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S.A.No.705 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18 / 08 / 2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.705 of 2003

The Commissioner,
Kuruvikulam Panchayat Union,
Kuruvikulam.

: Appellant

.VS.

1.The Forest Officer,
Kovilpatti.

2.The District Collector,
Tirunelveli District,
Through State Government of Tamil Nadu,

3.Smt.Parvathiammal

: Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.55 of 2022, on the file of the Sub Court, Sankarankovil, dated 24.09.2002, confirming the Judgment and Decree made on O.S.No.80 of 1982, on the file of District Munsif, Sankarankovil, dated 03.05.1998.



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For Appellants : Mr.M.Senthil Ayyanar
Government Advocate

For Respondents : Mr.M.P.Senthil for R3

* * *

J U D G M E N T

This Appeal is directed against judgment and decree dated 24.09.2022 passed in Appeal Suit No.55 of 2002 by the Sub Court, Sankarankoil, confirming the judgment and decree passed by the District Munsiff Court, Sankarankoil in O.S.No.80 of 1982, dated 03.05.1998.

2. The third respondent's father was the original plaintiff in the suit. After the plaintiff's demise, the third respondent was impleaded in his place. The appellant is the third defendant in the suit, while the second and third respondents are the first and second defendants, respectively. The suit was originally filed by the plaintiff seeking an order of mandatory injunction and other reliefs. For the sake of convenience, the parties will be referred to according to their litigative status before the trial court.



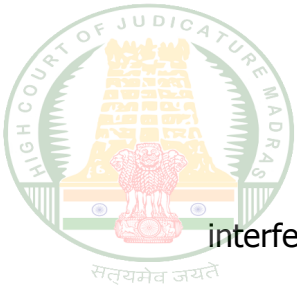
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3. Brief facts of the plaintiff are as follows:-

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3.1 The plaintiff's predecessor had been in absolute possession of the Kaanvai for over 100 years, during which they engaged in fishing. Subsequently, the plaintiff took possession of the same. In 1965, the third defendant attempted to lease out the fishery rights in the tanks, namely periakulam (big tank) and seriakulam (small tank). However, following the plaintiff's objections, the Commissioner of Kuruvikulam Panchayat Union, through proceedings dated 15.03.1966, decided to drop the leasing action. Since the plaintiff's predecessor and the plaintiff were in continuous and absolute possession of the Kaanvai, they claimed ownership over it. The plaintiff further asserted that they had subleased the Kaanvai to third parties. Hence, the defendants have no right to obstruct or interfere in the matter.

3.2 It is also stated in the plaint that the first defendant began planting Kaurvelam trees. Although the plaintiff objected to this, the first defendant continued planting by engaging laborers to further plant trees. The plaintiff contends that if the trees are planted in the Kaanvai, it will significantly hinder fishing activities, making it difficult or impossible to fish. The land with clay containing fish eggs cannot be tilled year after year. Consequently, the plaintiff faced potential losses, including the risk of losing property. Therefore, the suit was instituted to seek an mandatory injunction preventing the defendants from



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interfering with the fishing rights, the removal of karuvelam trees, and an award of costs.

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4. Denying the allegations made in the plaint, first defendant filed their written statement, stating inter alia, that the suit schedule property is designated for the distribution of water to the Kuruvikulam Panchayat and is recorded in favor of the Panchayat Union in accordance with Sections 3 and 5 of the 1985 Act. The first defendant further states that the Panchayat Union is responsible for maintaining the Kaanvai in a rotation-wise manner. Any revenue generated from the sale of fishing rights is solely attributable to the Panchayat Union. The first defendant merely planted trees, which were subsequently handed over to the Panchayat Union for their maintenance. Therefore, the first defendant contends that they are not a proper party to this suit, and as such, the case against the first defendant should be dismissed.

5. The third defendant filed a written statement stating that the river, water body, big and small ponds, lake all are belonged to State Government only. According to Section 85 of the Panchayat Act, 1958, the small water bodies (pasana kulangal) that are used for irrigation, agricultural purposes, and fish farming shall be managed and protected by the local panchayat. Thus, the fish farming activities are also included under the jurisdiction of the Panchayat Union.



