



S.A(MD)No.458 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.458 of 2017

and

C.M.P(MD)No.9626 of 2017

1.Lilly Saroja

2.Suganthi

3.Shanthi

4.Jayanthi

5.Sankaran

... Appellants/Appellants/Defendants

Vs.

Selvaraj

Through his power agent.

Dhanapal.

... Respondent/Respondent/Plaintiff

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 15.02.2016 passed in A.S.No.17 of 2015 on the file of the Sub Court, Kovilpatti, confirming the judgment and decree dated 13.02.2015 passed in O.S.No.131 of 2012 on the file of the District Munsif Court, Kovilpatti.



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For Appellants : Mr.M.P.Senthil

For Respondent : Mr.S.Kumar

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 15.02.2016 passed in A.S.No.17/2015 on the file of the Sub Court, Kovilpatti, confirming the judgment and decree dated 13.02.2015 passed in O.S.No.131 of 2012 on the file of the District Munsif Court, Kovilpatti.

2. The appellants are the defendants and the respondent is the plaintiff in O.S.No.131 of 2012 on the file of the District Munsif Court, Kovilpatti. The respondent/plaintiff filed the suit for declaration that the plaintiff is the absolute owner of the suit property and consequent permanent injunction against the defendants.

3. For the sake of convenience, the parties are referred as plaintiff and defendants as arrayed in O.S.No.131 of 2012 on the file of the District Munsif Court, Kovilpatti.



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4. Case of the plaintiff:

The property in a larger extent of 1.52 acres in S.No.177/5 of Manthithoppu village originally belonged to one Ponnammal. Patta No.394 was issued in her name even in 1960. Prior to that, the old adangal number is 750 for the said property. Out of 1.52 acres, the western 51 cents was sold to one Ayyamperumal by the said Ponnammal along with her son Ramasamy Nadar through sale deed No.1310/1971 dated 15.07.1971. Thereafter, the said Ponnammal and her sons entered into oral partition in respect of 1.01 acres. Her son Kasi Nadar sold centre 51 cents out of 1.52 acres to one Seenivasa nadar. The remaining eastern 50 cents was purchased by one Sankarappa Naicker from the legal heirs of Ponnammal. Patta No.895 stood in the name of Ayyamperumal till his life time. Thereafter, patta No.895 was changed in the name of Seenivasa Nadar. The legal heirs of Ayyamperumal and Seenivasa Nadar jointly sold 1.02 acres to one Thirupati under registered Sale Deed No.926/2008, dated 04.02.2008. The survey number was subdivided and patta granted in S.No.177/5A to Thirupathi and the patta granted in S.No.177/5B to Sankarappa Naicker. Thirupathi sold 1.02 acres to the plaintiff by virtue of registered Sale Deed No.7133/2009 dated 26.08.2009



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and patta No.2377 was issued to him. From the date of purchase, the plaintiff has been in possession and enjoyment of the said property, which is described as suit property. The defendants colluded with revenue officials and obtained the same patta No.2377 without any notice to the plaintiff. The plaintiff filed an appeal before the Revenue Divisional Officer, who passed the order dated 15.03.2012 in Na.Ka.No.B6/9329/2010 restored the mutation registry in the name of plaintiff. But the defendants continuously tried to disturb the enjoyment of the plaintiff over the suit property. The plaintiff is temporarily residing in Singapore, so the plaintiff filed suit through power of attorney seeking for declaration and injunction.

5. Case of the Defendants:

The averments that the suit property with a larger extent originally belonged to Ponnammal and she along with her sons sold western 51 cents to Ayyamperumal and middle 51 cents to Seenivasa Nadar, and that Thirupathi purchased the above 1.02 acres from legal heirs of Ayyamperumal and Seenivasa Nadar and that the eastern 50 cents sold to Sankarappan Naicker are totally false. The alleged patta stood in the name of the plaintiff and his predecessor in title are also false. In fact, 1 acre 52 cents in S.No.177/5 of



