

**SUPREME COURT OF INDIA**

State of T.N.

Vs.

S. Kumaraswami

C.A.No.1002 of 1971

(A. N. Ray, C.J.I., M. H. Beg and Jaswant Singh, JJ.)

19.03.1976

**JUDGEMENT**

**RAY, C. J.:-**

1. This appeal is from the judgment dated 17 September 1969 of the High Court of Madras.
2. The respondent filed this suit against the State for a declaration of title to 849.99 acres of land. The suit was decreed. On appeal the High Court remanded the suit for finding on two issues:
  - (a) Whether the respondent-plaintiff has title to the suit properties; and
  - b) Whether the respondent plaintiff has possession of the suit properties.

3. The Subordinate Judge submitted a finding that the respondent plaintiff had no title and also had no possession.

4. The finding of the Subordinate Judge on the two matters was brushed aside by the High Court without any reason without any appreciation of documents and without any appreciation of contentions of the parties. The High Court gave a perfunctory judgment. The High Court failed to exercise the duties as an appellate court. It is unfortunate that the High Court did so.

5. The only way to do justice in the matter is to remand it to the High Court. The High Court will hear the matter. The Bench which heard this matter earlier will not hear it on remand. We are sorry to make this observation but it is because of the manner in which the Division Bench of the High Court pronounced judgment in this matter.

6. For the foregoing reasons we order as follows :

1. The decree dated 17 September 1969 of the High Court is set aside. The matter is remanded to the High Court for disposal in accordance with law.

2. The parties will be at liberty to urge their rival contentions on all questions of fact and law.

3. The findings against the State on all questions, including, in particular, title, possession and res judicata recorded in the order dated 18 August, 1966 of the High Court are set aside. The State will be at liberty to urge all these pleas and other pleas open to the State.

4. The parties will be at liberty to support or challenge the findings dated 26 October, 1967 submitted by the Subordinate Judge.

5. The Joint receivers appointed by this Court will forthwith take possession of the entire property and continue to act as joint receivers till the disposal of the matter. The directions given by this Court earlier, that the respondents would have liberty to enter the land, are recalled and it is made clear that the respondents will have no right whatever to enter the land till disposal of the matter.

The Joint receivers will make a valuation of the existing standing crops and submit a report of the valuation to the High Court.

7. We have to state that in making this order we are assisted by the Advocate General, Tamil Nadu as well as counsel for the respondents. Both of them fairly appreciated that the order of the High Court could not be allowed to stand. It is on this basis that we have made this order.

8. As to costs, Mr. Ramamurthi, counsel for the respondents submitted that each party should pay and bear its own costs. The reason given by Mr. Ramamurthi is that his clients are not responsible for the form of the order. The advocate general did not press for costs. In that view of the matter we direct the parties to pay and bear their own costs in this appeal.

9. Let the records be forthwith sent to the High Court.

Order accordingly.