
(2010) 02 MAD CK 0102

In the Madras High Court

Case No : S.A. No. 456 of 2003 and C.M.P. No. 1778 of 2009

Tiruvengadampillai, Natarajan and Amudha

APPELLANT

Vs

Jayaramanpillai

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100
Evidence Act, 1872 — Section 90

Citation : (2010) 02 MAD CK 0102

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant; M.V. Chandran, for the Respondent

Judgement

R. Mala, J.—The Second Appeal is filed by the first defendant and the legal heirs of the deceased second defendant, against the judgment

and decree dated 25.1.2002 in A.S. No. 3 of 1999 on the file of the Sub-Court, Cheyyar, modifying the judgment and decree dated 9.7.1993 in

O.S. No. 110 of 1981 on the file of the District Munsif Court, Cheyyar.

2. The averments in the plaint are as follows:

(a) Dry S. No. 33/6, measuring 1 acre 11 cents and S. No. 35/1, measuring 2 acre 24 cents, belong to one Thiruvengada Pillai. He had two sons,

by name Munusami Pillai and Karia Pillai. Munusami Pillai died long back leaving behind his sons, Thiruvengada Pillai alias Mandiri Pillai.

Ramasami Pillai and Vellakannu Pillai. The said Thiruvengada Pillai alias Mandiri Pillai had daughter, by name Kutti Ammal and she died leaving

behind the first defendant as her only legal heir. Ramasami Pillai died about 45 years ago, leaving behind the plaintiff Jayarama Pillai. Vellakannu

Pillai died in the year 1945, leaving behind his only daughter Valli Ammal and she

also died issueless. (b) Karia Pillai had half share in the suit

properties. Munusami Pillai had another half share in the suit properties. There is a Well in S. No. 33/6, which is "A" schedule property. Both

Karia Pillai and Munusami Pillai had half share in the Well. Munusami Pillai's half share in the "A" schedule property, was divided between three

brothers, Thiruvengada Pillai alias Mandiri Pillai, Ramasami Pillai and Vellakannu Pillai. Thus, each of them is entitled to 1/6 share. Since

Vellakannu Pillai died intestate without any issues, his 1/6 share in the Well, devolved upon into 1/12 share to Thiruvengada Pillai alias Mandiri

Pillai and another 1/12 share devolved upon the present plaintiff. So, the plaintiff is entitled to 1/6 share by birth and 1/12 share by devolution.

(c) Karia Pillai divided his properties into two shares and gave half share to one Kolavai Pillai, the father of the second defendant and another half

share to Ramasami Pillai, the father of the plaintiff. Thus, in the Well, Kolavai Pillai had 1/4 share and Ramasami Pillai had 1/4 share. The second

defendant inherited 1/4 share and the plaintiff inherited 1/4 share in the properties. In total, the plaintiff is entitled to 1/2 share in the landed

properties and in the Well and the second defendant is entitled to 1/4 share in the Well and in the landed properties.

(d) The plaintiff and the father of the first defendant, Adhimoola Pillai applied for installation of 5 H.P. Pump-set in the suit Well. Service

Connection was issued in the name of the plaintiff in or about 1958. The plaintiff has contributed half-share, Adhimoola Pillai has contributed 1/4

share and the second defendant contributed 1/4 share in the purchase of pump-set. The plaintiff has been taking water from the pump-set through

the existing channel from the Well in S. No. 36/6 and irrigated his lands. He used to raise paddy, sugarcane and ragi crops. His income was Rs.

4,000/- p.a.

(e) The defendants 1 and 2 along with one Andi Pillai and others, unlawfully removed the pump-set in the middle of the year 1974. The plaintiff

gave a Police complaint. The first defendant is keeping the motor materials in his custody. As a result, the entire lands are lying fallow. So, the

plaintiff has not raised the crops. For non-payment of electricity consumption charges, the Electricity Department had disconnected the Service

Connection. So, the plaintiff has issued notice on 4.11.1977. The defendants

gave a reply with false allegations.

(f) Hence, the plaintiff filed the suit for declaration of plaintiff's title to half share in the Well described in the "A" schedule property and half share in

the pump-set in the "B" schedule property and also for mandatory injunction to direct the defendants to restore the motor, etc., described in the

"B" schedule property and in the Well described in the "A" schedule property, to pay damages of Rs. 6,000/- for loss of crops, to pay Rs. 200/-

for value of the green leaves and to pay Rs. 532.54 for the electricity consumption charges paid by the plaintiff. The plaintiff prayed for a decree.

