



S.A.(MD).No.518 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.518 of 2021
and C.M.P.(MD).No.6860 of 2021

K.Krishna Pillai

... Appellant/Appellant/Plaintiff

Vs.

- 1.The State of Tamil Nadu,
represented by its District Collector,
Kanniyakumari District,
Collectorate, Nagercoil,
Vadasery Village,
Agastheeswaram Taluk.
- 2.The Tahsildar,
Kalkulam Taluk,
having office at Thuckalay,
Thuckalay Village,
Kalkulam Taluk,
Kanniyakumari District.
- 3.The Junior Engineer,
Public Works Department,
Eraniel,
Near Court Campus,
Monday Market, Eraniel Village,
Kalkulam Taluk,
Kanniyakumari District.



S.A.(MD).No.518 of 2021

4.The Assistant Engineer,
Public Works Department,
Irrigation Section,
Eraniel,
Near Court Campus,
Monday Market, Eraniel Village,
Kalkulam Taluk,
Kanniyakumari District.

... Respondents/Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 02.02.2021 passed in A.S.No.55 of 2019 on the file of the learned Sub Court, Eraniel confirming the Judgment and decree dated 14.112016 passed in O.S.No. 11 of 2014 on the file of the learned Principal District Munsif cum Judicial Magistrate Court, Eraniel.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.D.S.Nedunchezian for R1 to R4
Government Advocate

JUDGMENT

This second appeal has been preferred to set aside the Judgment and Decree dated 02.02.2021 passed in A.S.No.55 of 2019 on the file of the learned Sub Court, Eraniel confirming the Judgment and decree dated 14.112016 passed in O.S.No.11 of 2014 on the file of the learned Principal District Munsif cum Judicial Magistrate Court, Eraniel.



S.A.(MD).No.518 of 2021

WEB COPY

2.The appellant as the plaintiff filed the suit in O.S.No.11 of 2014 on the file of the learned District Munsif cum Judicial Magistrate, Eraniel, seeking declaration and permanent injunction with costs. The same was dismissed by the trial Court by the Judgment and decree dated 14.11.2016. Against which the plaintiff filed appeal suit in A.S.No.55 of 2019 on the file of the learned Subordinate Judge, Eraniel. The same was dismissed concurring with the finding of the trial Court. Against which, this second appeal has been filed.

3.Pending the second appeal, the learned counsel for the appellant as well as the respondent would submit that as per the Commissioner's report and plan a portion of the property situated in S.No.404 alleged to have been encroached by the appellant herein. That encroached portion is marked in green ink, which is available on the south, namely a portion of the southern wall of the appellant. Now the photographs are shown that the encroached portions have been removed. Photographs showing removal of encroachments were filed, in pursuance of the order passed by this court. The above said photographs are placed on record.



S.A.(MD).No.518 of 2021

4. When the encroached portion is removed what else remains for the appellant is answered that since the suit is dismissed, ultimately problem may arise in future. The respondent may again cause trouble stating that the suit has been dismissed. There is no issue with regard to the title and ownership of the appellant in S.No.391/14. The learned Additional Government Pleader also accepted the above said peaceful possession.

5. In the commissioner's sketch the portion encroached by the appellant/plaintiff is shown washed in green colour. That portion was ordered to be removed by this Court. To that effect undertaking affidavit was filed. Compliance was also reported. Those documents are placed on record.

6. As stated above, the appellant would submit that since the encroached portion has been removed he may be granted decree and judgment in respect of the portion to which the plaintiff is entitled. That is not objected by the defendant hereby stating that they will not interfere into the peaceful possession and enjoyment of the plaintiff in respect of



S.A.(MD).No.518 of 2021

the portion mentioned in the commissioner's sketch.

WEB COPY

7.In view of the above said, the suit is decreed in respect of the portion washed in green colour in the commissioner's sketch. The commissioner's sketch and report shall form part of the decree. Accordingly, the judgment and decree passed by the trial court as well as the appellate court are set aside. This appeal stands allowed without costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Subordinate Judge, Eraniel.
- 2.The Principal District Munsif cum Judicial Magistrate, Eraniel.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD).No.518 of 2021

G.ILANGO VAN,J.

TM

S.A.(MD).No.518 of 2021

31.07.2024