



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.171 of 2011 and
M.P.No.1 of 2011

The Commissioner,
Namakkal Municipality,
Namakkal.

... Appellant / Defendant

Vs.

1.P.Arunachalam (died)
2.A.Rathinam
3.V.Shanthi
4.R.Lalitha
5.A.Sivakumar

(respondents 2 to 5 brought on record as LR's of the deceased sole respondent viz., P.Arunachalam vide order dated 16.03.2020 in M.P.Nos.1 to 3 of 2015)

... Respondents / LR's of Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 10.09.2008 made in A.S.No.166 of 2007 on the file of the Subordinate Court, Namakkal, modifying the decree and judgment dated 28.04.2000 made in O.S.No.553 of 1998 on the file of the Principal District Munsif Court, Namakkal.



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For Appellant : Mr.K.Rajendra Prasad

For Respondents : No appearance

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 10.09.2008 made in A.S.No.166 of 2007 on the file of the Subordinate Court, Namakkal, modifying the decree and judgment dated 28.04.2000 made in O.S.No.553 of 1998 on the file of the Principal District Munsif Court, Namakkal.

2. Heard Mr.K.Rajendra Prasad, learned counsel for the appellant and perused the materials available on record.

3. On 21.12.2024, this Court has passed the following order:

"The learned counsel for the appellant submitted that there is a sewage plant built near the suit property and the plaintiff has got separate entry to the burial ground and that is the reason why the respondent / plaintiff did not evince any interest to participate in the appeal proceedings.

2. Attention was brought to the Government Order passed in G.O.No.167 dated 18.05.2012 wherein an extent



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of 2.60 acre has been taken up for constructing the sewage plant. Accordingly the sewage plant has also been constructed and the photographs of the same has also been filed in the additional typed set of papers.

3. For the respondent to comment on the above submission made by the appellant or the appellant to initiate steps to get a joint compromise memo in this regard, if possible. The matter is ordered to be listed on 02.01.2025."

4. When the matter is taken up today, there is no representation for the respondents / legal heirs of the deceased plaintiff and the appellant is also not able to file any joint compromise memo as suggested in the above order. However, the typedset of the appellant contains a Government Order along with the Field Map to show that the suit property has been taken up for Sewerage Treatment Plant and crematorium.

5. As the features of the suit property has been tremendously changed in pursuant to the Government Order issued in G.O.Ms.No.167 dated 18.05.2012, the respondents cannot have any access towards the suit property to reach their lands. As the First Appellate Court has passed a



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decree which is incapable of execution in view of the subsequent changes that had occurred in the suit pathway, the judgment and decree of the First Appellate Court is liable to be set aside.

6. In view of the above stated reasons, this Second Appeal is allowed and the judgment and decree dated 10.09.2008 made in A.S.No.166 of 2007 is set aside and the suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

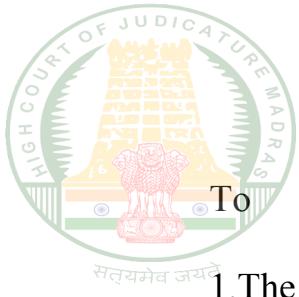
03.01.2025

Speaking order / Non Speaking Order

Index : Yes / No

Neutral Citation : Yes / No

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To

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1.The Subordinate Court,
Namakkal.

2.The Principal District Munsif Court,
Namakkal.



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R.N.MANJULA, J.

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