

CRP(MD). No.845 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02/06/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP(MD). No.845 of 2014
and SA No.1493 of 2002**

CRP(MD) No.845/2014

1.Kumaravel Asari (Died)

2.P.N.Padamohan

3.P.N.Babu Kumar

4.P.N.Sreenivason

5.Rugmini

6.Valliammal

7.K.Padmamoorthy

8.Jayanthi

9.Latha

10.Sankar

11.Sivakumar

... Petitioners



CRP(MD). No.845 of 2014

(Petitioners 6 to 11 were brought on record as LR's of the deceased 1st petitioner vide order dated 23.04.2024 in CMP Nos.1713, 1715 and 1716 of 2024)

Vs

1. The District Collector
Kanyakumari District
Nagercoil.

2.The Tahsildar,
Vilavancode Taluk
Kuzhithurai PO
Kanyakumari District

3.Dennis (Died)

4.Rani

5.Xavier Antony

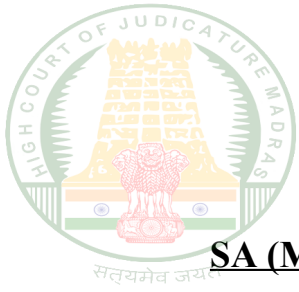
... Respondents

(R4 and R5 were brought on record as LR's of the deceased 3rd respondent vide order dated 14.11.2024 in CMP Nos.1717, 1718 and 1721 of 2024)

PRAYER :-Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order and decretal order, dated 12.02.2014 of the I Additional District Munsif, Kuzhithurai in IA No.883 of 2013 in OS No.242 of 2002.

For Petitioner : Mr.K.N.Thampi

For Respondent : Mr.B.Saravanan for R1 and R2
No appearance for R4 and R5



CRP(MD). No.845 of 2014

SA (MD) No.1493/2002

WEB COPY

1.Kumaravel Asari (Died)

2.P.N.Padmamohan

3.P.N.Babu Kumar

4.Rajasekharan (Died)

5.P.N.Sreenivason

6.Rugmini

7.Valliammal

8.K.Padmamoorthy

9.Jayanthi

10.Latha

11.Sankar

12.Sivakumar

... Appellants

(Appellants 7 to 12 were brought on record as LR's of the deceased 1st appellant vide order dated 16.02.2024 in CMP Nos.17050, 17053 and 17054 of 2023)

(5th appellant is declared as major vide order dated 16.08.2013 in MP No. 1 of 2012)

Vs

1. Commissioner of Kuzhithurai Municipality
Kuzhithurai, Kanyakumari District

... Respondent

3/15



CRP(MD). No.845 of 2014

PRAYER :-Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.11.2001 in A.S.No.105 of 1997 by the Subordinate Judge, Kuzhithurai confirming the judgment and decree dated 16.04.1997 in O.S.No.288/1989 by the II Additional District Munsif of Kuzhithurai.

For Appellants : Mr.K.N.Thampi

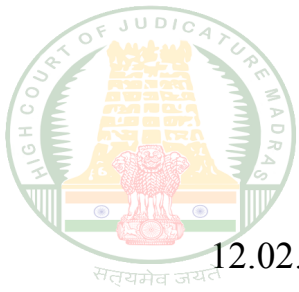
For Respondent : Mr.P.Athimoolapandian

COMMON JUDGMENT

The second appeal is filed against the judgment and decree, dated 21.11.2001 in A.S.No.105 of 1997 by the Subordinate Judge, Kuzhithurai confirming the judgment and decree, dated 16.04.1997 in O.S.No.288/1989 by the II Additional District Munsif of Kuzhithurai.

2. Since the appeal and the civil revision petition arising out of the same suit property in S.Nos.A143, 144, 145 and 148 and the Petitioners in the Civil Revision Petition and the appellants in the appeal are one and the same, they were taken up together and disposed of by way of this common judgment.

3. The Civil Revision Petition is filed against the order dated



CRP(MD). No.845 of 2014

12.02.2014 made in IA No.883 of 2013 in OS No.242 of 2002 by the I

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Additional District Munsif, Kuzhithurai, in and by which, the interlocutory application filed under Order XXIII Rule 3 of the Civil Procedure Code praying for leave to withdraw the suit was dismissed.

4. Since the appellants in the second appeal and the petitioners in the Civil Revision Petition are one and the same, they are hereinafter referred to as the appellants and the respondents for easy reference.

5. The appellants lost their case before the trial court in OS No. 288/1989 as well as before the lower appellate Court in AS No.105/1997 and challenging the concurrent findings rendered by the Courts below, they are before this Court with the second appeal.

6. The very same appellants filed another suit in O.S.No.242/2002 in which they filed an application under Order XXIII Rule 3 of the Code of Civil Procedure for withdrawal of the suit and the same is rejected. Challenging the same, the appellants filed the present civil revision petition.