3. The gist and essence of the written statement filed by the first defendant are as follows:

(a) It is true that the suit properties belonged to Thiruvengadam Pillai, who is his maternal grandfather. Karia Pillai died issueless. The relationship

between the parties is admitted.

(b) The suit Well in S. No. 33/6 originally belonged to Mandiri alias Thiruvengada Pillai, who got the property to his share in the partition among

his brothers about 50 years ago.

(c) The said Thiruvengada Pillai was in possession and enjoyment of the properties for several years and then, he settled the properties in favour of

his son-in-law, Adhi moola Pillai, the father of the first defendant. The said Adhimoola Pillai was in possession till his death about 20 years ago. He

also installed an electric pump-set in the suit Well in his own name from and out of his own funds. The said Adhimoola Pillai died when the first

defendant was minor, aged about four years. Because of the minority, the plaintiff being the cousin brother of the first defendant's mother, had

been managing the property along with other properties with Paramasivam Pillai of Kalvai Village. In the course of management, the plaintiff

transferred the electricity connection in his name. After the first defendant attained majority, he had objected and that has been cancelled about ten

years ago. The first defendant is in possession of the properties using the Well absolutely for more than 20 years. The plaintiff has no manner of

right, title or interest in respect of the suit properties, nor at any point of time, the plaintiff used the suit Well, nor irrigated to his lands from the suit

Well. But he attempted to interfere with the suit property on 5.2.1978, which was prevented. The first defendant filed a suit against the plaintiff, in

O.S. No. 44 of 1978 and obtained order of injunction in respect of S. No. 33/6, 19 cents with the Well.

(d) It is only the plaintiff who has removed the pump-set from the Well, for which the first defendant has given Police complaint. The plaintiff has come forward with the suit in the nature of speculative action. Hence, the first defendant prayed for dismissal of the suit.

4. The gist and essence of the written statement filed by the second defendant are as follows:

(a) The second defendant has got 1/4 share in the Well and the lands. The plaintiff and the first defendant had got equal share in the rest of 3/4

share in the Well and the lands. The contribution for the installation of the pump-set and the shed in the Well also was in the same ratio.

(b) The plaintiff was taking water to his lands, which was objected to by the defendants. It happened seven years ago. Even then, the plaintiff was

taking water. Hence, there was a Panchayat before the Village Munsif. But the first defendant took away fuse carrier and deposited the same with

the Village Munsif. But with the help of the President of the Village, the plaintiff put up a new fuse carrier and began to operate the pump-set.

Hence, the first defendant wrote to the Electricity Board to disconnect the Service Connection and the same was disconnected.

(c) For a period of three years, nobody cultivated the lands. The motor pump-set is in the first defendant's house. The plaintiff removed switch,

starter and other materials and kept them in his house. The plaintiff has applied for Service Connection and got the same in his name and has

installed the pump-set in the same common shed and has been running the same. The first defendant also has constructed a separate shed and got

service connection and has been running the pump-set of his own. Only the second defendant has suffered and he has been denied his right to

water to his portion of the lands for the last three years. His lands alone are lying fallow.

(d) The fight was between the first defendant and the plaintiff. The plaintiff has been preventing the second defendant from using the common

pump-set shed. The plaintiff is not entitled for damages, since the plaintiff has been cultivating the portion of the lands. Hence, the second defendant

prayed for dismissal of the suit.

5. The trial Court, after considering the averments both in the plaint and in the written statement, framed 19 issues and considering the oral

evidence of P.Ws.1 to 4, D.Ws.1 and 2 and Exs.A-1 to A-7, granted decree in respect of half share in the Well situated in "A" schedule property.

In other respects, the suit was dismissed. Against that, the plaintiff preferred appeal. The first appellate Court, after hearing the arguments of both

Counsel, framed two points for determination and while confirming the judgment and decree of the trial Court in respect of the declaration in

respect of half share of the plaintiff in the suit Well, also declared 1/2 share of the plaintiff in respect of the motor pump-set and granted relief for

installation of new motor pump-set and also awarded damages of Rs. 6,000/- for the loss of crops sustained and in other respects, the suit was

dismissed by the first appellate Court. Against that, the first defendant and the legal heirs of the deceased second defendant have preferred this

Second Appeal.