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Manthithoppu was purchased by Rajasekaran, who is the husband of 1st defendant and father of defendants 2 to 4, from Seenivasa Naicker and his legal heirs by virtue of sale deed dated 22.05.1978. The said 1.52 acres originally belonged to Seenivasa Naicker's predecessor in title one Venkata Subba Naicker through sale deed, dated 26.08.1932. Patta for 1.52 acres was issued to Rajasekaran, who died leaving the defendants as his legal heirs. After his demise, the defendants have been enjoying the property. While being so, without notice to the defendants, the S.No.177/5 was sub divided as S.No.177/5A and 177/5B and so on application by the defendants, the said sub divided survey number was registered in the patta of the defendants. The plaintiff's predecessors had no right over the said property. The defendants enjoyed the property from 1978 through Rajasekaran and they sold the property to one Sankaran/5th defendant on 14.07.2010. The defendants and their purchasers have also entitled to property by adverse possession. The defendants filed a revision against the DRO proceeding in respect of patta granted to the plaintiff. The 5th defendant claims title through defendants 1 to 4. Hence, the suit is liable to be dismissed.



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6. The Trial Court framed the following issues:

- "(1) Whether the suit property is absolutely belonged to plaintiff?*
- (2) Whether the suit is bad for non joinder of necessary party?*
- (3) Whether the suit is beyond the territorial jurisdiction of the trial Court?*
- (4) Whether the plaintiff is entitled to declaration as prayed for?*
- (5) Whether the plaintiff is entitled to permanent injunction as prayed for?*
- (6) To what other relief the plaintiff is entitled to?"*

7. During trial, on the plaintiff side, P.W.1 and P.W.2 were examined and marked 14 exhibits as Ex.A.1 to Ex.A.14. On the defendants' side, one witness was examined as D.W.1 and Ex.B.1 to Ex.B.16 were marked. Ex.X1 was also marked.

8. After hearing both sides, the learned District Munsif, Kovilpatti concluded that the plaintiff has proved his case and decreed the suit as sought in the plaint by passing judgment and decree, dated 13.02.2015.



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9. Aggrieved by the judgment and decree in O.S.No.131 of 2012, the defendants preferred the Civil Appeal in A.S.No.17 of 2015 before the Subordinate Court, Kovilpatti. The first Appellate Court after hearing both, passed the judgment, dated 15.02.2016 dismissing the appeal in A.S.No.17 of 2015 and confirmed the judgment and decree passed in O.S.No. 131 of 2012.

10. Challenging the judgment and decree of the First Appellate Court confirming the judgment and decree of the trial Court, the defendants have preferred this Second Appeal and the same has been admitted for file on 27.10.2017 on the following substantial questions of law:-

"(1) Whether the Courts below are right in rejecting the case of the defendants on the ground that documents produced by the appellants/defendants are after suit documents?"

(2) Whether the Courts below failed to advert the settled principle of law when a plaintiff sought for declaration and permanent injunction, it is for him to prove the same before court of law with substantial oral and documents of evidence, rather than relying upon the weakness of the defendants?"



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(3) Whether the courts below right in deciding the issue No.2 in favour of the respondent/plaintiff, which is contradictory to their own pleadings in para no.11 of the plaint?

(4) Whether the Courts below right in granting decree to the respondent/plaintiff merely on the basis of patta No.394 in the name of Ponnammal, when the same is not issued in respect of suit schedule property?

(5) Whether Courts below right in rejecting the oral evidence of PW2 being a revenue official who clearly stated about the patta no.346 (Ex.B.2 dated 29.07.1980)?

(6) Whether the respondent/plaintiff proved his title with oral and documentary evidence before the Courts below to discharge his initial burden as a dominant litus?"