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According to the provisions of Section 135 of the Panchayat Act, the fish farming activities in the small water bodies under the Panchayat Union are considered a part of the revenue generation. Fish farming cannot be conducted without the proper authorization from the Panchayat Union. Additionally, any income generated from fish farming in these water bodies shall be allocated solely to the Panchayat. It is imperative that all parties comply with the regulations and obtain the necessary permissions. No individual has an absolute right over any water body. The right to fish in the permanent water bodies belongs solely to the Panchayat, and the lease will be granted to the person who makes the highest bid. As per Government Order No. 1354 dated 20.01.1981, the first defendant has the right to plant trees, which does not affect fish cultivation or the water body. The first defendant planted the trees only after obtaining the necessary permission, and the plaintiff has no rights over them. The individual who bids for the water pond holds the exclusive right to fish but does not possess any rights concerning the planting of trees in on the top of the water body. After planting the trees, the first defendant surrendered the property and no longer has any connection with it. Therefore, the first and second defendants are not proper parties to this suit. The plaintiff, therefore, prays for the dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and forty documents viz., Exs.A.1 to A.40 were



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marked and on the side of the defendant, the one Velupandiyan was examined as D.W.1 and 9 documents viz., Exs.D.1 to D.7 were marked.

7. The trial Court, taking into consideration the oral and documentary evidences, let in by both the parties, decreed the suit in favour of the plaintiff, holding that the plaintiff has the right to engage in fish farming, however dismissed the prayer for the removal of the karuvalam trees. Challenging the Judgment and Decree, the appellant, first respondent and the second respondents filed an appeal in A.S.No.55 of 2002 before the Sub Court, Sankarankovil and the appellate Court also confirmed the findings of the trial Court and dismissed the appeal, by holding that the plaintiff has rights only over fish farming (meenpasi) and no other rights over the water body. Aggrieved by the judgments and decrees of the same, the appellant/ third defendant / Commissioner Kuruvikulam Panchayat Union has filed the above second appeal.

8. Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the appellant would contend that the courts below ought to have properly interpreted various documents exhibited and also the provisions of the Panchayat Act of the present case and G.O.No.1354, Forest and Fisheries Department, dated 20.11.1981. He would further submit that the river, water body, big and small ponds, lake all are belonged to State Government and they can have only



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fishery right and hence, the mandatory injunction ought not to have been granted in favour of the plaintiff. Further, the Government also planting trees to protect the from the excess heat and it would be nice for the environment also. However, the learned Judge, without considering the same, as the Kaanvai would be used only for the Government and no private entity can right over the same. He would further submit that though the defendant had marked several documents viz., Government order and correspondences, without going into the same, granted mandatory injunction in favour of the third respondent and the learned appellate Judge also without considering the same, confirmed the findings of the trial Court, and hence, the learned Government Advocate prays to set aside the concurrent findings of the Courts below.

9. *Per contra*, Mr.M.P.Senthil, learned counsel for the plaintiff/third respondent submits that the trial court, having carefully examined the documents produced by both parties, rightly concluded that the plaintiff has a legitimate right over the fishing right and taking clay soil from the Kaanvai in question, as it has been in continuous possession and use by the plaintiff and the local community for several decades. While the Government may have general ownership of certain water bodies, it is well established that local inhabitants may enjoy fishing, irrigation, and other related rights through long-standing customary practices. In the present case, the plaintiff has been exercising such



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rights, including fishery rights, for an extended period without objection from the State or any other authority. The mere existence of a Government order does not nullify the customary rights that have been enjoyed by the plaintiff and other local residents for decades. The trial court, having found no substantial evidence to support the appellant's claims, granted a mandatory injunction, and the appellate court affirmed this decision after careful scrutiny. In conclusion, the learned counsel for the third respondent prays to dismiss the appeal and uphold the concurrent findings of the courts below.

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

11.The Second Appeal was admitted on the following substantial questions of law:-

"(i) Whether the lower Courts are justified in rejecting the plea of the appellants that the defendants 1 and 2 are not necessary parties to the suit?

(ii) Whether the lower Courts below are justified in finding that only the plaintiffs are entitled to permanent rights of Pasi Kuthagai and other rights over the suit tanks contrary to the provisions particularly Sections 85 and 135 of the Tamil Nadu Panchayat Act, 1958, as per which only the appellant is entitled to all the rights?



