

9 Ind. Cas. 595

Madras High Court

Case No: None

Govinda Padayachi

APPELLANT

Vs

Doraisawmi Padayachi
and Another

RESPONDENT

Date of Decision: Feb. 2, 1911

Citation: 9 Ind. Cas. 595

Hon'ble Judges: Ayling, J; Abdur Rahim, J

Bench: Division Bench

Judgement

1. The judgment of the learned District Judge cannot be said to satisfactorily dispose of the questions he had to determine before reversing the judgment of the District Munsif, who found in favour of the plaintiff on all the issues. The patta standing in the name of one man, the kist receipts could not show whether any particular portion of the land covered by the patta belonged to the husband of the plaintiff's vendor or to the defendant. Yet the District Judge seems to discard the evidence of the 4th witness for the plaintiff solely on the ground that the kist receipts do not specify for what particular plot payments were made. The Judge has also failed to deal with the question raised by the 2nd issue, for if the plaintiff made out that he was in possession of the land and afterwards wrongfully dispossessed by the defendant the plaintiff would be entitled to a decree unless the defendant is able to make out his title to the property. We must, therefore, call for revised findings on the 1st issue and a finding on the 2nd issue.

2. The finding should be submitted within six weeks from this date and seven days will be allowed for filing objections.

3. In compliance with the order contained in the above, the District Judge, Trichinopoly, submitted the following

FINDING

5. I am asked to return a revised finding on the first issue and a finding on the second issue.

6. Appellant's pleader has no instructions. Respondent's (plaintiff's) pleader relies on the District Munsif's judgment.

7. For the reasons given in lower Court's judgment, I find on the first issue that the plaintiff land belongs to the plaintiff. The second issue is whether the enjoyment and dispossession alleged in the plaint are true. Two Village Munsifs (plaintiff's 3rd and 5th witnesses) speak to the enjoyment of Anaimuthu, the deceased husband of plaintiff's vendor under Exhibit A, and to the payment of kist by him for the plaintiff land. Two adjacent land-owners (plaintiff's witnesses Nos. 2 and 4) speak to the plaintiff having sown varagu in this land after his purchase. The former states that defendants carried off the crop. There is no particular reason why these witnesses should not be believed. I, therefore, find the second issue in the affirmative.

8. This second appeal coming on for hearing after the return of the finding of the lower Court, the Court delivered the following.

Judgment

9. The decree of the District Judge is reversed and that of the District Munsif restored with costs in this and in the lower Appellate Court.