11. Heard both sides and perused the records in this Second Appeal.

12.The learned counsel for the appellants/defendants has submitted that the plaintiff claims title over the suit property from Ponnammal and her sons



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who had alleged title from 1976 through patta No.394. The defendants' predecessor one Venkatasubba Naicker had a title in the year 1932, who purchased the suit property from Siththava Naicker. The plaintiff states that the suit property is in S.No.177/5A. A mere perusal of the suit property shows that there are no boundaries mentioned for the suit property. When a litigant seeks a declaration of title, the description of property must be given with all particulars namely, the specific boundaries, measurements and survey numbers as contemplated under Order 7 Rule 3 of the Civil Procedure Code. But, the suit property is mentioned only in the survey number. Further, the plaintiff has not produced any title document of his vendor but only produced revenue records. So, the entire burden rests on the plaintiff to establish his case by producing title documents and also through cogent evidence including a proper description of properties. Hence, it is suffice to negate the relief sought by the plaintiff. It is a settled proposition that declaration of title cannot be granted in the absence of the exact four boundaries of the suit property. The plaintiff relied on Ex.A.2 - SLR copy. A bare perusal of Ex.A.2 reveals that the plaintiff's predecessor in title namely Ponnammal was overwritten after scoring the existing name. There is no explanation for the said fact on the side of the plaintiff. The plaintiff also relied on Ex.A.2 - SLR



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copy to substantiate that the old adangal number 750 correlates to S.No.177/5.

Apart from adangal number 750, there are other numbers i.e., 748/12, 741/3 and 749/13, even the 749/13 was overwritten and probably 741/3 was altered as 749/13. The authenticity of Ex.A.2 was not proved through any official witness. The plaintiff has not initially proved his case. The plaintiff cannot take advantage of weakness of the defendants' case. The plaintiff must prove his case through oral and documentary evidence. The Courts below discarded Ex.B.4, which is a registered sale deed, dated 29.08.1932 executed in favour of Venkatasubbu Naicker, who is the defendants' predecessor, by Sithava Naicker. In the schedule of properties, the adangal numbers 748/12 and 741/3 were mentioned apart from other numbers. Ex.A.2 refers the above adangal numbers. The defendants traced the title from 1932. The plaintiff has not produced any title deed in the name of Ponnammal. The only document is Ex.A.1 - SLR copy, which will not substantiate the purchase by Ponnammal. The plaintiff's admitted evidence is that he has not claimed other survey numbers which are shown in adangal No.750. As per Ex.A.2, S.No.177/8 also correlates old adangal No.750, so on what basis the plaintiff claimed right in S.No.177/5 was not established by the plaintiff.



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13. Further, the learned counsel for the appellants submitted that the Courts below failed to consider the admitted evidences of the plaintiff. The appellants/defendants produced Ex.B.4, Ex.B.5 and Ex.B.6 and also revenue records stood in the name of Rajasekaran in respect of suit property in S.No.177/5A. Further, Ex.B.1 - Patta Passbook was also issued in the name of Rajasekaran, which was also deposed by P.W.2 - Tahsildar. Ex.B.2 - Patta No.2377 reflected the name of appellants/defendants 1 to 4. After purchase, the name of 5th appellant/5th defendant is reflected in Ex.B.3 - Patta for survey No.177/5A. On the date of suit, the 5th defendant was a bonafide purchaser, who was not impleaded in the suit, but only on application filed by the defendants 1 to 4, the 5th defendant was impleaded. Courts below committed error in appreciating the evidences adduced on the defendants' side and also misinterpreted the documentary evidence of the defendants. Further, the 1st Appellate Court without considering the points independently mechanically concurred with the findings of the trial Court. This Court is empowered to invoke Section 100 of the Civil Procedure Code, to interfere with the concurrent findings of the Courts below and hence, the Second Appeal may be allowed. In support of his argument, the learned counsel placed reliance on the following citations:

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***"(i) 2012 (1) CTC 542 (A.M.Kothandaramasamy
Koil Thrupuvanama /v/ Vairam)***

***(ii) 2019-4 Law Weekly 353 (Joint Family
Manager, Sangottaiyan /v/ Nagaraj)***

***(iii) 2019 SAR (Civil) 765 (Jagdish Prasad Patel
(Dead) Thr. LRs. & Anr. /v/ Shivrath & Ors.)***

***(iv) 2019 8 SCC 637 (State of Rajasthan and
others /v/ Shiv Dayal and Ors.)***

***(v) 2006 (4) CTC 79 (Hero Vinodh (Minor) /v/
Seshammal)"***

14. Per contra, the learned counsel for the respondent/plaintiff submitted that the defendants have raised contention for the first time in this Second Appeal that the boundaries of the suit property were not given in the schedule of property. Such pleading was not made in the written statement or at the time of recording of evidences. The defendants have not anywhere disputed the identity of the suit property. The suit property specifically mentioned about survey number, extent and village name. It is held by the Hon'ble Supreme Court that property can be identified by survey number or