6. At the time of admission of the Second Appeal, the following substantial question of law was framed for consideration:

Whether the lower appellate Court erred in law and misdirected itself in holding that the first defendant removed and took away the motor pump-

set and that he is liable to pay damages for non-cultivation of plaintiff's land merely because the first defendant failed to establish his case that the

plaintiff himself took away the motor pump-set, when in law it is for the plaintiff to establish his case without depending upon the proof of the

defendant's case?

C.M.P. No. 1778 of 2009:

7. During the pendency of the Second Appeal, the appellants/first defendant and legal heirs of the deceased second defendant, have come forward

with this application for reception of document, namely the settlement deed dated 11.1.1949, as additional evidence, stating that even though the

document has been handed over to the lower Court Counsel, but it was not marked before the Courts below. During the discussion with his

Counsel appearing in the present Second Appeal, they came to know that the document has not been filed and so, they were advised by the

Counsel to file this document. Hence, this document is necessary for the disposal of the Second Appeal and they prayed for reception of the said

document as additional evidence.

8. It has to be decided whether the appellants-petitioners in C.M.P. No. 1778 of 2009, are entitled for letting in the said document as additional evidence.

9. It is true that in the trial Court, declaration of title in respect of 1/2 share in the suit Well has been granted. It was confirmed by the first appellate

Court. Now, during the pendency of the Second Appeal, this C.M.P. has been filed under Order 41 Rule 27 C.P.C.

10. It is appropriate to consider Order 41 Rule 27 C.P.C., which reads as follows:

Order XLI. Appeals from Original Decrees:

Rule 27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within

his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other

substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

11. There are three ingredients to be proved by the appellants/petitioners in C.M.P./first defendant and the legal heirs of second defendant, for

reception of additional evidence. In paragraph 6 of the affidavit filed in support of the C.M.P., the petitioners have stated that the first petitioner

gave the certified copy of the settled deed executed by his maternal grandfather in favour of his father, to his lower Court Counsel, and the same

was not marked before the Court below. Non-marking of the said settlement deed was not aware of these petitioners and now only, they have

come to know of the fact recently and hence, they wanted to rely upon the said document.

12. The petitioners have to prove three ingredients of Order 41 Rule 27 C.P.C., namely that, due diligence, that such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them at the time when the decree appealed against was passed and that the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. Here, in their petition, in paragraph 6 of the affidavit filed in support of the C.M.P., the petitioners have stated that they have handed over the copy of the settlement deed, dated 11.1.1949 to their Counsel, but it was not marked. So, before the trial Court itself, they were aware of the fact that they were having document and hence, the ingredients 1 and 2 are false. So, the next ingredient is whether the document is necessary for disposal of the Second Appeal.

13. It is pertinent to note that as per the document alleged to be marked as an additional evidence, the defendants' father Adhimoolam Pillai was given 1/2 share in the Well. Exs.A-6 and A-7 are relevant documents. In Ex.A-6, the first appellant-Thiruvengada Pillai filed O.S. No. 138 of 1981 for declaration of title and injunction in respect of the suit property in S. No. 33/6, 19 cents with Well, trees and the description of the property in O.S. No. 138 of 1981 as found in Ex.A-6, is as follows:
North Arcot District, Cheyyar Taluk, Vadamanapakkam Village dry land bearing S. No. 33/6 of 0.19 cents with a Well, trees, including
Nathangal and Medu bounded by the Narayana Pillai dry land on the West; by the dry lands of Thiruvengida Pillai on the north and south; and by
the dry land of Srinivasa Pillai on the east.

Ex.A-6 relates to O.S. No. 138 of 1981 filed by the appellant-Thiruvengada Pillai against the respondent-plaintiff, which was dismissed.

14. The respondent-plaintiff has filed O.S. No. 137 of 1981, as per Ex.A-7, for declaration of title to use the channel and for injunction. The description of property in O.S. No. 137 of 1981, as found in Ex.A-7 is as follows:

15. The said suit in O.S. No. 137 of 1981 has been decreed and the right has been given to the first respondent-plaintiff to use the channel for

irrigating the lands situated in S. No. 33/6, 1 acre 11 cents and in S. No. 35/7, 2 acre and 24 cents. At this juncture, it has to be considered as to

whether the additional document, namely the settlement deed, dated 11.1.1949

is necessary or not.

