



S.A.No.1264 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.No.1264 of 2003

1. Government of Tamil Nadu,
Represented by its District Collector,
Tirunelveli.

2. The Tahsildar,
Palayamkottai,
Tirunelveli.

... Appellants/Respondents/
Defendants

Vs.

1. Velu Devar

2. Subbaiya Konar

... Respondents/Appellants/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., as against the judgment and decree dated 23.10.2002 made in A.S.No.39 of 2001 on the file of the I Additional Sub Judge, Tirunelveli reversing the judgment and decree dated 15.02.2001 made in O.S.No.198 of 1998 on the file of the I Additional District Munsif Court, Tirunelveli.

For Appellants : Mrs.D.Farjana Ghoushia
Special Government Pleader



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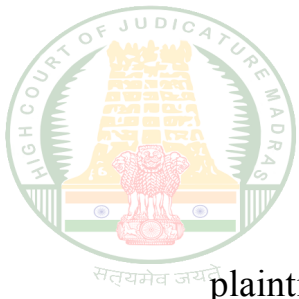
For Respondents : No appearance

J U D G M E N T

The defendants in O.S.No.198 of 1998 on the file of the I Additional District Munsif Court, Tirunelveli, have filed the present Second Appeal.

2. The respondents herein representing the ayacutdars of Pudukulam Village have filed the above said suit for the relief of permanent injunction as against the State not to auction the fishery rights in the suit tank. As per the plaint averments, only the ayacutdars of the suit tank are entitled to have fishing rights over the tank. According to them, for more than 100 years they are enjoying the customary rights. However, the authorities are attempting to auction the fishery rights by way of public auction. Hence, the suit.

3. A perusal of the written statement reveals that the State has contended that the tank belongs to the State and the fishery rights are being auctioned every year to the general public by way of public auction. It is also contended that one of the plaintiffs has also taken the fishing rights on auction in a particular year. Only accepting the rights of the State, the



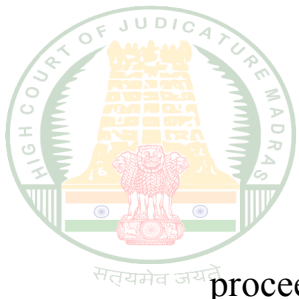
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plaintiffs have taken part in the auction proceedings. Therefore, they are estopped from claiming any exclusive fishing rights in the tank belonging to the State.

4. The trial Court after considering the documents filed on either side has arrived at a finding that the Tank belongs to the State. The documents filed on the side of the plaintiffs would disclose they have entered into certain agreements for fishing rights. However, in those agreements the State is not a party. The trial Court further found that Exs.B1 to B4 would establish the rights of the State in the tank and the plaintiffs have been exercising the fishery rights only based upon the public auction conducted by the State. The trial Court dismissed the suit.

5. The first appellate Court relying upon Exs.A1 to A6 has arrived at a finding that such a customary practise is being followed by the ayacutdars of the suit tank and based upon the said customary rights, they are exercising their fishery rights. In such circumstances, unless the Government enacts any Rule or enactment, the customary rights of the plaintiffs cannot be curtailed by the State. Based upon the said findings, the first appellate Court had



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proceeded to set aside the judgment and decree of the trial Court and decreed the suit as prayed for. Challenging the same, the present Second Appeal has been filed by the State.

6. Second Appeal was admitted on the following substantial questions of law:

(a) Whether the Lower Appellate Court was right in properly considering the oral and documentary evidence in its proper perspective?

(b) Whether the Lower Appellate Court was right in entertaining the suit for injunction, against the lawful and true owner?

(c) Whether the Lower Appellate Court was right in allowing the appeal, when the appellants right and title over the suit kulam is not challenged by way of a declaratory suit?

(d) Whether the Lower Appellate Court was right in granting injunction in favour of the respondents, when the respondents themselves admit the right and title of the appellant and participated in the auction?

(e) Whether the Lower Appellate Court was right in decreeing the suit of the respondent based on an alleged customary fishing rights, when by virtue of Section 3(b) of ACT XXVI of 1963, the tanks shall vest with the



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Government?

(f) Whether the Lower Appellate Court was right in decreeing the suit when the respondents/plaintiffs have failed to prove their title against Act XXVI of 1963??

(g) Whether the other reasons given by the Court below are legally sustainable?

7. The learned Special Government Pleader appearing for the appellants/State submitted that the title to the tank has not been disputed. When the title is vested with the Government, the private parties or the villagers cannot claim any right over the fishery rights unless they have participated in the auction process. The learned Special Government Pleader further contended that in view of Tamil Nadu Act 26 of 1963, the tank has vested with the State and therefore, all the rights of the ayacutdars including the customary rights, if any, have got extinguished. In such circumstances, the first appellate Court was not right in relying upon the alleged customary rights of the ayacutdars.

8. Though the notices have been served upon the respondents and their names were also printed in the cause list, they have not chosen to appear either in person or through their counsel. The second respondent has passed



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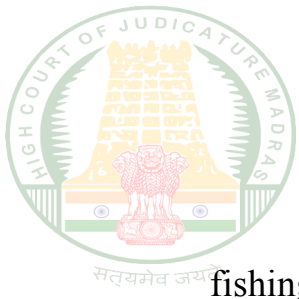
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away. He had been impleaded in the representative capacity as one of the ayacutdars. In such circumstances, the second appeal would not get abated when the other respondent is available and he has not chosen to appear before this Court.

9. Heard the learned Special Government Pleader appearing for the appellants and perused the materials available on record.

10. The suit has been filed seeking a permanent injunction as against the State not to auction fishery rights in the suit tank. According to the plaintiffs, the villagers have got a customary right of fishing into the suit tank. Exs. A1 to A6 have been marked on the side of the plaintiffs to establish the said right. A perusal of these documents would reveal that the State is not a party to the said proceedings and therefore, the same is not binding upon the appellants.

11. The first plaintiff has been examined as P.W.1. During his cross examination, he has admitted that the suit tank belongs to the State. He has also admitted that all the villagers will join together and they would share the



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fishing rights. A perusal of Ex.B4 reveals that it is the auction proceedings for the suit tank. The first plaintiff had participated in the said auction and he was declared as the successful bidder on 30.03.1995. Therefore, it is clear that the auction was being regularly conducted only by the State by way of public auction and in the said auction, the first plaintiff had participated and he had emerged as a successful bidder. In such circumstances, the contention of the plaintiffs that they are having customary fishing rights over the suit tank is not legally sustainable. The first appellate Court had relied upon Exs.A1 to A6 agreements and confirmed customary rights upon the plaintiffs. It is pertinent to point out that in all these documents the State is not a party. In such circumstances, Exs.A1 to A6 cannot be pressed into service, to grant a decree as against the State.

12. The tanks having vested with the State under the Tamil Nadu Act 26 of 1963, the fishery rights would also vest with the State and State would be entitled to auction the fishery rights by way of public auction. The fishing rights cannot be segregated from that of the right of the tank. The first appellate Court has erroneously decided the said legal issue and set aside the judgment and decree of the trial Court.



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13. In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellants and the judgment and decree of the first appellate Court is set aside and the judgement and decree of the trial Court is restored.

14. Accordingly, this Second Appeal is allowed. There shall be no order as to costs.

30.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The I Additional Sub Judge,
Tirunelveli

2. The I Additional District Munsif Court,
Tirunelveli.



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R.VIJAYAKUMAR,J.

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