



S.A.No.728 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.728 of 2001

Palanichamy

...Appellant

vs.

1.Sivasubramaniam (died)

2.Santhi Devi (died)

3.Rajeswari (died)

4.Punithavalli

5.Sakthi Vadivel

6.Ravichandran

7.Sangeetha

8.Jegatheesan

9.Saravanan

... Respondents

(R2 recorded as the legal heir of the deceased R1. R3 and R4 brought on records as legal heirs of the deceased R1 vide order dated 25.03.2009 in C.M.P.(MD)No.3484 of 2006 in SA.No.728 of 2001)



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(R5 to R7 are brought on record as legal heirs of deceased R3 vide Court order dated 24.01.2020 in C.M.P.(MD)Nos.2778 to 2780 of 2018 in S.A.No.728 of 2001)

(R8 and R9 are brought on record as legal heirs of the deceased R2 vide Court order dated 02.02.2023 in C.M.P.(MD)Nos.228 to 230 of 2023 in S.A.No.728 of 2001)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 03.07.2000 in A.S.No. 33 of 1999 on the file of the Additional District Court cum Chief Judicial Magistrate Court, Karur reversing the Judgment and Decree dated 12.01.1993 in O.S.No.1035 of 1989 on the file of the District Munsif Court, Karur.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For Respondents : Mr.P.Santhanakrishnan
for R8 and R9

No appearance for R4 to R7

R1 to R3 - Died



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ORDER

Though the matter is listed under the caption 'notice of motion' today, it is taken up for final disposal.

2. The appellant is the defendant in the suit in O.S.No.1035 of 1989 on the file of the District Munsif Court, Karur. The deceased respondents 1 and 2 are the plaintiffs in the above suit.

3. For the sake of convenience, the parties are referred to as per their ranking in the suit.

4. The deceased plaintiffs filed the above suit against the defendant for declaration and permanent injunction. The suit was dismissed by the Trial Court. Challenging the Judgment and Decree of the Trial Court, the deceased plaintiffs filed an appeal in A.S.No.33 of 1999 on the file of the Additional District Court cum Chief Judicial Magistrate, Karur. The learned Judge who dealt with the appeal, had allowed the appeal.



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Challenging the Judgment and Decree of the Appellate Court, the defendant in the suit has filed the present Second Appeal, raising the following substantial question of law.

"1. When the admission of the plaintiffs coupled with documentary evidence establish non-continuance of a channel as pleaded in the plaint, is the learned Additional District Judge right in reversing the Judgment of the learned District Munsif?"

5. The case of the deceased plaintiffs is that they filed the suit for declaration, to declare that they are entitled to take water from the channel that branches off from Chinnadharapuram Raja Vaikkal and runs through the patta land of the defendant in S.Nos.902 and 898B. The deceased plaintiffs have filed a rough sketch along with the plaint showing Chinnadharapuram Raja Vaikkal, their land, defendant's land, irrigation channels and branches of that channels. As per the settlement deed dated 13.04.1953, properties in S.Nos.890/1, 890/2, 890/3, 891/1, 891/2, 891/A1, 891/A2, 891/A3, 892/A1, 892/A3, 893, 894 belong to the



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deceased first plaintiff. As per the release document dated 05.03.1970 executed by Muthanayakkar, properties in S.Nos.888, 880A and 897 belong to the deceased second plaintiff. The land in S.Nos.902 and 898B belongs to the defendant. The deceased plaintiffs' and the defendant's lands at first were dry lands. Chinnadharapuram Raja Vaikkal, which is shown as S.No.912, branches off from Amaravathi River. The deceased plaintiffs, defendant and other adjacent land owners are taking water from Chinnadharapuram Raja Vaikkal for over 100 years. The Raja Vaikkal shown in the rough sketch as A, B, C, D, E, E, F, G kavar was established by the Government for the purpose of irrigation. The adjacent land owners are irrigating their respective lands by using the water from A to G kavar. C, D suit kavar runs through the land in S.Nos. 902 and 898B, which belongs to the defendant. C, D suit kavar exists for more than 100 years. The deceased plaintiffs are entitled to take water from C, D suit kavar for irrigation. C, D suit kavar is a part of the Raja Vaikkal A to H kavar. According to the Revenue Register, C, D suit kavar belongs to the Raja Vaikkal. The defendant is also entitled to take water from A to H kavar. However, he has no right to close C, D suit



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kavar. On the first week of April 1989, the defendant attempted to restrict the deceased plaintiffs from irrigating their lands through C, D suit kavar. Therefore, the deceased plaintiffs filed the above suit for declaration and permanent injunction. However, the Trial Court failed to appreciate the facts and dismissed the suit. The Appellate Court rightly appreciated the facts and granted decree in favour of the deceased plaintiffs.