16. It is appropriate to consider the pleading of the plaintiff. The first respondent/plaintiff in the present plaint in O.S. No. 110 of 1981, has stated

in paragraphs 5 and 6 as to how he got 1/2 share in the suit Well. Per contra, the first defendant in his written statement, in paragraphs 5 and 6,

denied the allegations made in paragraphs 5 and 6 of the plaint. In paragraph 7 of the written statement, the first defendant has stated that his

maternal grandfather Mandiri alias Thiruvengada Pillai, got the property in partition among his brothers 50 years ago and the said Mandiri alias

Thiruvengada Pillai settled the properties in favour of his son-in-law, Adhimoola Pillai, the father of the first defendants and the said Adhimoola

Pillai died 20 years ago. But the first defendant has not pleaded about the additional document filed before this Court to state that his father got the

property under a registered settlement deed, dated 11.1.1949. The original document also has not been filed before Court. The settlement deed

has to be proved in accordance with law.

17. In this connection, it is pertinent to note Section 90 of the Indian Evidence Act, which reads as follows:

Section 90: Presumption as to documents thirty years old: When any documents, purporting or proved to be thirty years old, is produced from any

custody which the Court in the particular case considers proper, the court may presume that the signature and every other part of such document,

which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or

attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

18. Hence, u/s 90 of the Indian Evidence Act, the presumption cannot be invoked, since the original document is not filed. In such circumstances,

the document has to be proved in accordance with law. Without pleading, no evidence can be looked into. Hence, I am of the opinion that the

additional document now filed is not pleaded in the written statement. In such circumstances, the document cannot be received as additional

evidence.

19. It is also pertinent to note that after the suit has been decreed in respect of 1/2 share in the suit Well, the defendants have not preferred any

appeal. The relief of declaration, mandatory injunction as well as damages of Rs. 6,000/- have been granted by the first appellate Court and then

only the appellants/defendants have come forward with the present Second Appeal and during the pendency of the Second Appeal, they have filed

the present C.M.P. for reception of the document as additional evidence. So, there is no reason for accepting the averments in the affidavit filed in

support of the C.M.P. Hence, I am of the opinion that the appellants-petitioners in C.M.P., are not entitled for letting in additional evidence.

Hence, C.M.P. No. 1778 of 2009 is dismissed.

Substantial question of law:

20. The respondent as plaintiff filed the suit for declaration that he is entitled to half share in the Well and also in the motor pump-set, electricity

connection, and damages for Rs. 6,000/- for not raising crops, Rs. 200/- for damages for green leaves and for other reliefs, stating that as per the

succession, he is entitled to half share.

21. The defendants raised a contention that the Service Connection is in the name of the first defendant and he is the owner of the motor pump-set.

The trial Court has granted decree in respect of half share in the suit Well. In other respects, the suit was dismissed. Against that, the plaintiff

preferred appeal. In that appeal, the first appellate Court, while confirming the judgment and decree of the trial Court, declaring the plaintiff's half

share in the suit Well, also declared 1/2 share in the motor pump-set and granted relief in respect of installation of new motor pump-set and Rs.

6,000/- for the loss of crops sustained. Against that, the present Second Appeal has been preferred by the first defendant and the legal heirs of the

second defendant.

22. Learned Counsel for the appellants-defendants would contend that the plaintiff must prove his case, but he has not proved his case. He relied

on the decision of a Division Bench of this Court reported in Kannu Reddiar Vs. T. Palanirajan and Others, and submitted that the plaintiff cannot

take away the claim and goes into the case of the defendants and seek for remedy. The plaintiff has examined P.Ws.2 and 3 and their evidence is

not trustworthy. Hence, learned Counsel prayed for setting aside the judgment and decree of the first appellate Court.

23. Per contra, learned Counsel for the respondent-plaintiff would contend that

the first appellate Court has considered the claim on the basis of the evidence of P.Ws.1 and 2. The motor pump-set has been removed by the defendants. Hence, the respondent-plaintiff is entitled to damages.