CRP(MD). No.845 of 2014

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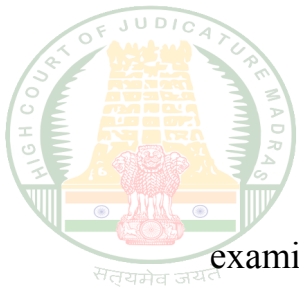
7. It is the case of the appellants/plaintiffs before the trial Court that the suit in OS No.288/1989 is filed for permanent injunction. The suit schedule property is situated in Old S.No.1280 and the said survey number was subsequently sub-divided as S.Nos.A143, 144, 145 and 148, in which, buildings and Wall were constructed and they originally belong to one Gnanamuthu Nadar, S/o. Suvisesa Nadar. In the above said area, originally three buildings were in the suit property and those buildings are of 40 years ago prior to Jamins and at the time, buildings were numbered as 59/12, 60/12 and 61/12 and prior to that the owners have constructed a compound wall around the buildings. The said buildings and wall surrounded by the compound wall fall within Thiruthuvapuram ward of Kuzhithurai Municipality. The said buildings are assessed with house tax by the municipality for which the Municipality also issued tax receipts in favour of the appellants. While so, one Natarajan Asari and Kumaravel Asari purchased the suit property with buildings compound Wall on 06.06.1962 for valuable consideration and after the death of Natarajan Asari, the rights devolved on the plaintiffs 2 to 6/appellants and thus, the suit property with building and compound wall belong to the appellants and they are in exclusive possession and enjoyment of the



CRP(MD). No.845 of 2014

property. While so, on 20.03.1983, the respondents issued a notice to the appellants/plaintiffs to the effect that there were some odai poramboke adjacent to the compound wall and as such, the compound wall to be demolished. Admittedly, the appellants/appellants claim that compound wall was constructed within their patta land in which the Municipality or any other private party have no right and before issuing demolition notice under the Municipality Act, no opportunity was given to the appellants to challenge the order. On 11.04.1989, the respondents made an attempt to demolish the compound wall of the appellants and the appellants approached the authorities on the ground that no opportunity whatsoever was given to them before demolition. Subsequently, the respondent had not demolished the wall. However, it is the grievance of the appellants before the Court below that the wall may be demolished by the respondent. Aggrieved by the same, the appellants filed a civil suit before the trial Court in OS No.288/1989.

8. Before the trial Court, in order to prove the case, on the side of the appellants, the appellants examined P.W.1 and P.W.2 and exhibited Exs.A1 to A12 and on the side of the respondent, R.W.1 and R.W.2 were



CRP(MD). No.845 of 2014

examined and marked 8 documents, viz., Ex.B1 to Ex.B8 and C.W.1 has been examined as Court witness and the commissioner's report was marked as Ex.C1 to Ex.C3.

9. On considering the oral and documentary evidence, the trial Court dismissed the suit on the ground the old survey numbers, viz., S.Nos.1280/1 and 1280/12 contain T.S.No.A1/48 and in order to prove that no correlation statement was filed by the appellants/plaintiffs and further old survey plan was not produced by the appellants/plaintiffs. Further Ex.B7 produced by the respondents/defendants would prove that T.S.No.A1/48 is a one way pathway and Tahsildar and Surveyor concerned have measured the pathway and sent a communication to the Municipal Office to demarcate the boundaries and to appoint a competent person to do the same. Thereafter, the boundaries were demarcated and encroachments were removed by the Municipal authorities and this was seen from Ex.B5-notice from the Sub Inspector of Police, Kaliyakkavilai to the Kuzhithurai Municipality. Further, the subsequent encroachment made in the pathway was removed as seen from Ex.B6. Further the Advocate Commissioner's report would also indicate that the compound



CRP(MD). No.845 of 2014

wall on the south-eastern side was demolished by the Municipality.

Therefore the fact that no channel run through the subject property was not accepted by the trial Court. Thus, the trial Court has come to a conclusion that T.S.No.A1/48 is a channel as per the documents in Ex.B1 to Ex.B8. Ex.A10 produced by the appellants is only a created document for the purpose of the case. In the partition deed Ex.B8, there is no mention about T.S.No.A1/48. If the appellants have right over the above said town survey number, it would have been included and reflected in Ex.B8-Partition deed. Further, no document was filed by the plaintiffs or his ancestors claiming right over T.S.No.A1/48 and hence, the plaintiffs are not entitled to get the relief of permanent injunction as sought for by them, against which, the plaintiffs/appellants filed an appeal in AS No.105/1997 before the lower appellate Court/Sub Court, Kuzhithurai. The said appeal suit came to be dismissed confirming the judgment and decree of the trial Court in O.S No.288/1989. Aggrieved by the said concurrent findings, the appellants are before this Court with this second appeal.