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boundaries. The other contention is that the plaintiff's predecessor had no right for a total 1.52 acres as her name was entered after striking out of some other name and also two more adangal numbers mentioned along with adangal No.750. Ex.A2 revealed that S.No.177/5 having a total extent of 1.52 acre stood in the name of Ponnammal. So, the alleged inclusion of other adangal numbers will not disprove the title of Ponnammal. Ex.A.2 was filed along with plaint and the defendants have not raised any doubt upon the genuineness of Ex.A.2. The defendants trace title to suit property under Ex.B.4 sale deed which is relating to property measuring 32 cents in adangal No.748/12, 52 cents in adangal No.741/3, measuring 1.5 acres in adangal No.746/10 and 2 acres 36 cents in adangal Nos.726-729. But the suit property is measuring 1.52 acres in adangal No.750 and in S.No.177/5. The extent and boundaries given in Ex.B.4 and Ex.B.5 are not tallied with suit property. So it is proved that the properties covered under Ex.B.4 entirely differ from the suit property in S.No.177/5. Moreover, Ex.X.1 - revenue file reflects the transfer of patta in favour of plaintiff for suit property in S.No.177/5. Whereas the defendants have not produced any transfer of patta proceedings. The defendants 1 to 4 and the 5th defendant have contested the case separately. Neither the defendants 1 to 4 nor the 5th defendant entered into witness box to



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prove their case. It is a settled proposition that if the party to the suit did not enter into witness box and depose his own case on oath and does not offer himself for cross examination by other side, a presumption would arise that the case set up by him is not correct under Section 114 (g) of the Evidence Act.

15. The learned counsel for the respondent/plaintiff further submitted that in this case, the husband of the second defendant was examined as D.W.1, who admitted in his evidence that he did not know directly anything about the sale of Rajasekaran and prior sale to Rajasekaran. The plaintiff proved his case by examining himself and through Ex.A.2 to Ex.A.14. The Courts below correctly appreciated the evidences of the plaintiff and correctly came into conclusion. A Second Appeal Court is not expected to conduct a third trial on facts and the appeal to be heard only on substantial question of law formulated by the High Court. The questions of law framed in this case are not substantial questions of law. The finding of the Courts below is concurrent one. Concurrent findings could not be set aside unless question of law decided favouring appellants in the Second Appeal. The question of law could not be decided in favour of the appellants as the



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suit was factually decided by the Courts below. Therefore, this Second Appeal may be dismissed. In support of his argument, the learned counsel for the respondent/plaintiff relied on the following citations:

"(i) Judgement in S.A.No.133 of 2006 dated 08.12.2010 of High Court, Madras (Pormanen & Ors. /v/ P.Thiagarajan)

(ii) 2022 (7) MLJ 437 (SC) (Hindustan Petroleum Corporation Ltd. /v/ Ajay Bhatia)

(iii) 2015 (13) SCC 673 (Zarif Ahmad /v/ Mohd. Farooq)

(iv) 2010 (10) SCC 512 (Man Kaur (dead) by LRs /v/ Hartar Singh Sangha)

(v) 2021 (2) SCC 718 (Iqbal Basith & Ors. /v/ N.Subbalakshmi & Ors.)

(vi) 2007 (1) CTC 334 (Gurdev Kaur & Ors /v/ Kaki & Ors.)

(vii) 2018 (18) SCC 303 (Ramathal /v/ Maruthathal & Ors.)"



