



S.A.(MD).No.186 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.186 of 2017

and

C.M.P(MD)No.3499 of 2017

Sakkarai Thevar

... Appellant

/Vs./

1. Amaravathi
2. The Tahsildar,
Uthamapalayam Taluk Office,
Uthamapalayam,
Theni District.
3. The Executive Engineer,
Public Works Department,
District Collector Office Back Side,
Theni,
Theni District.
4. The Executive Officer,
K.Pudupatti Town Panchayat,
Theni District.

... Respondents

[R-4 is Suo Motu impleaded vide order of this Court, dated 20.11.2023]



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed by the Sub Court, Uthamapalayam in A.S.No.7 of 2015 dated 10.11.2016 modifying the Judgment and Decree passed by the District Munsif Court, Uthamapalayam in O.S.No.296 of 2010 dated 28.11.2014.

For Appellant : Mr.N.Tamilmani

For Respondents : Mr.N.Marimuthu, for
Mr.A.Chandrakumar, for R-1

Mr.A.Baskaran,
Additional Government Pleader,
for R-2 to R-4

JUDGMENT

This Second appeal has been filed against the Judgment and Decree passed by the Sub Court, Uthamapalayam in A.S.No.7 of 2015 dated 10.11.2016 modifying the Judgment and Decree passed by the District Munsif Court, Uthamapalayam in O.S.No.296 of 2010 dated 28.11.2014.

2. Heard Mr.N.Tamilmani, the Learned counsel appearing for the Appellant, Mr.N.Marimuthu, for Mr.A.Chandrakumar, the



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Learned counsel appearing for the 1st respondent, Mr.A.Baskaran, the Learned Additional Government Pleader appearing for the respondents 2 to 4 and perused the material documents available on record.

3. The 1st defendant is the Appellant herein. The Plaintiff and the defendants 2 & 3 are respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

4. The plaintiff has filed a suit in O.S.No.296 of 2010 for permanent injunction, for mandatory injunction and to remove the encroachment and the suit was allowed on 28.11.2014. Against the said Judgment, the 1st defendant has preferred an appeal in A.S.No.7 of 2015 and the said appeal was allowed partly. Against the same, the 1st defendant is before this Court.

5. The contention of the plaintiff is that the 1st defendant has encroached water body and also bunds of the water body, thereby blocking the pathway which is used by the villagers. As per the plaintiff,



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the 1st item belongs to the plaintiff and the 3rd item belongs to the 1st defendant and the 2nd item of the property is encroachment.

6. In order to resolve the issue, this Court directed the 2nd respondent / Tahsildar to carry out spot verification and submit a report. The 2nd respondent has filed his report, wherein it is stated in the report that the Plaintiff and the 1st defendant have encroached the water body to the extent stated hereunder:

“3. I humbly submit that the said V.Sakkarai has encroached the said 17 cents of land in the bunds of the Oorani and has put up a Tin Sheet shed in 10.5 cents in the southern portion and cultivating Peans and has encroached the lands and he has also fenced the said lands.

4. I humbly submit that to the north east of the bunds of Oorani, the lands in S.No.1704 to an extent of 0.45.50 is situated and the patta stands in the name of Thiru.Karunaisamy and her wife is Tmt.Amaravathi who is the Plaintiff in the Original Suit. The said Tmt.Amaravathi has encroached 6.5 cents out of the 17 cents of the bunds of the said Oorani.”



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7. Therefore, this Court is of the considered opinion that both the encroachments made by the plaintiff and the 1st defendant should be evicted and the pathway should be opened for the general public.

8. The Tahsildar further reported that the land is under the control of Local Body i.e. the Executive Officer, K.Pudupatti Town Panchayat who is the appropriate authority. Since the Executive Officer, K.Pudupatti Town Panchayat, Theni District is not a party in the suit, this Court *Suo motu* impleaded as 4th respondent. The 4th respondent is directed to evict the plaintiff and the 1st defendant, thereafter maintain the same as pathway which can be used by common public. If there is any other encroachment by third parties, the 4th respondent is directed to take appropriate steps and to evict the encroachment as per Law, after issuing notice. The said exercise shall be completed within a period of Eight weeks, from the date of receipt of a copy of the order.



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9. With these modifications, this Second Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

20.11.2023

Index : Yes / No
NCC : Yes / No
ksa



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TO:

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2. The Executive Engineer,
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District Collector Office Back Side,
Theni,
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3. The Executive Officer,
K.Pudupatti Town Panchayat,
Theni District.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

ksa

Judgment made in
S.A.(MD)No.186 of 2017

20.11.2023