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(iii) Whether the lower Courts are justified in granting the relief of permanent injunction to the plaintiff contrary to the decision of the trial Court which has rejected the suit relating to grant of permanent injunction?"

12. The specific case of the plaintiff/third respondent is that his predecessors had been in long-standing and uninterrupted possession of the Kaanvai for more than a hundred years, primarily using it for fishing and extracting clay. In 1965, when the Panchayat Union tried to lease out the fishing rights, the plaintiff raised an objection. As a result, the plan was dropped through an official order dated 15.03.1966, which shows that the plaintiff was in possession and using the place at that time. He asserts that the planting of karuvelam trees by the defendants obstructs fishing activities and causes irreparable damage to the ecological condition of the Kaanvai, affecting fish breeding and traditional use. Thus, he sought a mandatory injunction to prevent interference with these rights.

13. The specific case of the appellant/third defendant is that the Kaanvai is a public water body vested with the State Government and managed by the Panchayat Union under Sections 85 and 135 of the Tamil Nadu Panchayat Act, 1958. It is submitted that only the Panchayat Union has authority to lease out



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fishery rights through public auction and that no individual has any exclusive or permanent right over such water bodies. The tree planting was carried out by the first defendant with prior approval and later handed over to the Panchayat for maintenance. It is further contended that these acts do not infringe any legal right of the plaintiff, whose claim is not supported by statutory or ownership rights.

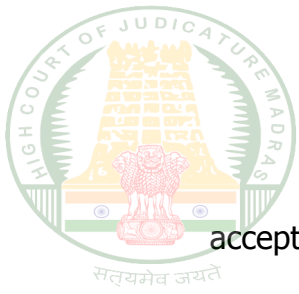
14. Admittedly, both the tanks situated in Kuruvikulam Panchayat Union belong to the Government. The plaintiff himself admitted that the tanks belong to the Government; however, his ancestors had rights of access, fishing, and removal of clay. The respondent's side also marked Ex.A1 to A8, which are of the years 1886, 1892, 1902, 1907, 1915 and 1922. Therefore, the plaintiff substantiated his claim that from time immemorial, for over 100 years, his predecessors have been enjoying fishing rights by leasing out to various third parties. Even Ex.A19, a revenue receipt for the fishing right, was issued in favour of the predecessors of the plaintiff. Further, Ex.A10 to A14 are registered documents leasing out the fishery right to third parties by the predecessors of the plaintiff in the years 1933, 1941, 1948, 1955, and 1964. Similarly, Exs.A15 and A16 of the years 1973 and 1979 are also documents substantiating the fishing rights even after the year 1958. Ex.A14, which is a registered lease deed, is from the year 1964 and is also after 1958. Though the plaintiff filed the suit for



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declaration, declaring that the plaintiff is entitled to fishing rights and permanent injunction restraining the defendants from interfering with the enjoyment of fishery rights, and also for mandatory injunction to remove the karuvelam trees planted by the first respondent in the suit tanks, the trial Court decreed the suit for declaration and permanent injunction, held that the plaintiff is entitled to fishing rights and permanent injunction, but rejected the claim of mandatory injunction. Though the appellant/third defendant claimed that the tank is vested with them under the Panchayat Act, 1958, and that they were exercising fishing rights, leasing it out, and maintaining the tank, they failed to produce any acceptable documents to support their claim.

15. The main plea taken by the appellant is that after the Panchayat Act, 1958 came into force, the appellant Union was exercising rights of fishing, but the same was not substantiated in the manner known to law. The further contention is that after the advent of Panchayat Act, the tank vested with the Panchayat, for which the learned counsel for the third respondent relied on Sections 83 and 85 of the Panchayat Act, 1958, which correspond to the New Act, 1994. Exs.A1 to A16 produced by the third respondent shows that the third respondent and her predecessors were enjoying and continued to enjoy the fishing rights by leasing them to various third parties from 1886. Even after the filing of the suit, they continued to enjoy the same. The enjoyment has also been



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accepted by the Revenue on the basis of Exs.A17 to A39. Moreover, Ex.A40, as maintained by the appellant Panchayat Union itself, shows that the third respondent and her predecessors alone were enjoying the fishery rights for a very long time, and they produced records from the year 1886 till the filing of the suit as well as even after filing of the suit. Even D.W.1, during cross-examination, admitted that the third respondent/plaintiff and her predecessors were enjoying the fishing rights. However, the main contention of the appellant is that after the 1958 Panchayat Act came into force, the tank vested with the Panchayat and they are entitled to the fishing rights and accordingly, they are enjoying them.