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16. Heard the arguments of both and perused the material records of the case. It is the contention of the appellants/defendants that the description of property is not correctly mentioned as per the provision under Order 7 Rule 3 of the Civil Procedure Code and four boundaries of property are also not mentioned. It is their further contention that in a suit for declaration of title, correct identification of property must be shown by relying on citations reported in **2019-4 Law Weekly 353 (Joint Family Manager, Sangottaiyan /v/ Nagaraj) and 2012 (1) CTC 542 (A.M.Kothandaramasamy Koil Thrupuvanama /v/ Vairam)**. Per contra, the learned counsel for the respondent/plaintiff contended that the appellants/defendants raised such contention in this Second Appeal only, they have not raised such allegation before the trial Court while filing written statement as well as letting in evidence. It is further contended by the plaintiff that the mentioning of extent with survey number and village is sufficient and there is no dispute in respect of identity of suit property. The respondent/plaintiff relied on citations reported in **2022 (7) MLJ 437 (SC) (Hindustan Petroleum Corporation Ltd. /v/ Ajay Bhatia) and 2015 (13) SCC 673 (Zarif Ahmad /v/ Mohd. Farooq)**.



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17. On perusal of records, it is clear that the suit property is mentioned in the plaint as “Palayamkottai Registered District, Kovilpatti Sub Registrar Circle, Kovilpatti Taluk, Manthithoppu Village, S.No.177/5A to the extent of 0.41.50 Hectare = 1.02 Acre of Punja land”. The suit is filed for declaration that the plaintiff is the absolute owner of the suit property and consequential injunction. On perusal of records, the defendants have not raised any objection about the description of property before trial Court and also, there is no dispute regarding the suit property and its extent. While considering both citations, identity of extent with survey number and village is sufficient and when a decree is to be executed regarding mandatory injunction and recovery of possession, the four boundaries are necessary. In this case, as rightly argued by the counsel for the respondent/plaintiff, there is no dispute in respect of identity of the suit property and also the appellants/defendants have not raised such contention before the trial Court in their written statement and only raised in this Second Appeal. Hence, the contention of the appellants/defendants is untenable.

18. On perusal of records, the plaintiff claims title to 1.02 acres in S.No.177/5A from one Ponnammal, who had title over the suit property with a



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larger extent of 1.52 acres in old adangal No.750 and who was given patta No.394 under Estate Abolition and Conversion into Ryotwari Act, 26 of 1948 in the year 1960. It is their further case that one Ayyamperumal purchased western 51 cents from the said Ponnammal and her heir and that one Seenivasa Nadar purchased middle 51 cents from the said Ponnammal and her heirs. It is their further case that one Thiruppathi purchased the western 51 cents and middle 51 cents from Ayyamperumal and Seenivasan vagairah. From the said Thiruppathi the plaintiff purchased the same. The plaintiff side marked the title deeds as Ex.A.3 to Ex.A.6. The defendants submitted that the suit property with larger extent originally belonged to Shitthava Naicker from whom Venkatasubbu Naicker purchased the same under Ex.B.4 sale deed and that the said properties were shown in old adangal Nos.748/12, 743/1 and 749/13. The defendants' case is that the plaintiff admitted that he purchased the property only shown in old adangal No.750, but in Ex.A.2 - SLR copy there is also mentioned two more old adangal number in addition to old adangal No.750. At this juncture, on perusal of judgment of the Courts below, the document Ex.B.4 has been discussed, it is observed that in Ex.B.4 the description of properties mentioned as 50 cents in adangal number 748/12, 51 cents in adangal number 741/3, 105 cents in adangal number 746/1 and



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also the properties bearing adangal Nos.726, 727, 728 and 729 and so the defendants parent deed does not bear the old adangal number 750 and its property with larger extent of 1.52 acre. So, the Courts below correctly discussed and came to conclusion that the defendants predecessor had no right or title over the property bearing old adangal number 750, as the purchase of the property through Ex.B.4 and Ex.B.5, the defendant cannot derive title over property in S.No.177/5A and based on Ex.B.5, the patta Ex.B.1 is also not sufficient to prove the case of defendants. The plaintiff's predecessor purchased the property prior to Ex.B.4, i.e. through Ex.A.3, dated 15.07.1973 and Ex.A.4, dated 29.9.1976. The plaintiff produced documents to correlate that the property under old adangal number 750 is the present survey No.177/5A. The patta was also issued in favour of plaintiff's predecessor and it also evident from records that when patta was granted to defendant for the said survey number, the plaintiff made objection application and mutation of transfer of patta proceedings was issued. This was clearly evident from Ex.X.1.

