



S.A.(MD)No.484 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.484 of 2022

and

C.M.P.(MD)No.6179 of 2022

1.Masilamani

Irulapparaja (Died)

Natarajan (Died)

2.Kannan

3.Kalyani

4.Mohamed Yasif

5.Ramlakshmi

6.Revathi

7.Vasantha

8.Karthick

9.Vijaya Prabhakaran

... Appellants

/Vs./

1.The Junior Engineer,
Public Work Department,
(Water Resource Organization),
Kadayam,



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Ambasamudram Taluk,
Tirunelveli District.

2.The Tahsildar,
Alankulam Taluk,
Tirunelveli District.

3.The State of Tamil Nadu,
Represented through
The District Collector,
Tirunelveli District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to allow the Second Appeal and set aside the judgment and decree dated 22.03.2022 made in A.S. No. 42 of 2019 on the file of Sub Court, Ambasamudram, confirming the judgment and decree dated 28.03.2019 made in O.S. No.160 of 2013 on the file of Additional District Munsif Court, Ambasamudram.

For Appellants : Mr.George Raja
for M/s.Ajmal Associates

For Respondents : Mrs.S.Jeyapriya
Government Advocate



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JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2. The appellants are the plaintiffs in the suit in O.S.No.160 of 2013 on the file of the Additional District Munsif Court, Ambasamudram. The said suit was filed for declaration and injunction in respect of fishing rights in S.No.166, Thuppakudi Village, Kadayam, Tirunelveli District. The plaintiffs claimed fishing rights in the aforesaid lake, based on a document dated 13.02.1911 (Ex.A1). According to the plaintiffs, they have been having the fishing rights ever since 1911 till 2013. The trial Court, based on a Government Order in G.O.Ms.No.16, Public Works (W2) Department, dated 14.01.2011 (Ex.B3) dismissed the suit filed by the plaintiffs.

3. The aforesaid Government Order in G.O.Ms.No.16, Public Works (W2) Department, dated 14.01.2011 (Ex.B3) grants exclusive rights to the Public Works Department for granting lease of fishery



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rights. Based on the said Government Order, the Public Works Department had also conducted an auction in respect of the fishery rights for the subject lake and a third party was granted fishing rights pursuant to the said auction in the year 2013. The oral and documentary evidence were let in by the respondents / defendants before the trial Court to prove that the plaintiffs did not have exclusive fishery rights for the subject lake as claimed by them.

4. Before the trial Court, on the side of the plaintiffs, seven documents were marked as Exs.A1 to A7 and two witnesses were examined on their side, namely Masilamani as P.W.1 and Selvaraj as P.W. 2. On the side of the respondents / defendants, four documents were marked as exhibits, namely, Exs.B1 to B4 and one witness was examined namely, Saravanakumar, Public Works Officer as D.W.1.

5. The respondents / defendants have filed a document namely Ex.B4 dated 15.07.2013 that for the subject lake, fishery rights were granted to a third party, pursuant to an auction and the third party namely Subramanian had taken the subject lake for fishing activity on paying a



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sum of Rs.60,950/- as consideration for the period from 01.08.2013 to 31.07.2014. Only based on the oral and documentary evidence available on record, the trial Court had dismissed the suit filed by the plaintiffs.

6. Fishing rights cannot be granted forever. Even though the plaintiffs may have carried on the fishing activity in the subject lake for a long number of years, that cannot grant them right to have fishing activity forever. Admittedly, the property namely the lake does not belong to the plaintiffs and it belongs to the Government. While that be so, this Court is of the considered view that the trial Court has rightly dismissed the plaintiffs' suit.

7. Aggrieved by the Judgment and Decree dated 28.03.2019 passed by the trial Court, namely, the Additional District Munsif Court, Ambasamudram in O.S.No.160 of 2013, the plaintiffs filed the first appeal. The lower appellate Court, namely, Sub Court, Ambasamudram, also confirmed the findings of the trial Court, by Judgment and Decree dated 22.03.2022 passed in A.S.No.42 of 2019.



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8. This Court has also perused and examined the Judgment and Decree of the lower appellate Court. This Court is of the considered view that the lower appellate Court has also rightly confirmed the findings of the trial Court by dismissing the appeal. Aggrieved by the same, this Second Appeal has been filed.

9. Even though in the grounds of this Second Appeal, the appellants have raised certain substantial questions of law, the so called questions of law are all factual issues, which have been rightly considered by the Courts below against the appellants after giving due consideration to the oral and documentary evidence available on record. This Court is of the considered view that the Courts below have rightly rejected the appellants' contentions by dismissing the suit as well as by dismissing the first appeal. There are no substantial questions of law involved in this Second Appeal. Accordingly, there is no merit in this Second Appeal and the same is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.03.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Sub Court, Ambasamudram.
- 2.The Additional District Munsif Court,
Ambasamudram.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.484 of 2022

Dated:
15.03.2023