As per Section 100 C.P.C., the first appellate Court is the last fact finding Court. After considering the oral and documentary evidence, the first appellate Court awarded damages. There is no substantial question of law to be decided in the Second Appeal. Hence, the Second Appeal itself is not maintainable. This Court shall not interfere or re-appreciate the oral and documentary evidence as per Section 100 C.P.C. Learned Counsel for the respondent-plaintiff relied upon the decisions of the Supreme Court reported in Arumugham (Dead) By Lrs. and Others Vs. Sundarambal and Another, , Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., , and a decision of this Court reported in V.O.C. Arumugham Pillai Vs. A. Ilango and Others, and prayed for dismissal of the Second Appeal.

24. The respondent as plaintiff filed the suit for declaration that he is entitled to 1/2 share in the pump-set installed in the suit Well as well as in the suit Well, for mandatory injunction, directing the defendants to restore the motor pump-set and also for damages of Rs. 6,000/- for the loss of crops sustained and other reliefs. The trial Court has granted declaration in respect of 1/2 share in the suit Well. In other respects, the suit was dismissed. Against that, the plaintiff preferred appeal. The defendants have not preferred any appeal. In the said appeal, the first appellate Court decided that the respondent-plaintiff is entitled not only for declaration of his 1/2 share in the suit Well, but also declaration of his 1/2 share in the motor pump-set and also granted mandatory injunction in respect of installation of new motor pump-set and also awarded damages of Rs. 6,000/- for the loss of crops sustained. Against that, the present Second Appeal has been preferred by the first defendant and the legal heirs of the deceased second defendant.

25. Both the Courts below have declared that the respondent-plaintiff is having 1/2 share in the suit Well. But the trial Court has dismissed the suit in respect of mandatory injunction to restore the motor pump-set in "B" schedule property in the suit Well, described in "A" schedule property. As per the pleadings, both the appellants/defendants and the respondent-plaintiff are co-owners of the suit Well and the suit motor pump-set. As per

evidence, the first appellate Court has come to the conclusion that the motor pump-set has been removed by the appellants-defendants. At this

juncture, learned Counsel for the respondent-plaintiff would contend that since the first appellate Court is the last fact finding Court, this Court has

no jurisdiction to re-appreciate the oral and documentary evidence. He also contended that the trial Court has granted 1/2 share in the common

Well and considering the oral and documentary evidence, the first appellate Court has held that the respondent-plaintiff is entitled to half share in

the motor pump-set and mandatory injunction for restoring the motor pump-set and also awarded damages. These are only question of facts and

that there is no substantial question of law is involved in the Second Appeal. The appellants-defendants have not preferred any appeal in respect of

the judgment and decree of the trial Court regarding declaration of title in respect of 1/2 share in the Well.

26. Learned Counsel for the respondent-plaintiff relied upon the decision of the Supreme Court reported in Sree Bank Ltd. Vs. Sarkar Dutt Roy

and Co., and contended that the award of damages is only question of fact. In Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., the Supreme Court

held as follows:

3. ...None of the parties appears to have contended to the contrary in the High Court. This being a question of fact it cannot be raised for the first

time in this Court. On such a question of fact, the High Court's finding is binding on us. Furthermore, undoubtedly if the respondents wished to

contend that the option had been exercised, it was for them to have given evidence of such exercise but they did not do so. No such evidence has

been brought to our notice from the records of the case. It has, therefore, to be held that the right to apply for execution in respect of the

instalments under the decree arose on the dates on which they respectively fell due.

27. Learned Counsel for the respondent-plaintiff also relied upon the decision of this Court reported in V.O.C. Arumugham Pillai Vs. A. Ilango

and Others, wherein, it is held as follows:

When the decision of the lower court is given on merits, on consideration of well-recognized principles for determination findings will not be

interfered with in second appeal.

Hence, it is true that the first appellate Court is the last fact finding Court.

28. Learned Counsel for the respondent-plaintiff also relied upon the decision of the Supreme Court reported in Arumugham (Dead) By Lrs. and

Others Vs. Sundarambal and Another, wherein, it is held as follows:

14. From the aforesaid judgment of the three Judges bench in R. Ramachandran Ayyar Vs. Ramalingam Chettiar, , it is clear that this Court held

that second appellate Court cannot interfere with the judgment of the first appellate Court on the ground that the first appellate Court had not come

to close grips with the reasoning of the trial Court. It is open to the first appellate Court to consider the evidence adduced by the parties and give

its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate Court

to interfere with such findings of the first appellate Court only on the ground that the first appellate Court had not come to grips with the reasoning

given by the appellate trial Court....