19. On perusal of records, on the side of the plaintiff, the plaintiff's power of attorney, Dhanapal and another witness were examined as P.W.1



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and P.W.2. On the side of the defendants, none of the defendants was examined as a witness, instead, one Selvaraj, husband of 2nd defendant was examined as D.W.1. It is evident from the evidence of D.W.1 that he did not know directly about the sale of Rajasekaran and his prior sale and patta obtained in the name of the defendant was cancelled and re-transferred to the plaintiff name in the revenue records. In this connection, on perusal of both sides citations, it is clear that if a litigant to the suit did not enter into witness box and depose his own case on oath and did not offer himself for cross examination by other side, a presumption would be arisen that the case set up by the litigant is not correct under Section 114(g) of the Evidence Act. In this case, the plaintiff proved his case by examining himself and produced documents. Whereas the defendants 1 to 4 and 5th defendant, who contested the suit separately, did not enter into witness box and did not give evidence on oath to prove their case. So, the argument of the plaintiff has some force. Of course, the Court could not conclude the case by taking advantage of weakness of the case of the defendant. But, in this case, the plaintiff established their case by letting in oral and documentary evidence.



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20. The Courts below correctly appreciated the case and the same need not re-appreciated in this Second Appeal. The defendants only filed a patta stood in their name, which is also after the suit. On perusal of records, on defendants' side, there are no correlation revenue records to show the suit property S.No.177/5A disclosed from their old adangal numbers 748/12, 741/13 and 749/13. The Courts below correctly appreciated the evidence adduced on both sides. This Court cannot sit to conduct third trial of facts as held in **2007 (1) CTC 334 (Gurdev Kaur & Ors /v/ Kaki & Ors.)** and **2018 (18) SCC 303 (Ramathal /v/ Maruthathal & Ors.** Further, the appellants/defendants cannot plead new set of facts in the Second Appeal, the appellants/defendants can challenge only substantial questions of law based on their pleadings and evidences placed before the trial Court. On perusal of records, the plaintiff traces the title of suit property through Ponnammal and established their case by oral and documentary evidence. Whereas the defendants, who trace the title of suit property from Venkatasubbu Naicker, have not established their case through oral and documentary evidence. As rightly contended by the plaintiff side, the defendants did not enter into witness box and did not give evidence on oath to substantiate their case.



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In the above facts and circumstances, the questions of law 1, 2 and 4 to 6 are answered against the appellants/defendants.

21. The next contention raised by the appellants/defendants is that issue No.2 “whether the suit is hit by principles of non-joinder of necessary party.” It is not disputed that after filing suit, the 5th defendant was impleaded. After impleadment of 5th defendant, the defendants had not challenged the same by filing a Civil Revision or Appeal. Further, it is evident that the defendants 1 to 4 contested the case separately and also the 5th defendant has also contested the case separately. Both filed the appeal before the first Appellate Court. So, the trial Court correctly concluded that the suit is not bad for non joinder of necessary parties, hence, this question of law is answered against the appellants/defendants.

22. On perusal of judgments of the Courts below, the Courts below found concurrent findings based on evidences adduced in the case. The said findings need not be interfered by this Court by way of Second Appeal. The rulings relied on by the appellants/defendants side will not support their case, whereas the rulings relied on by the respondent/plaintiff side, are



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squarely applicable to the facts of this case. Hence, the questions of law framed in this Second Appeal are answered against the appellants/defendants.

Thus, this Second Appeal fails.

23. In the result, the Second Appeal is dismissed. The judgment and decree, dated 15.02.2016 passed in A.S.No.17 of 2015 on the file of the Sub Court, Kovilpatti, confirming the judgment and decree dated 13.02.2015 passed in O.S.No.131 of 2012 on the file of District Munsif Court, Kovilpatti is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD

To

1. The Sub Court, Kovilpatti.
2. The District Munsif Court, Kovilpatti.
3. The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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Pre-Delivery Judgment made in
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