



SA(MD)No.80 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 13.03.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

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1.Mydeen Sahib (Died)

2.P.K.Ismail

3.A.K.Syed Mohideen

... Appellants

(3rd appellant is substituted in the place of A1
vide order dated 27.11.2018 in CMP(MD)
No.10914/2016

v.

Kadayanallur Municipality
represented through its Commissioner,
Kadayanallur
Tirunelveli District

... Respondent



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WEB COPY Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.08.2006 in AS NO.23/2005 passed by the Principal Sub Court, Tenkasi reversing the judgment and decree dated 27.04.2004 in OS No.8 of 2002 on the file of the Additional District Munsif Court, Tenkasi.

For Appellants : Mr.C.Vakeeswaran
For Respondent : Mr.J.Parekh Kumar

JUDGMENT

This second appeal has been filed against the judgment and decree passed by the Principal Sub Court, Tenkasi in AS No.23/2005 dated 30.08.2006 reversing the judgment and decree passed by the Additional District Munsif, Tenkasi made in OS No.8/2002 dated 27.04.2004.

2. The plaintiffs are the appellants.

3. The case of the plaintiffs is that the suit property originally belonged to Kadayanallur Town Gulam Mohammed Sahib and Sintha Tharaganar family. The first schedule property in S.No.42/1 was assigned



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with patta No.835 and second schedule property in S.No.39/1A was assigned with patta No.1414 and the plaintiffs were paying kist for both the properties. The plaintiffs were claiming right and title over the property under Exs.A17 and 18, which are registered documents registered as Doc. Nos.188/1922 and 834/1938.

4. The further case of the plaintiffs is that the defendant Municipality did not have any right or title over the property and in spite of the same, an attempt was made by the defendant to issue auction notice for the purpose of granting lease of fishery rights. It is under these circumstances, the suit came to be filed seeking for the relief of declaration of title and permanent injunction.

5. The defendant Municipality filed a written statement denying the right and title claimed by the plaintiff. They took a stand that the defendant is in possession and enjoyment of the property and they were making all efforts for leasing out the fishery rights. Thus, the stand taken by the defendant is that the plaintiff does not have any right or title over the



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property and was not in possession of the property and therefore, the defendant sought for the dismissal of the suit.

6. On the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A20 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B10 were marked.

7. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the plaintiffs have made out a case and accordingly decreed the suit as prayed for by judgment and decree dated 27.04.2004.

8. The defendant aggrieved by the judgment and decree passed by the trial Court filed AS No.23/2005 before the Principal Sub Court, Tenkasi. The lower appellate Court, on reappraisal of the oral and documentary evidence, came to a conclusion that a combined reading of Exs.A1,A2 and A17 and A18 made it clear that apart from the plaintiff, the names of nearly 19 persons were included in the patta insofar as Teppakulam is concerned



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and the names of 15 persons were included insofar as Kinaru Pathai Patta.

Hence, on the ground of not impleading the necessary and proper parties to the proceedings, the lower appellate Court proceeded to set aside the judgment and decree passed by the trial Court and allowed the appeal. Aggrieved by the same, the present appeal has been filed.

9. When this second appeal was admitted on 06.02.2007, this Court framed the following substantial questions of law:

(1) Whether the lower appellate Court's findings in respect of Ex.B10 is wrong and perverse and hence the judgment of the lower appellate Court warrants interference?

(2) Whether the lower appellate Court has failed to consider the documentary evidence namely, Ex.A17, A18 and Ex.A1 to A6 which are documents of title and possession and thus the lower appellate Court has failed to consider the available evidence and so on the ground of non-consideration of evidence, the judgment of the lower appellate Court has to be interfered with under Section 100 C.P.C.?

3. Whether the judgment of the lower appellate Court is liable to be interfered with sine the fact that the respondent/Municipality is estopped from denying the title of



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10. This Court carefully considered the submissions made on either side and the materials available on record.

11. In the case in hand, the appellants/plaintiffs were tracing the title from Exs.A17 and A18. Insofar as possession is concerned, the appellants were relying upon Exs.A1 to A6. The learned counsel for the appellants submitted that the defendants have not established their right and title over the property and the lower appellate Court went wrong in not taking into consideration the title document, which were marked as Exs.A17 and A18 and proceeded to interfere with the well considered judgment passed by the trial Court.

12. It is trite law that irrespective of the stand taken by the defendants, it is for the plaintiffs to establish the right and title over the



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property. Only if this initial burden is discharged by the plaintiffs, the role of the defendants assumes significance.

13. Keeping the above in mind, this Court carefully went through the original documents and more particularly, Exs.A1, A2, A17 and A18. A17 and A18 are the sale deeds executed in favour of the plaintiffs. The plaintiffs had placed reliance upon Ex.A1 and Ex.A2 to prove their possession. However, on carefully going through these two documents, insofar as patta No.835, which pertains to Teppakulam, the names of 19 persons have been shown. Insofar as the patta No.1414, which pertains to Kinaru pathai patta, the names of 15 persons have been shown. In view of the above, the obvious question that comes to the mind of this Court is as to why there is mention of the names of nearly 19 persons and 15 persons respectively with respect to the suit property when the plaintiffs are claiming for exclusive right and title over the property. The answer has not been provided by the plaintiffs and therefore, the best way to secure an answer is to make them as parties to the proceedings. Only then, the Court can ascertain as to how those 19 persons and 15 persons respectively are



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also claiming right over the property since their names have been mentioned in the patta marked as Ex.A1 and A2.

14. In view of the above, the lower appellate Court was perfectly right in rendering a finding that non inclusion of those persons as parties to the suit clearly amounts to non joinder of necessary and proper parties.

15. The Court must keep in mind the fact that the plaintiffs were claiming for absolute right over the property. Therefore, while dealing with such a claim made by the plaintiffs, if the Court finds that there are many more persons, who are also having a claim over the property and which was evident from Exs.A1 and A2, obviously, the Court has to *prima facie* satisfy itself as to whether those persons also have any right over the property. If any judgment is passed behind the back of those persons, it will certainly put them to grave prejudice. Hence, the suit filed by the plaintiffs is certainly vitiated for non joinder of necessary parties.

16. In the light of the above discussions, this Court does not find any



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ground to interfere with the judgment and decree passed by the appellate Court in AS No.23/2005 dated 30.08.2006 and the substantial questions of law framed by this Court are answered accordingly against the appellants.

17. In the light, the second appeal stands dismissed. No costs.

13.03.2026

NCC : Yes/No

Index : Yes/No

RR

To

1.The Principal Sub Court, Tenkasi

2.The Additional District Munsif Court, Tenkasi.

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J

RR

Judgment made in
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