

(1923) 11 MAD CK 0018
In the Madras High Court

Veerasami Mudali

APPELLANT

Vs

Palaniyappan and Others

RESPONDENT

Date of Decision : 23-11-1923

Acts Referred:

Citation : 84 Ind. Cas. 799 : (1924) 19 LW 513 : (1924) 46 MLJ 515

Judgement

1. We are unable to understand the reasoning of the learned District Judge in arriving at his finding, and we are therefore unable to accept it even

though it is one of fact. We would call upon him to submit a revised finding on the issue in question. We think the parties may be allowed an

opportunity to adduce fresh evidence on the point as the evidence on record seems to be too meagre to arrive at a satisfactory finding. Finding will

be submitted in two months and 7 days will be allowed for filing objections.

2. In compliance with the order contained in the above judgment the District Judge of Trichinopoly submitted a finding that the mesne profits should

be fixed at Rs 115 a year.

3. This Second Appeal again coming on for hearing on Thursday, the twenty-second day of March, 1923, after the return of the revised finding

called for by the order of this Court made herein, dated the 22nd August, 1922.

4. We regret we are again unable to accept the finding as to mesne profits, by the learned District Judge. All the documentary evidence which the

judge himself has set out would make out the mesne profits to be much smaller than what has been found. The learned Judge has relied on the

evidence of P. W. 2, but the evidence as set out by him is that of P. W. 1. The learned Judge has not indicated why he rejects the inference from

the documents, which are usually more reliable than the oral evidence. We must

request the Lower Court to submit a further revised finding on the point; this time it will be on the evidence already on record. Finding will be submitted in eight weeks. Ten days are allowed for filing objections to the finding.

5. In compliance with the order contained in the above Judgment the District Judge of Trichinopoly submitted a finding that the suit lands were 23 and odd acres in extent and that mesne profits should be fixed at Rs. 23 a year.

6. This Second Appeal coming on for final hearing after the return of the revised finding of the Lower Appellate Court called for by the order of this Court made herein, dated the 22nd March, 1923.

7. We accept the finding that the mesne profits should be awarded at Rs. 23 a year. The result is that Second Appeal is allowed and plaintiff's suit for possession is decreed with mesne profits at the rate above stated for three years before suit and till the delivery of possession or for three years whichever is earlier from the date of this decree.

8. The parties will pay and receive proportionate costs throughout.