6. The case of the defendant is that the land in S.Nos.902 and 898B belong to him by way of partition. The Government has issued patta to him for S.Nos.902 and 898B. The deceased plaintiffs, their predecessors or the Tamil Nadu Government has no right in the above survey numbers. The channel branches from the Chinnadharapuram Raja Vaikkal, runs through land in S.F.Nos.911 and 903, Kallakurichi Village and enters into the defendant's land in S.F.Nos.902 and 898B, Kallakurichi Village. The suit channel running in S.F.Nos.902 and 898B exclusively belongs to him. The suit channel runs on the ground level in S.F.Nos.902 and 898B. If the suit channel is deepened below the ground level, it would become



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impossible for the defendant to irrigate his lands. While so, one Kombapalayathan @ Srinivasan and four others, who are the neighbours, interfered with his peaceful possession and enjoyment of the suit channel in S.F.Nos.902 and 898B. Therefore, he filed a suit in O.S.No.791 of 1985 on the file of the District Munsif Court, Karur seeking permanent injunction. While the suit was pending, the Tahsildhar, Karur sent a notice dated 26.08.1988. The defendant also sent a reply setting forth the correct facts. The Tahsildar, Karur being aware of the rights of the defendant in the suit channel, ordered his men to deepen the suit channel, and accordingly, the suit channel was deepened and widened. Subsequent to the deepening of the suit channel, the defendant is unable to irrigate his land. Therefore, the defendant filed a suit in O.S.No.193 of 1989 against the Government and the Tahsildar, Karur seeking for declaration and consequential relief of permanent injunction, mandatory injunction and damages. While O.S.No.193 of 1989 was pending, the suit in O.S.No.791 of 1985 was decreed in favour of the defendant. Subsequently, the suit in O.S.No.193 of 1989 was also decreed in favour of the defendant. While the suit in O.S.No.791 of 1985 was pending, the



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suit channel was deepened on the provocation of the deceased plaintiffs.

The deceased plaintiffs have not at all irrigated their lands using the water from the suit channel. Though the Trial Court rightly dismissed the suit filed by the deceased plaintiffs, the Appellate Court failed to appreciate the facts and allowed the appeal. Therefore, the Second Appeal is to be allowed.

7. The learned counsel appearing for the appellant / defendant submits that the suit in O.S.No.791 of 1985 is decreed in favour of the defendant to the effect that the suit channel stops with the land of the defendant. When the defendant has been issued patta inclusive of the disputed channel, it cannot be contended by the deceased plaintiffs that the suit channel is a Government channel. There is no evidence to prove that the channel is a common channel. The deceased plaintiffs have not proved by way of oral or documentary evidence that the suit channel continues to run from the defendant's land towards their land. The suit in O.S.No.193 of 1989 filed against the Government and Tahsildar, was decreed in favour of the defendant stating that the disputed channel lies



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in the property of the defendant and it is unauthorisedly widened and deepened by the Tahsildar. Though the Trial Court rightly dismissed the suit, the Appellate Court failed to appreciate the facts and wrongly allowed the appeal in favour of the deceased plaintiffs.

8. The learned counsel appearing for the respondents 8 and 9 submits that the deceased plaintiffs, defendant and the other adjacent land owners are permitted by the Government to take water from A to G kavar for irrigation. Though C, D suit kavar runs through the defendant's land, he has no exclusive right over the same, since, it is a common channel. The channel has no separate ayacut. The water will flow through the suit channel, only if there is excess water in Chinnadharapuram Raja Vaikkal. The defendant is taking water from this suit channel like other adjacent land owners. The defendant obstructed the flow of water by depositing the sand dugged from the well in the suit channel. The defendant has no right to stagnate the water even if the suit channel passes through his patta land. The defendant cannot restrict the respondents herein from irrigating their lands by using the



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water taken from the suit channel, since it is a common channel belonging to the Government and maintained by the Government. Though the Trial Court failed to consider the fact and dismissed the suit, the Appellate Court rightly appreciated the evidences and allowed the appeal.