29. As per the said decision of the Supreme Court reported in Arumugham (Dead) By Lrs. and Others Vs. Sundarambal and Another, , this Court

is the second appellate Court and it cannot interfere with the judgment of the first appellate Court on the ground that the first appellate Court has

not come to close grips with the reasonings of the trial Court. In the present case, the first appellate Court has considered the documentary

evidence, Exs.A-1 to A-7 and the evidence of P.Ws.1 to 4 and D.Ws.1 and 2 and came to the conclusion that the respondent-plaintiff is entitled

to declaration of his 1/2 share in the suit Well and in the motor pump-set and also entitled for mandatory injunction for restoring the motor pump

set and also granted damages of Rs. 6,000/- for the loss of crops sustained.

30. At this juncture, learned Counsel for the appellants-defendants would rely upon the decision of a Division Bench of this Court reported in

Kannu Reddiar Vs. T. Palanirajan and Others, and argued that the lower Court has ignored the fact that the quantum of damages should be

determined specifically after due consideration and discussion of the evidence on record in this regard. In the said decision reported in Kannu

Reddiar Vs. T. Palanirajan and Others, , it is held as follows:

41. As already seen, the finding of the trial Court granting a decree for damages is far from satisfactory. The Court below has failed to see that a

decree for damages could be granted only if the claim was specifically pleaded with details relating to quantum and proved by positive, specific and direct evidence. But, in this case, the pleading relating to damages was bald and vague. Further, no positive and acceptable evidence was adduced by the plaintiffs in support of the claim for damages. Likewise, the lower court has ignored the fact that the quantum of damages should be determined specifically after due consideration and discussion of the evidence on record in this regard. But, the lower court had decreed the suit as prayed for in a most arbitrary fashion. The court below should have also seen that if at all the plaintiffs had any cause of action, it could only be against PIPDIC and not against the defendant and that a notice from the defendant to PIPDIC shall not create a cause of action for damages against the defendant.

42. Even otherwise, if at all the plaintiffs are entitled to any right and remedy, the same could only be by way of a suit to enforce the terms of the lease. It is apparent from the observations of the court below that "the defendant was a ruthlessman" and that "the deceased plaintiff Nirmala passed away on seeing the attitude of the defendant by leaving the plaintiffs as her legal representatives", that the court below was seriously prejudiced against the defendant. The court below ought to have seen that PIPDIC, which was a proper and necessary party to the suit, was not impleaded as one of the defendants and hence, the suit should fail. Likewise, Ex.A-8 alone shall not be sufficient to decree the suit. The lower court ought to have seen that the estimation of profit was neither exhibited nor proved either by the plaintiffs or by the PIPDIC. Further, the estimation of profit is only an expectation on the basis of assumption of contributing factors. Therefore, unless the assumed contributing factors are pleaded and proved, the expected resultant products cannot be accepted. Such things had not been done in this case. Hence, as rightly urged by Mr. G. Masilamani, learned Senior Counsel for the appellant, the claim for loss of profit was not tenable both on facts and in law.

31. At this juncture, while perusing the judgment of the first appellate Court, even though the trial Court has dismissed the suit in respect of grant of damages, the first appellate Court, in paragraph 11, in the later portion, discussed the evidence and came to the conclusion that the respondent-

plaintiff is entitled to Rs. 6,000/- as damages in respect of loss of crops sustained.

32. As already stated, the first appellate Court has considered all the aspects in proper perspective and arrived at the correct conclusion and in

view of the decision of the Supreme Court reported in AIR 1999 SC 2216 (cited supra), I am of the view that the first appellate Court is the last

fact finding Court and it considered the documentary evidence Exs.A-1 to A-7 and the oral evidence of P.Ws.1 to 4 and D.Ws.1 and 2 and

arrived at the correct conclusions. Hence, I do not find any infirmity or illegality in the judgment and decree passed by the first appellate Court. The

substantial question of law is answered accordingly.

33. In fine,

(a) the Second Appeal is dismissed.

(b) The judgment and decree of the first appellate Court are confirmed.

(c) Two months' time is granted to the appellants-defendants for restoration of the motor pump-set and for payment of Rs. 6,000/- as damages to

the respondent-plaintiff, as awarded by the first appellate Court.

(d) C.M.P. No. 1778 of 2009 is dismissed, as observed in the earlier paragraphs.

(e) No costs.