CRP(MD). No.845 of 2014

10. While admitting the appeal, this Court framed the following substantial question of law:

“Whether the judgments and decrees of the Courts below are correct, since Ex.B7 re-survey plan is not conclusive proof to the effect that T.S.No.1A/48 is poramboke?”

11. The learned counsel for the appellants would submit that in order to prove the title in favour of the appellants, the appellants marked Ex.A1-sale deed, dated 06.06.1962, which is in Malayalam and a translated copy of the sale deed is marked as Ex.A2, in which, a building, a Well and compound wall are specifically mentioned in the sale deed. Originally the entire survey number is 1280, in which, the appellants' property is situated. Though the boundaries were not specifically mentioned in the sale deed, however, there was a partition deed in the year 1987 and title of the appellants was proved before the trial Court. However, the trial Court as well as the lower appellate Court rejected the appellants' title is not sustainable and hence, he prays for allowing the appeal by answering the substantial question of law in favour of the appellants.



CRP(MD). No.845 of 2014

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12. Per contra, the learned counsel for the respondent Municipality would submit that admittedly the appellants did not file any correlation document to show that S.Nos.A143,144,145 and 148 owned by the appellants, though they claimed the original property was purchased in the year 1962, subsequently during partition in the year 1987. Even a bare perusal of the said partition deed did not reveal that S.No.1A/48, it comes within the old S.Nos.1280/1 and 1281/12, as claimed by the appellants. Ex.A1 and Ex.A2 and Ex.B8 partition deed did not reveal the said survey number was mentioned in the plaint. However, in order to prove that S.No.A1/48 belong to the Municipality, it is classified as “Odai Poramboke”, the said document was marked as Ex.B7 and on that basis, the suit was dismissed and it was subsequently confirmed in the first appeal and hence, the well considered finding of the trial Court and the lower appellate Court are liable to be confirmed, since the appellants have not established the substantial questions of law.

13. He would further submit that the suit has been instituted in the year 1989 and the same was confirmed by the lower appellate Court in



CRP(MD). No.845 of 2014

the year 1997. Subsequently, another suit was filed in the year 2002, which was filed for declaration and permanent injunction, in which, in order to withdraw the suit, the appellants filed an application under Order XXIII Rule 1 for withdrawal of the suit, which was rejected by the trial Court on the simple ground that the very same ground cannot be taken for multiplicity of proceedings. On these grounds, he prays for dismissal of both the second appeal and Civil Revision Petition.

14. I have considered the rival submissions and perused the materials available on record.

15. It is seen that though they claimed the original property was purchased in the year 1962 subsequently during partition in the year 1987, the appellants did not file any correlation document to show that S.Nos.A143,144,145 and 148 owned by them. Even a bare perusal of the document Ex.A2 did not reveal that S.No.1A/48 comes within the old S.Nos.1280/1 and 1281/12, as claimed by the appellants. From a perusal of Ex.A1, Ex.A2 and Ex.B8-partition deed, the said survey number was not mentioned. However, in order to prove that S.No.A1/48 belong to



CRP(MD). No.845 of 2014

the Municipality, it is classified as “Odai poramboke”, the document was marked as Ex.B7 and on that basis alone, the trial Court dismissed the suit. The appellants failed to prove that S.No.A1/48 belong to them and it does not belong to the respondent Municipality. It is also seen that the said S.No.A1/48 did not find place even in the partition suit. As per Ex.B6 and report of the Commissioner, a part of the compound wall has been demolished as per the measurement taken and also part of the encroachments were removed. Even in none of the receipts, S.No.A1/48 is mentioned. As far as Ex.B8-partition deed is concerned, it is clear that the said survey number is not mentioned and the same was encroached by the appellants by raising a compound wall. On the said basis also, the Courts below had dismissed the relief as sought for by the appellants.

16. In view of the above, since the appellants have not established the substantial questions of law, the well considered findings of the trial Court and the lower appellate Court need not be interfered with and the substantial question of law is answered against the appellants. Accordingly, the second appeal is dismissed.



CRP(MD). No.845 of 2014

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17. In view of the judgment in the second appeal, the Civil Revision Petition, which was filed against the order of the trial Court in dismissing the interlocutory application for withdrawal of another suit filed for the very same cause of action, stands dismissed.

No costs.

02.06.2025

NCC : Yes/No

Index : Yes/No

RR

To

1. The I Additional District Munsif, Kuzhithurai
2. The Subordinate Judge, Kuzhithurai
3. The II Additional District Munsif of Kuzhithurai.
4. VR Section,
Madurai Bench of Madras High Court, Madurai.

M.DHANDAPANI,J

14/15



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CRP(MD). No.845 of 2014

RR

**ORDER
IN
CRP(MD). No.845 of 2014
and SA(MD) No.1493/2002**

Date : 02/06/2025