



S.A.(MD).No.577 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD).No.577 of 2007

Ramakrishna Thevar

... Appellant

Vs.

Senthur Pandian (died)

2.Muthulakshmi

3.Jaya

4.Tamilselvi

5.Murugalakshmi

6.Muthuselvi

7.Madhubala

8.Sathish Kumar

respondents 2 to 8 are brought on record as
LRs of the deceased sole respondent vide Court
order dated 28.04.2022 made in
C.M.P.(MD).No.5445 of 2021 in
S.A.(MD).No.577 of 2007.

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal Sub Court, Tenkasi, dated 18.12.2006 in A.S.No.26 of 2006, confirming the judgment and decree of the Principal District Munsif, Tenkasi in O.S.No.161 of 2005, dated 16.12.2005.



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For Appellant : Mr.T.S.R.Venkataramana
for M/s.V.Janakidevi
For Respondents : Mr.D.Nallathambi

J U D G M E N T

This appeal has been filed against the judgment and decree passed by the Principal Sub Court, Tenkasi in A.S.No.26 of 2006, dated 18.12.2006, confirming the judgment and decree passed by the Principal District Munsif, Tenkasi in O.S.No.161 of 2005, dated 16.12.2005.

2. The suit in O.S.No.161 of 2005 was filed by the first respondent herein before the Principal District Munsif, Tenkasi for declaration and permanent injunction. Before the trial Court, on the side of the plaintiff, one witness was examined as P.W.1 and five documents were marked as Exs.A1 to A5. On the side of the defendant, one witness was examined as D.W.1 and three documents were marked as Exs.B1 to B3. Besides, three Court documents were marked as Exs.C1 to C3. The trial Court, after hearing both the parties and on perusal of the Commissioner Report, decreed the suit in favour of the first respondent/plaintiff. Against which, the appellant/defendant has preferred an appeal before the



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Principal Sub Court, Tenkasi and the first appellate Court has confirmed the judgment and decree passed by the trial Court. Aggrieved over the said judgment and decree, the appellant/defendant has filed the present appeal.

3. While admitting the second appeal, this Court has framed the following substantial question of law:

Whether the Courts below were right in decreeing the suit without considering the actual survey number mentioned in Ex.A2?

4. Mr.T.S.R.Venkataramana, learned Senior counsel appearing for the appellant would submit that in the suit schedule property, the Survey Number has been mentioned as 982. However, the Courts below came to the conclusion that in the suit schedule property, the survey number has been wrongly mentioned as 982 and the correct survey number was 932 and passed the judgment and decree in favour of the first respondent/plaintiff. He would further submit that both the Courts below ought not to have passed the judgment and decree, when the suit was filed for S.No.982 and they themselves on its own, corrected the survey number and passed the judgment as if the suit was filed for S.No.932. He would



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also submit that the boundaries, survey number, extent of the property and the name are not matching with Exs.A1 and A2. The Commissioner was appointed by the trial Court and he has filed a report and what was the real position was not taken into consideration.

5. Though the learned counsel appearing for the respondents made a strong objection for the submission made by the learned counsel for the appellant, he would fairly submit that in the event, if the Court feels that the matter may be remanded, let the Court below shall consider the matter afresh and thereafter pass a judgment and decree.

6. Upon hearing and perusal of documents, it appears that the survey number of the suit schedule property is 982, but the Courts below passed the judgment and decree for the survey number 932 stating that the plaintiff has mentioned the survey number wrongly as 982, without any application for amendment or correction. Further, it appears that the boundaries, survey number, extent of the property and the name are not clear. Therefore, though both the counsel agreed for remanding the matter, this Court, upon consideration of the



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submissions and in view of the above discussed aspects, is inclined to remand the matter for consideration by the Court below afresh in all aspects not with regard to any particular issue. Based on the available documents and evidences, if both the parties interested, they can let in any additional evidence and produce the additional documents.

7. In such a view of the matter, this Court is inclined to set aside the judgment and decree passed by the Courts below. Accordingly, the judgment and decree passed by the Principal Sub Court, Tenkasi in A.S.No.26 of 2006, dated 18.12.2006 and the Principal District Munsif, Tenkasi in O.S.No.161 of 2005, dated 16.12.2005 are set aside and the matter is remanded back to the trial Court for fresh consideration on all aspects and if required, the trial Court may appoint a new Advocate Commissioner or if the same Advocate Commissioner is available, he may be appointed to find out the exact status of the property.

8. In the result, the Second Appeal is disposed of. No costs.

21.08.2023

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To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The Principal District Munsif,
Tenkasi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY,J.

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