



Rev.Apl.C.(MD).No.88 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Rev.Aplc(MD)No.88 of 2022

in

S.A.No.21 of 2003

1. Nalliappan
S/o.Nalliappan

2. L.Pitchammal
D/o.Late Lakshmanan

3. L.Lakshmanan
S/o. Late Lakshmanan

4. A.Vijaya
D/o. Late Lakshmanan

..... Petitioners/ Appellants Nos. 2, 3, 7 and 8
-vs-

1. The Executive Engineer
Public Works Department,
Madurai, Thallakulam (Kesampatty Village,
Periya Aruvi Reservoir Controller),
Madurai City and District.

2. The Assistant Engineer,
Periya Aruvi Water Reservoir Maintenance,
Public Works Department,
Melur Taluk and City,
Madurai District.

.... Respondents No.1 and 2/ Respondents



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3. L.Adammal

D/o. Late Lakshmanan

4. L.Raman

S/o. Late Lakshmanan

5. T.Pushbam

D/o. Late Lakshmanan ... Respondents No 3 to 5/Appellants No. 4 to 6

(Respondents No.3 to 5 are given up
Notice not necessary in the Review Petition)

PRAYER: Review Application filed under Section 114 and Order 47 Rule 1 and 2 of Civil Procedure Code, to review the judgment and decree made in S.A.No.21 of 2003, dated 07.01.2022 by allowing the Review Petition.

For Petitioners : Mr.S.Vellaichamy

For Respondents : Mr.N.G.A.Natraj
For R1 & R2

J U D G M E N T

The present Review Application has been filed seeking to review the order of this Court, dated 07.01.2022, made in S.A.No.21 of 2003.



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2. The Second Appeal arises out of a suit for declaration of title and permanent injunction. It is the case of the plaintiffs that the said property is the ancestral property and the brothers are in joint possession of the property and the Government is attempting to interfere in their possession. The suit schedule property is shown as to 0.27.5 hectares punja land in Survey No. 202/4A1. The trial Court as well as the first Appellate Court have dismissed the suit on the ground that the defendants viz., the Government had acquired title by adverse possession. In the Second Appeal, this Court had reversed the said finding relating to the adverse possession in favour of the Government. However, proceeded to arrive at a finding that the plaintiffs have not filed any documents to establish the title and possession over the property and dismissed the second appeal.

3. In the Review Application, it has been brought to the notice of this Court that the plaintiffs/appellants have filed M.P.No.1 of 2012 to mark six documents as additional evidence in the Second Appeal, out of six documents, Document No.5 is a patta standing in the name of the appellants for Survey No.202/4A1.



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4. According to the learned counsel appearing for the Review petitioner, being an ancestral property, the appellants/ plaintiffs can only rely upon the Adangal extracts and the patta to establish their title. Over looking the documents filed as additional evidence, this Court has proceeded to dismiss the Second Appeal relying upon the documents that were presented by the plaintiffs before the trial court.

5. I have carefully considered the submissions made by the learned counsel on either side.

6. This Court is of the view that the revenue records including patta that were sought to be marked as additional evidence, in the Second Appeal by way of M.P.No.1 of 2012 were not brought to the notice of this Court and as a result the Second Appeal has been dismissed.

7. Therefore, there is an error apparent on the face of the record warranting this Court to interfere and exercise its power under order 47 Rule 1 and 2 of CPC, the Review application stands allowed and the judgment and



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decree, dated 07.01.2022 made in S.A.No.21 of 2003 is hereby set aside.

Registry is directed to list the Second Appeal for fresh hearing before the concerned Court. There shall be no order as to costs.

13.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Executive Engineer
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R.VIJAYAKUMAR,J.

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