16. A combined reading of Sections 83 and 84 of the Panchayat Act and Sections 132 and 133 of the New Panchayat Act shows that a declaration, either through notification or proceedings, is required to vest the tanks with the Panchayat Union or the local authority before the appellant Panchayat Union can make any claim regarding the tanks for auctioning the fishing rights. Therefore, as far as the enjoyment of the fishing rights by the third respondent/plaintiff is concerned, it was undisputed even before the Panchayat Act came into force. Now, the only question is whether after the Panchayat Act came into force, the third respondent/plaintiff lost her right. Therefore, the factual aspects regarding the enjoyment of the fishing right were considered, and the Court as a fact-



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finding Court has held that the appellant was not enjoying the fishing rights. At this juncture, it would be useful to refer to Sections 83 and 85 of the Tamil Nadu

Panchayat Act and the provisions of the New Panchayat Act:-

"Section 83: Any property or income including any fishery right which by custom belongs to, or has been administered for the common benefit of the inhabitants of the village or town or of the holders in common of village land generally or of holders of lands of a particular description or of the holders of lands under particular source of irrigation shall, if so declared by the Government, vest in the Panchayat and be administered by it for the benefit of the inhabitants or holders aforesaid.

Section 85: (1) subject to such cognitions and control as may be prescribed, the Government may transfer to any panchayat or to any panchayat union council the protection and maintenance of any irrigation work, the management of etc., turns of irrigation, or the regulation of distribution of water from any irrigation work to the fields depending on it.

(2) The panchayat, or the panchayat union council shall have power, subject to such restrictions and control as may be prescribed, to execute kudimaramat in respect of any irrigation source in the village or town and to levy such fee and on such basis for the purposes thereof as may, be prescribed:

Provided that nothing contained in this section shall be deemed to relieve the village community or any of its members of its or his liability under the [Tamil Nadu] Compulsory Labour Act, 1858 (Central Act I of 1858), in respect of any irrigation source in the village or town, in case the panchayat makes default in executing the kudimaramat in respect of that irrigation source.

(3) Where the maintenance of any irrigation work is transferred under this section, the fishery rights Government in such work shall be transferred to any be vested in the panchayat or the panchayat union council, as the case may be, subject to such terms and conditions including terms and conditions regarding the utilization of the income, as may be specified by the Government.

* * *



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Section 132 Vesting of Communal property or income in Village Panchayat:-

Any property or income including any fishery right which by custom belongs to, or has been administered for the common benefit of the inhabitants of the village or of the holders in common of village land generally or of holders of lands of a particular description or of the holders of lands under particular source of irrigation, shall, if so declared by the Government, vest in the village panchayat and be administered by it for the benefit of the inhabitants or holders aforesaid.

Section 133. Maintenance of irrigation works, execution of kudimaramat etc:-

(1) Subject to such conditions and control as may be prescribed, the Government may transfer to any Village Panchayat or to any panchayat union council the protection and maintenance of any irrigation work, the management of turns of irrigation, or the regulation of distribution of water from any irrigation work to the fields depending on it.

(2) The village panchayat, or the panchayat union council shall have power, subject to such restrictions and control as may be prescribed, to execute kudimaramat in respect of any irrigation source in the village and to levy such fee and on such basis for the purposes thereof as may be prescribed":

Provided that nothing contained in this section shall be deemed to relieve the village community or any of its members of its or his liability under the [Tamil Nadu] Compulsory Labour Act, 1858 (Central Act 1 of 1858), in respect of any irrigation source in the village, in case the village panchayat makes default in executing the kudimaramat in respect of that irrigation source.

3) Where the maintenance of any irrigation work is transferred under this section, the fishery rights of the Government if such work shall be transferred to and be vested in the village panchayat or the panchayat union council, as the case may be, subject to such terms and conditions including terms and conditions regarding the utilization of the income, as may be specified by the Government."



