



WEB COPY

S.A.No.80 of 2



DATED: 22-08-2025

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No.80 of 2017

Rahamadullah
S/o. late. Abdul Rahman,
Old No.139, New.No.178,
Mosque Street,
Thiruvaduthura Village,
Kuthalam Taluk,
Myladuthurai.

Appellant(s)

Vs

1.Iqbal(Died)
S/o. Shaik Dawood, Mosque Street,
Thiruvaduthura Village, Kuthalam
Taluk, Myladuthurai.

2.Mrs.Madhina Beevi
W/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai District.

3.Mr.Mohamed Riyas
S/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk,
Myladuthurai District.



4.Mr.Ali Rahman

S/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai District.

5.Mrs.Noorbiya

W/o.Late Shajahan, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai District.

6.Ms.Sahana(minor)

Minor Represented By Her Mother
Noorbiya (R5) D/o.Late Shajahan, Rep.
By Her Mother Mrs.Noorbiya, No.139,
Pallivasal Street, Thiruvavaduthurai
Village, Kuthalam Taluk, Myladuthurai
District.

(RR2 To 6 Brought On Record As Lrs
Of The Deceased Sole Respondent Viz.,
Iqbal Vide Order Of Court Dated 29-10-
2021 made n C.M.P.No.11934 and
11936/2021 in S.A.No.80/2017.

Respondent(s)

PRAYER

Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 06.03.2015 in A.S.No.9 of 2014 on the file of the Principal Subordinate Judge, Myladuthurai, reversing the judgment and decree dated 28.06.2013 in O.S.No.195 of 2007 on the file of the Principal District Munsif, Myladuthurai and allow the Second Appeal.



WEB COPY

S.A.No.80 of 2



For Appellant(s) Mr.P.K.Harinath Babu

For Respondent(s): R1 – Died
R2 to R6 – No appearance

JUDGMENT

The instant Second Appeal has been filed to set aside the Judgment and Decree dated 06.03.2015 in A.S.No.9 of 2014 on the file of the Principal Subordinate Judge, Myladuthurai, reversing the judgment and decree dated 28.06.2013 in O.S.No.195 of 2007 on the file of the Principal District Munsif, Myladuthurai and to allow the Second Appeal.

2. Heard Mr.P.K.Harinath Babu, learned counsel appearing for the appellant. R2 to R6 are the LR's of the deceased 1st respondent/sole defendant. In spite of service on them and their names being printed in the cause list, they have kept themselves away. They have neither appeared in person nor through a counsel. Hence, they are called absent and set *ex parte*.



WEB COPY

3. The learned counsel for the appellant would submit that he had originally filed a suit against the deceased first respondent for a declaration that the suit schedule property belonged to him and for a direction to remove the superstructure put up in the suit property, and also for a permanent injunction restraining the defendant from putting up any construction or trespassing into the suit property. The suit was contested by the first respondent and, after hearing the parties, the relief as prayed for was granted. The first respondent had filed an appeal suit against the said decree, and the First Appellate Court, without properly appreciating the materials, had interfered with the well-reasoned judgment and decree of the trial Court.

4. He would further submit that the trial Court had appointed an Advocate Commissioner to inspect the suit property to arrive at a conclusion and had held that Ex.C2 report shall form part and parcel of the decree. He would further submit that the First Appellate Court had not considered Ex.C2 in its entirety and had merely held that the burden of proof is on the plaintiff, failing to note that the plaintiff had proved his title to the property, his entitlement to the



property, and therefore, the burden was on the defendant to substantiate his case.

WEB COPY

5. He would further submit that the substantial questions of law had already been framed by this Court on 03.02.2017, and he would press the substantial questions of law framed in (b) and (c) alone. Taking this Court through the findings made in the judgment of the trial Court, he would submit that the defendant had failed to prove that the property belonged to him, whereas the plaintiff had substantiated his right over the property. The report of the learned Advocate Commissioner, which had been marked as Ex.C2, had also aided the trial court in granting the decree prayed for by the appellant. Further, he would submit that the First Appellate Court, though noting that the defendant had not filed any documents to support his claim to the property, had nevertheless discarded the evidence produced by the plaintiff, including the revenue records, tax receipts, and sale deeds marked as Ex.A1, Ex.A2, Ex.A6, and Ex.A7 and had come to the conclusion that the defendant had been in possession of the suit property from 1991, after the dispute between the appellant and the deceased first respondent was settled in a panchayat. He



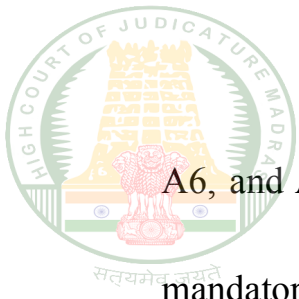
would further submit that the defendants had not filed any documents to substantiate such a claim.

WEB COPY

6. The First Appellate Court had further given a finding that the Advocate Commissioner's report was not supported by the report of the surveyor and that the sketch was contrary to the findings. When the trial court had specifically held that the rough sketch filed along with the report of the Advocate Commissioner under Ex.C2 shall form part of the decree, it would itself show that the findings of the First Appellate Court are contrary. The reasoning of the First Appellate Court that there was no sketch by the Advocate Commissioner is erroneous. Hence, he seeks the indulgence of this Court.

