT&CP Act, the said Scheme had not lapsed in 3 years from 1969 i.e in 1973 itself and all the lands covered under the said Scheme, including the suit property were not released therefrom and consequently, was the Court below right in giving contrary findings and allowing the Appeals?

2.Whether the claim made by the 1st respondent and his family they are not owners of the suit property and execution of Ex.B.3 Gift deed



S.A.Nos.1497 to 1501 of 2007

in favour of the 2nd respondent , would not destroy their claim that the suit property is a scheme road and make their suit filed to declare so, unmaintainable?

3. When in Ex.A.42 the Appellants have not described the suit property either as a road or a Scheme Road anywhere therein, the Court below was right misreading and misconstruing the same and holding that the suit 40 ft. wide Scheme Road is mentioned in the said Release Deed and the said mistake had not vitiated its findings and judgment and made them perverse?

S.A.No.1499 of 2007

“ The Second Appeal is admitted on the following substantial questions of law:

“1. When admittedly the then Salem Municipality had not proceeded with “the Periyeri Town Planning Scheme”, not acquired any land under the L.A.Act and not laid the roads contemplated in it, in view of Sec.38 r/w.Sec.125(2) of the TNT&CP Act, the said Scheme had not lapsed in 3 years from 1969 i.e in 1973 itself and all the lands covered under the said Scheme, including the suit property were not released therefrom and



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S.A.Nos.1497 to 1501 of 2007

consequently, was the Court below right in giving contrary findings and allowing the Appeals?

2. Whether the final and binding findings and decree for permanent injunction made against the Respondents-1&2 and Sundaram Chettiar and the Salem Corporation in O.S.No.1021/1997 in respect of T.S.No.4 situated adjacent to the suit property on its northern side and proposed as a continuation of the north-south scheme road from the suit property and closure of the same by compound, would not conclusively prove that the scheme was not implemented, no road, muchless, a scheme road was laid and in existence in the suit property and not used by the public at any time?

3. When it Ex.A.42 the Appellants have not described the suit property either as a road or a Scheme Road anywhere therein, the Court below was right misreading and misconstruing the same and holding that the suit 40 ft. wide Scheme Road is mentioned in the said Release Deed and the said mistake had not vitiated its findings and judgment and made them perverse?

S.A.No.1500 of 2007



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S.A.Nos.1497 to 1501 of 2007

“ The Second Appeal is admitted on the following substantial questions of law:

“1. Whether materials on record would not prove that the respondents-1 to 8 are in illegal occupation of the suit property and consequently, was the Court below right in dismissing the suit filed by the appellants for recovery of possession?

2. Whether Ex.A.4 executed by Laksmiammal and her children in excess of their undivided share in the properties, that too, in respect of a specific portion and providing passage therein, would be legal, valid and binding on the remaining sharers viz., the Appellants and consequently, was the Court below right in relying on Ex.A.4 and dismissing the suit filed by the appellants?

S.A.No.1501 of 2007

“ The Second Appeal is admitted on the following substantial questions of law:

“ Whether materials on record would not prove that the respondents 15 to 21 are in illegal



S.A.Nos.1497 to 1501 of 2007

occupation of the Item-2 of the suit property and consequently, was the Court below right in dismissing the suit filed by the Appellants for recovery of possession?”

5. At the time of the final hearing of the above Second Appeals, the Learned Senior counsel, Mr.T.P. Manoharan appearing for the counsel for the Appellant, Mr.K.P Jotheeswaran would submit that though the First Appellate court had found that a 40 feet Scheme road had been formed by the Municipality and proceeded to reverse the well considered findings of the Trial court, he would bring to my notice that in a Writ Petition filed before this court in W.P.No.13049 of 2008, the Writ Court in and by an order dated 23.08.2021 has held that the Scheme viz., “Periyeri Town Planning Scheme” had already stood lapsed and was dead as there was no acquisition undertaken. The Writ Court has categorically found and held in para 11 that the entire scheme has lapsed as early as on 20.01.1973 and that the respondents viz., the statutory respondents in the Writ Petition viz., (1) The Secretary to



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the Government, State of Tamilnadu, Housing and Urban Development Department, Chief Secretariat, Chennai-600 009 (2).The Commissioner/Director of Town & Country Planning, 807, Anna Salai, Chennai-600 002, (3). The District Collector cum Chairman of the Salem Local Planning Authority, Collectorate, Salem-636 001, (4). The Joint Director of Town & Country Planning and Member Secretary,Salem Local Planning Authority, Neduchalai Nagar, Salem-636 005 and (5). The Commissioner, Salem Municipal Corporation, Salem 636 001 cannot invoke Section 33 (1) of the Tamiladu Town and Country Planning Act, 1971 as the scheme was dead and lapsed. The Writ Petition was allowed by this Court specifically placing reliance on the “Periyeri Town Planning Scheme” in G.O.Ms.No.2467, R.D. & L.A. Department dated 15.12.1969 and finding that the said scheme was never proceeded, holding that the scheme had lapsed.

6. The learned Senior counsel for the appellant would also state that the order passed in the Writ Petition has become final and the Statutory



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respondents have not preferred any Writ Appeal as against the said order of the Writ Court. Therefore, he would primarily contend that the said order passed in the Writ Petition would have a direct bearing in the present Second Appeals as the core question involved in all these Second Appeals is only revolving around the existence of the 40 feet scheme road.

7. Mrs. Devi, learned Standing counsel for the Salem Municipality in S.A.No.1498 of 2007 would also fairly concede that the order passed in the Writ Petition has become final and no Appeal has been filed, challenging the same and that in view of the said order there can be no reference to any road under the said scheme, much less the 40 feet scheme road which was the only bone of contention before the Trial Court as well as the First Appellate Court.

8. Despite notices being served on all the contesting respondents in the present Second Appeals, there is no appearance on their behalf and infact the



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counsel on record had also stated that they have given change of vakalat long back and their names need not be printed in the cause list. To afford an opportunity to the contesting respondents to appear and make submissions, I also adjourned the matter thrice and posted the Appeals under the captions for orders. Despite the same, none of the respondents, except the standing counsel for the Salem Municipality and the counsel who appeared for some of the respondents only represented that they support the case of the appellants in all these appeals, have chosen to appear and contest the matter.

9. In view of the order passed in the W.P. No.13049 of 2008 dated 23.08.2021, there is no difficulty in deciding the substantial questions of law to be answered in the above Second Appeals. The First Appellate court has reversed the findings of the Trial court only on the basis that the 40 feet road was formed by the Municipality and was in existence. However now that the said position is found to be incorrect and in the light of the order passed by the Writ Court and the same also having become final, all the Second



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Appeals deserve to be allowed and the substantial questions of law are answered in favour for the appellants and the Second Appeals are allowed.

There shall be no order as to costs.

24.11.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

Speaking/Non-speaking order

kpr

To

1. The Additional Sub Judge, Salem
2. The Principal District Munsif, Salem



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S.A.Nos.1497 to 1501 of 2007

P.B.BALAJI, J.,

kpr

Pre-delivery Judgment in
S.A.Nos.1497,1498,1499,
1500 and 1501 of 2007

24.11.2023