



S.A.(MD).No.133 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.133 of 2012

and

M.P.(MD)No.2 of 2012

Viyagulamuthu

... Appellant

/Vs./

1.Thanudhas

2.State of Tamil Nadu,

Represented by the District Collector,
Kanyakumari District at Nagercoil.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 25.07.2011, made in A.S.No.118 of 2010 on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 25.08.2010, made in O.S.No.1 of 2005 on the file of the Additional District Munsif Court, Eranial.

For Appellant

For R1

For R2

: Mr.P.Prabhakaran

: Mr.V.Meenakshi Sundaram
for Mr.I.Velpradeep

: Mr.C.Satheesh

Government Advocate



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JUDGMENT

The present second appeal is preferred by the 1st defendant in the suit against the Judgment and Decree dated 25.07.2011, passed in A.S.No.118 of 2010 on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 25.08.2010, passed in O.S.No.1 of 2005 on the file of the Additional District Munsif Court, Eranial.

2. The 1st defendant in the suit is the appellant herein. The plaintiff is the 1st respondent herein and the 2nd defendant is the 2nd respondent herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit. Originally the 2nd defendant was not a party in the suit but was subsequently impleaded.

3. The plaintiff had filed the suit for declaration to declare the plaintiff's the title and possession of the suit property and consequential injunction restraining the defendants from trespassing or forming any road or any way intermeddling the road in the plaintiff's property.



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4. The suit property is situated in Survey No.434/2 and the old Survey No. 2380. The 1st defendant has filed a written statement declining the plea of the plaintiff. Based on the rival pleadings, the suit was decreed. Aggrieved over the same, the 1st defendant preferred an appeal suit and the same was dismissed confirming the judgment and decree of the Trial Court. Aggrieved over the same, the present second appeal is preferred.

5. Pending second appeal, the 2nd defendant government had preferred C.M.P.(MD)No.847 of 2022 to receive additional documents. It is seen the Trial Court had allowed the suit on the ground that the government had not filed any documents. And the Appellate Court had confirmed the judgment and decree on the same ground. Therefore, this Court is inclined to allow the C.M.P.(MD)No. 847 of 2022 to receive additional documents. It is seen the plaintiff had not filed any counter affidavit in C.M.P.(MD)No.847 of 2022. Therefore, in order to protect the rights of the plaintiff, liberty is granted to the plaintiff to put forth the plea at the time of marking the documents.



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6. It is seen that both the original suit and the appeal suit were allowed based on the sole reason that the Government had not produced any records. Now, the Government has produced the records. Therefore, the rival claims and rights of the parties have to be decided after elaborate trial. Therefore, this Court is inclined to remit the case back to the Trial Court. The parties are at liberty raise additional pleadings and raise additional objections regarding the additional documents. Thereafter, the Trial Court shall decide the issue afresh. The judgment and decree passed by both the Trial Court and Appellate Court are set aside. The Trial Court is directed to conduct denova trial. The parties are directed to appear before the Trial Court on 04.01.2025. The Registry is directed to return the original documents to the Trial Court.

7. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2024

Index : Yes / No
NCC : Yes / No

Tmg

Note: Issue order copy on 30.12.2024.



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TO:

1. Sub Court, Padmanabhapuram.
2. Additional District Munsif Court, Eranial.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. The District Collector,
Kanyakumari District at Nagercoil.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.133 of 2012

Dated:
19.12.2024