7. I have considered the submissions made by the learned counsel appearing on behalf of the appellants.

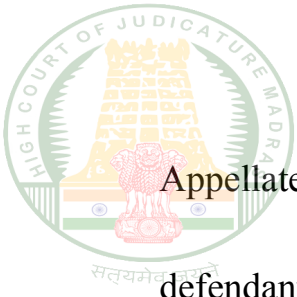
8. The trial Court, relying upon Ex.C2, which is the sketch given by the learned Advocate Commissioner appointed during the proceedings, and also upon the various documents that had been marked, particularly Exhibits A1, A2,



WEB COPY

A6, and A7, supported by the oral evidence of PW1, had granted the relief of mandatory injunction and also permanent injunction. A perusal of the judgment and decree of the First Appellate Court would indicate that the First Appellate Court had recorded that the Advocate Commissioner had not filed any sketch based upon documents or with the assistance of a surveyor. It is to be noted that the defendant/the first respondent, who had contested the suit, had not filed any documents to support his claim. Further, the manner in which the First Appellate Court had discarded the Advocate Commissioner's report is on the basis that the Advocate Commissioner's report or the sketch did not support the case of the plaintiff, as it was not supported by a surveyor's sketch to show the properties sold by the respective parties.

9. It is time and again held that an Advocate Commissioner cannot be used as a tool to collect evidence and can only report the factual status observed during inspection. When such is the principle of law, the First Appellate Court had erred in holding that the Advocate Commissioner's report and sketch should have been based upon documentary proof of title of the parties. The First



WEB COPY

Appellate Court also failed to note that the deceased first respondent/sole defendant had not produced any documents to substantiate his title to the property. On that ground, the finding that the Advocate Commissioner's report should be discarded cannot be sustained. That apart, the First Appellate Court had also placed reliance upon a settlement said to have been arrived at before the panchayat, from which date, the defendant had been in possession of the suit property. It is to be further noted that there was no such document to support the claim of the defendant. Had it been the case of the deceased first respondent/defendant that he had been in possession of the suit property from the year 1991, he could have produced at least some documents to substantiate such possession, that too, when the suit was filed in the year 2007. He has not chosen to do so, except by leading evidence by himself and a third party.

10. Therefore, this Court is of the considered view that the First Appellate Court had not considered the issue in the proper perspective, by also not framing appropriate issues with regard to the same, except by framing the issue



as to whether the appeal is liable to be allowed.

WEB COPY

11. Hence, the substantial questions of law framed by this Court in (b) and (c) are answered in favour of the appellant. The order of the First Appellate Court made in A.S.No.9 of 2014 dated 06.03.2015 on the file of the Principal Subordinate Judge, Myladuthurai is set aside, and the judgment and decree dated 28.06.2013 made in O.S.No.195 of 2007 on the file of the Principal District Munsif, Myladuthurai stand restored.

12. In fine, the Second Appeal stands allowed. However, there shall be no order as to costs.

22-08-2025

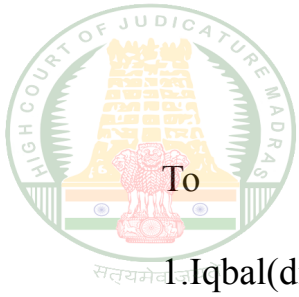
kak

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



To

1.Iqbal(died)

WEB S/o.Shaik Dawood, Mosque St,
Thiruvaduthura Village, Kuthalam Tk,
Myladuthurai.

2.Madhina Beevi

W/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai
District.

3.Mohamed Riyas

S/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai
District.

4.Ali Rahman

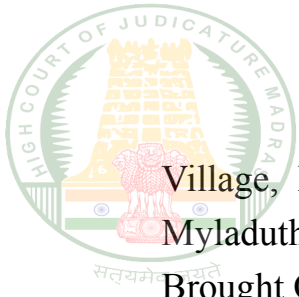
S/o.Late Iqbal, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai
District.

5.NOORBIYA

W/o.Late Shajahan, No.139, Pallivasal
Street, Thiruvavaduthurai Village,
Kuthalam Taluk, Myladuthurai
District.

6.Sahana(minor)

Minor Represented By Her Mother
Noorbiya (r5) D/o.Late Shajahan, Rep.
By Her Mother Mrs.Noorbiya, No.139,
Pallivasal Street, Thiruvavaduthurai



S.A.No.80 of 2



Village, Kuthalam Taluk,
Myladuthurai District. Rr2 To 6
Brought On Record As Lrs Of The
Deceased Sole Respondent Viz., Iqbal
Vide Order Of Court Dated 29-10-2021
Made In Cmp.11934 And 11936/2021
In Sa. 80/2017 (mgrj)

WEB COPY



WEB COPY

S.A.No.80 of 2



K.KUMARESH BABU, J.

kak

S.A.No.80 of 2017

22-08-2025