9. Heard the learned counsel appearing for the appellant / defendant and the learned counsel appearing for the respondents 8 and 9. Perused the materials available on record.

10. During the pendency of the suit, Commissioner was appointed to inspect the suit channel.

11. Admittedly, the land in S.Nos.902 and 898B belongs to the defendant and the suit channel i.e., C, D suit kavar branches off from Chinnadharapuram Raja Vaikkal and runs through the above said defendant's land. A perusal of Aravakuruchi Village Maps marked as Ex.A12, shows that the channel branches off from Chinnadharapuram



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Raja Vaikkal and is shown as A, B, C, D, E, F, G kavar. A perusal of Exs.A2 and A6, Village Maps shows that the channel continues to run even after it passes through the defendant's land. The Trial Court has elaborately considered the evidences and rightly held that the channel is a Government channel and it continues to run after passing through the defendant's land.

12. Therefore, A to G kavar is a common channel. Chinnadharapuram Raja Vaikkal gets water from Amaravathi River and the excess water from Chinnadharapuram Raja Vaikkal drains through the channel A to G kavar. The lands that are situated adjacent to the suit channel i.e., C, D suit kavar are getting irrigated through the suit channel. Though the suit channel runs through the defendant's land, he is not entitled to get exclusive right over the same and he is also not entitled to obstruct the flow of water to other fields for irrigation. In a connected Appeal before this Court in S.A.No.738 of 2001, the appellant herein has claimed exclusive right over the suit channel and this Court has clearly held that it is a common channel and nobody is entitled to get exclusive



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right over the same. It is also held that the suit channel should not be altered by deepening or widening and that the lands adjacent to the suit channel can be irrigated, only if the suit channel runs on the ground level. It is further held that the adjacent land owners cannot get water as a matter of right. Though the Trial Court dismissed the suit, the Appellate Court has rightly allowed the appeal. The Appellate Court has elaborately discussed that the suit channel is a common channel, belonging to the Government and maintained by the Government. Since it is a Government channel, this Court is of the considered opinion that the Government can very well formulate a Scheme as to how, the excess water which drains through the channel A to G kavar can be equally distributed to all the adjacent land owners of the channel for irrigation and as to how the adjacent land owners shall utilise the water for irrigation, depending upon the amount of flow of water and the lands owned by the adjacent land owners.

13. From the Commissioner's Report and through the evidence, it is clear that the level of the channel and the level of C, D suit kavar is



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same and if C, D suit kavar is deepened, the defendant, who is the appellant herein, would not get water for irrigation. Therefore, though the respondents 4 to 9 herein are entitled to take water from the C, D suit kavar, they cannot disturb the C, D suit kavar. It is admitted fact that the Government is not duty bound to supply water through the suit channel. Only the excess water from Chinnadharapuram Raja Vaikkal drains through the channel, which is being used by the adjacent land owners for irrigation. If the channel is deepened, neither the appellant herein nor the respondents 4 to 9 herein can utilise the water for irrigation. Therefore, the appeal is partly allowed with the modification that the adjacent land owners are entitled to take water from the C, D suit kavar and they are not entitled to disturb the C, D suit kavar. Therefore, the Judgment and Decree passed by the Appellate Court is modified to the effect that the C, D suit kavar shall not be deepened any further.

14. The decision of the Appellate Court in A.S.No.33 of 1999 on the file of the Additional District Court cum Chief Judicial Magistrate Court, Karur in permitting the adjacent land owners to take water from C,



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D suit kavar is confirmed. However, neither the parties to the Second Appeal nor the other adjacent land owners are entitled to deepen the C, D suit kavar. In view of the above modification, the Second Appeal is partly allowed. No costs.

27.04.2023
(2/2)

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Additional District Court
cum Chief Judicial Magistrate Court, Karur
- 2.The District Munsif Court,
Karur.



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P.VELMURUGAN, J.

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