



S.A.(MD)No.214 of 2004

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)No.214 of 2004

Chida.Na.Palaniappa Chettiyar

... Appellant/Respondent/
Plaintiff

Vs.

1. Indirani

2. Panjabikesan

3. Marudhamalai

4. Kamatchi

5. Rangaraju

6. Vasuki

7. Uma Maheswari

... Respondents/
Appellants 1 to 7/
Defendants 2 to 8

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.4 of 2003 on the file of Principal District Judge, Pudukkottai dated 30.06.2003 reversing the judgment and decree passed in O.S.No.205 of 1997 on the file of the Additional District Munsif, Pudukkottai, dated 22.10.2002.

1/8



WEB COPY



S.A.(MD)No.214 of 2004

For Appellant : Mr.M.R.Sreenivasan
For Mr.R.Nanthakumar

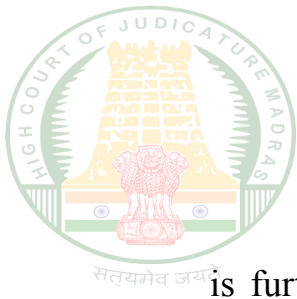
For Respondents : Mr.C.Sundaravadivel

J U D G M E N T

The plaintiff in O.S.No.205 of 1997 on the file of the Additional District Munsif, Pudukkottai has filed the present Second Appeal.

2. The plaintiff had filed suit for the relief of permanent injunction restraining the defendants from cutting and removing the valuable trees in the suit schedule properties till the final decree is passed in O.S.No.67 of 1993 on the file of the Sub Court, Devakottai.

3. According to the plaintiff, the suit schedule properties are the ancestral properties of the plaintiff's mother Deivanai Aachi and his brothers. The plaintiff has filed O.S.No.67 of 1993 before the Sub Court, Devakottai. A preliminary decree was passed allotting 6/25th share in favour of the plaintiff under Ex.A5, dated 20.01.1995. It is further contended that the defendants 1 to 7 are said to have purchased the suit schedule property from his mother Deivanai Aachi who was allotted 1/25th share in the suit schedule property. It



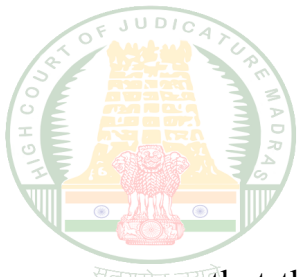
S.A.(MD)No.214 of 2004

WEB COPY

is further contended that the sale is not binding upon the plaintiff and the defendants cannot claim rights over the entire property. It is further alleged that the defendants have attempted to cut and remove the valuable trees in the suit schedule property. When the plaintiff approached the police authority, they have insisted for a Court order. Therefore, the present suit for injunction.

4. The defendants have filed a written statement contending that the defendants are in possession of the suit schedule property and they have raised loans by Depositing the original sale deeds with the Bank. According to them, they have raised trees and are in actual possession of the suit property. It is further averred that the defendants never attempted to cut down the trees nor was there any necessity. According to them, the cause of action pleaded is a false one.

5. The trial Court, after considering the oral and documentary evidence arrived at a finding that the sale deed executed by Deivanai Aachi in favour of the defendants 1 to 7 on 09.03.1988 will not be binding upon the plaintiff in so far as the share of the plaintiff is concerned. The trial Court, further found that the cause of action averred by the plaintiff is true and proceeded to hold



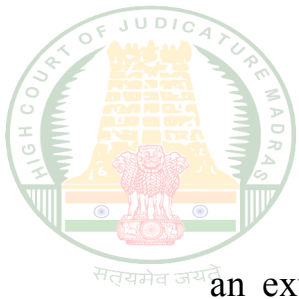
S.A.(MD)No.214 of 2004

WEB COPY

that the plaintiff and the defendants being co-sharers, the defendants cannot cut and remove the trees taking advantage of their possession over the suit schedule properties. Based upon the above said discussion, the trial Court decreed the suit as prayed for.

6. The defendants 2 to 8 had filed A.S.No.4 of 2003 before the Principal District Court, Pudukkottai. The first appellate Court has proceeded to hold that though the defendants have purchased the suit schedule property prior to the filing of the suit, they have not been made parties to the partition suit. Therefore, any decree obtained by the plaintiff would not be binding upon the said defendants. The defendants are in possession of the suit schedule property and they have dug a bore well and they have raised casurina trees. In such circumstances, the plaintiff does not have any right to seek a prayer for permanent injunction. The defendants would be entitled to cut and remove the trees. Challenging the same, the present Second Appeal has been filed.

7. According to the learned counsel appearing for the appellant when share has been allotted in favour of the plaintiff in the preliminary decree to



S.A.(MD)No.214 of 2004

WEB COPY

an extent of 6/25, taking advantage of the fact that the defendants are in possession of the property, they are attempting to cut and remove the trees. In fact, the mother of the plaintiff, namely Deivanai Aachi was allotted only 1/25th share in the suit schedule property and therefore she is not entitled to alienate the entire share. In such circumstances, the plaintiff seeks to grant permanent injunction. The first appellate Court was not right in reversing the judgment and decree of the trial Court by arriving at a finding that the decree in the partition suit, would not be binding upon the defendants.

8. The learned counsel appearing for the respondents submitted that the plaintiff has not established his right over the suit schedule properties. So far final decree has not been passed in the partition suit. Unless and until the final decree is passed, the share of the plaintiff cannot be identified. In such circumstances, the suit for permanent injunction restraining the defendants from cutting and removing trees would not be maintainable.

9. Heard the learned counsel appearing on either side and perused the materials available on record.



S.A.(MD)No.214 of 2004

WEB COPY

10. A perusal of the suit schedule property reveals that there are 8 items of suit property. However, there is no reference about the number of trees and the nature of trees in the suit schedule property. From the written statement it is clear that the defendants are in possession, and they have raised casurina trees. The Court can take judicial notice of the fact that these trees are short crops, and they are being cultivated and regularly cut and removed by the persons who are in possession of the property. In such circumstances, cutting of the casurina trees is not likely to affect the title or right of the plaintiff under the partition suit.

11. In such circumstances, this Court is of the considered opinion that the cutting and removing of the casurina trees would not in any way affect the plaintiff. So far, the plaintiff has not filed his final decree application. Only after final decree is passed, the share of the plaintiff could be identified. Unless the share of the plaintiff is identified, the plaintiff will not be in a position to prevent the defendants, who are in possession of the property from enjoying the property.



S.A.(MD)No.214 of 2004

WEB COPY

12. In case, if the plaintiff is allotted the suit schedule properties during the final decree proceedings, he is always at liberty to claim damages from the concerned parties, who had cut and removed the trees.

13. With the above said observation, this Second Appeal is disposed of.

There shall be no order as to costs.

16.07.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Principal District Judge,
Pudukkottai.

2. The Additional District Munsif,
Pudukkottai.



WEB COPY



S.A.(MD)No.214 of 2004

R.VIJAYAKUMAR,J.

ebsi

S.A.(MD)No.214 of 2004

16.07.2025