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As far as the substantial question of law regarding the right of the Panchayat after the Panchayat Act came into force in 1958 is concerned, the only question to be answered is whether any notification has been issued by the Government in accordance with Sections 83 and 85 of the Act, 1958. Neither the appellant nor the first and second respondents have filed any such declaration, notification, or specific direction.

17. When at the time of admitting the second appeal, this Court directed the Government authority to produce such a notification, if at all issued by the Government to the Panchayat, despite the specific direction, the appellant Panchayat Union has not produced those notifications. Therefore, the appellant's contention that after the enactment of the Panchayat Act, 1958, the suit tanks vested with them is without any documentary evidence. Even Section 83 clearly states that any property or income, including any fishing right, which is administered in the common interest of a village or a community or a class of persons, must be vested only upon such declaration. Therefore, in the absence of any notification by the Revenue, the appellant/third defendant cannot claim automatic vesting of the tank. At the risk of repetition, it is undisputed that the plaintiff and her predecessors have been exercising fishing rights since the year 1886



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18. Further, to support the case of the third respondent/plaintiff, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Alagar Iyengar and others Vs. State of Tamil Nadu*** [2002 (5) CTC 503], which held that unless there is a declaration by the Government, there cannot be any vesting. Therefore, in this case also, admittedly from the pleadings and oral and documentary evidence, the third respondent/plaintiff has established that even from 1886 onwards, the predecessors of the plaintiff were continuously enjoying the fishing rights till the filing of the suit, even after the Panchayat Act, 1958 came into force. If that be the case, it is for the appellant/third defendant to establish that after the 1958 Panchayat Act came into force, by way of declaration, the Panchayat took over the tank and that all rights vested with the Panchayat. Therefore, in the absence of any notification regarding such declaration, the appellant has miserably failed to substantiate their contention.

19. Since admittedly the Government is the owner of the tanks a fact the third respondent/plaintiff has not denied and they also paid adequate payments to the Government as seen from Exs.A17 to A35, the revenue receipts in favour of the plaintiff for various faslis, it clearly demonstrates that the tanks belong to the Government and the third respondent/plaintiff's predecessors have been



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continuously enjoying the fishing rights. Therefore, both the Courts, based on oral and documentary evidence, clearly held that they are enjoying the fishing rights, which have not been taken away even after the 1958 Panchayat Act came into force. If at all, as per the Act, there must be a declaration and notification to take away the right from the third respondent and transfer it to the Panchayat; however, there is no such material to prove the same.

20. Therefore, on a reading of the oral and documentary evidence, Sections 83 and 85 of the Panchayat Act, 1958 and Sections 132 and 133 of the new Panchayat Act, 1994, and the decision of the Hon'ble Supreme Court, this Court finds that the appellant has not established their rights. However, the third respondent/plaintiff has substantiated her rights over the fishing rights. Therefore, the substantial questions of law are answered in favour of the third respondent/plaintiff and against the appellant/third defendant.

21. However, since the disputed tanks belong to the Government and the tanks are meant only for storing water for irrigation, and ownership of the tank is vested with the Government, and the first respondent planted the Karuvelam trees in the upper portion of the tanks, both the trial Court and the appellate Court disallowed the claim for mandatory injunction. The third respondent/plaintiff has not filed any appeal challenging the same, which means



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that the tank is vested with the Government only. In case the third respondent/plaintiff acts against the interest of the landholders, who are entitled to get irrigation right from the tank water, or acts against the public interest or the Government interest, it is always open to the Government to cancel the said fishing rights after following due process of law. So far, the appellant, and the first and second respondents, have not produced any notification regarding the declaration of rights by the Panchayat, which is also left open to the Government to issue a notification.

22. Therefore, this Court does not find any merit in the second appeal, and the appeal deserves to be dismissed. Accordingly, the second appeal is dismissed. However, there shall be no order as to costs.

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Index: Yes/No.

Speaking Order : Yes/No.

Neutral Citation Case : Yes/No.

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Kovilpatti.
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- 4.The District Munsif,
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P.VELMURUGAN, J.

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Judgment made in
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