



S.A.(MD)No.26 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 16.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A.(MD)No.26 of 2017  
and  
C.M.P.(MD)No.590 of 2017

Mosai

... Appellant / Appellant / 4<sup>th</sup> Defendant

**Vs.**

1.Kanniammal

... 1<sup>st</sup> Respondent / 1<sup>st</sup> Respondent / Plaintiff

2.The District Collector,  
Ramanathapuram Town,  
Ramanathapuram District.

3.The Tahsildar,  
Adi Dravidar Welfare Department,  
Mudukulathur.

4.Murugesan

... Respondents 2 to 4 / Respondents 2 to 4 /  
Defendants 1 to 3

**Prayer** : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 26.09.2016 in A.S.No.64 of 2014 on the file of the learned Subordinate Judge, Paramakudi confirming the judgment and decree dated 05.08.2014 in O.S.No.60 of 1995 on the file of the learned District Munsif, Mudukulathur.



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S.A.(MD)No.26 of 2017

For Appellant : Mr.T.Villavankothai,  
For Mrs.S.Latha.

For Respondents : Mr.S.Srinivasa Raghavan,  
For Mr.R.Rajaraman for R1.  
Mr.R.Raghavendran,  
Government Advocate for R2 & R3.

### **JUDGEMENT**

The fourth defendant in O.S.No.60 of 1995 on the file of the District Munsif Court, Mudukulathur is the the appellant in this second appeal. The said suit was instituted by one Kanniammal / first respondent herein for permanent injunction. The suit was decreed as prayed for. Questioning the same, the appellant herein filed A.S.No.140 of 1997 before the Additional District and Sessions Court, Ramanathapuram. The decision of the trial Court was reversed and the appeal was allowed. Aggrieved by the same, Kanniammal / plaintiff filed S.A.No.1099 of 1999. During the pendency of the appeal, the appellant / Kanniammal claimed that the Special Tahsildhar (Adi Dravidar Welfare) had issued assignment order in her favour. This assignment order was sought to be received as additional evidence by filing M.P.No.1 of 2014 under Order XLI Rule 27 of Civil Procedure Code. This additional evidence was taken note of by this Court. The second appeal itself was allowed and the



S.A.(MD)No.26 of 2017

matter was remanded vide judgment and decree dated 08.01.2014 in the following terms:-

*“13.It is admitted fact that during pendency of the present second appeal, M.P.(MD)No.1 of 2014 has been filed under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 wherein an assignment order which stands in the name of the plaintiff has been filed. In the said assignment order, no plot number has been given and simply survey number as well as extent have been given. Under the said circumstances the Court cannot come to a conclusion without having oral evidence to the effect that new assignment order issued in favour of the plaintiff is related to the suit property and therefore for the purpose of adducing oral evidence with regard to new assignment order, this Court is of the view to set aside the judgments and decrees passed by the Courts below and the matter is liable to be remitted to the file of the trial Court. Since the matter is liable to be remitted to the file of the trial Court, the substantial question of law settled in the present second appeal need not be decided.*

*14.In fine, this second appeal is allowed without costs and the judgments and decrees passed by the Courts below are set aside and Original Suit No.60 of 1995 is remitted to the file of the District Munsif Cum Judicial Magistrate's Court, Mudukulathur. The appellant / plaintiff is directed to adduce oral evidence with regard to new assignment order. The respondents / defendants are also entitled to adduce additional evidence. The trial Court is directed to dispose of the Original Suit No.60 of 1995 before the end of June, 2014 and report the same to the Registry without fail. The Court fee paid on*



S.A.(MD)No.26 of 2017

*the appeal memorandum is ordered to be refunded to the appellant / plaintiff forthwith.”*

Following remand, the plaintiff as well as the contesting defendant adduced evidence. The assignment order was marked as Ex.A18. The trial Court after taking into account the additional evidence concluded that Plot No.70 for which the suit was instituted is covered by the assignment order (Ex.A18). It is relevant to note that one Jeyamani / Special Tahsildhar (Adi Dravidar Welfare) was examined as D.W.3 and he specifically spoke about Ex.A18 / assignment order dated 06.06.1999. The trial Court also observed that while the suit property for which relief was sought measured five cents, Ex.A18 / assignment order was only in respect of three cents. The trial Court recorded the undertaking of the plaintiff that she would not claim more than three cents and she was ready to surrender the remaining two cents. The suit was decreed vide judgment and decree dated 05.08.2014. Aggrieved by the same, the appellant herein / fourth defendant filed A.S.No.64 of 2014 before the Sub Court, Paramakudi. The first appellate Court vide judgment and decree dated 26.09.2016 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed. This second appeal had not been admitted till date.





S.A.(MD)No.26 of 2017

incompetent to issue an assignment order during the pendency of the civil proceedings.

5.I am afraid that I cannot take cognizance of this contention. This issue was already concluded in the earlier round itself. Vide judgment and decree dated 08.01.2014 in S.A.No.1099 of 1999, the assignment order was already received by way of additional evidence and the matter was remanded with a specific directive. The trial Court was called upon to undertake an exercise of finding out if the assignment order pertained to suit property. Therefore, the validity of the assignment order cannot be gone into by me again.

6.The suit is one for bare injunction. The Courts below have concurrently found that the plaintiff is in possession of the suit property. It has also been found that Ex.A18 / assignment order pertains to the suit property. No substantial question of law arises for consideration and the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**16.10.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes/ No  
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S.A.(MD)No.26 of 2017

To:

1. The Sub Court,  
Paramakudi.
2. The District Munsif Court,  
Mudukulathur.
3. The District Collector,  
Ramanathapuram Town,  
Ramanathapuram District.
4. The Tahsildar,  
Adi Dravidar Welfare Department,  
Mudukulathur.

**Copy to:**

The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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S.A.(MD)No.26 of 2017

**G.R.SWAMINATHAN, J.**

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S.A.(MD)No.26 of 2017

16.10.2024