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S.A.No.825 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2023

Delivered on: 05.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

S.A.No.825 of 2005

1. Ethirajulu
2. Durai
3. Gopal Naicker
4. Padmavathi

...Plaintiff 2 to 5/Appellants/appellants

Vs

1. K.Vedachalam
2. V.Kadumbadi
3. V.Mohan
4. Kodandan

.. defendants/respondents/respondents

.. 1st plaintiff/4th respondent/respondent

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code as against Judgement and Decree in A.S. No.54 of 2003 on the file of the Additional Sub Judge, Chengalpattu dated 29.10.2004 in confirming the judgment and decree in O.S.No. 64 of 1998 on the file of the District Munsif, Chengalpattu dated 27.02.2003.

For Appellants : M/s.V. Pavithra

for M/s.V.Srimathi

For R-3

: Dr. S.Suriya

Additional Government Pleader [CS]

J U D G M E N T

This Second Appeal has been preferred as against the decree and judgment passed in A.S.No.54 of 2003 on the file of the Additional sub Court, Chengalpattu dated 29.09.2004, wherein these appellants along with another have filed a suit in



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O.S.No.64 of 1998 on the file of the District Munsif Court, Chengalpattu as against the respondents 1 to 3 herein for the relief of declaration and injunction and the same was partly decreed and partly dismissed. As against the decree and judgment, the appellants have preferred first appeal in A.S.No.54 of 2003 and the same was dismissed by confirming the judgment of the trial Court, whereby, the present second appeal has been filed by the appellants.

2.The property situated in S.F. No.201/1C, an extent of 2.70 acres of odai poramboke, S.F. No. 201/1B an extent of 0.32 cents Guduvancherry Kottaimedu village road and S.F.No.201/1A an extent of 0.69 cents of odai poramboke are the suit properties. The plaintiffs have properties of patta lands in Kalavai and Nellikuppam village. The suit was filed by the plaintiffs, for themselves and on behalf of the above said to villagers. S.F.No.201/1,0.28.0 hectares i.e.,0.69 cents, S.F.No.201/1C hectares ie.,2.79 cents are registered as odai poramboke. S.F.No.201/1B,0.12.0 hectares i.e.,0.32 cents was recorded as road in the revenue records. In S.F. No.201/1C at the northern- west boundary, there is a lake and from the said lake, the water would flow through S.F. No.201/1A and S.F.NO.201/1C which are odai poramboke. In the said poramboke lands, if the defendants create any blocks in the said land the properties situated in Southern side of S.F.No. 201/c cannot raise any crops by the villagers. The plaint ABCD marked portion is the pathway, which runs towards 201/1B and 201/1C, which connect the Kalvai and Nellikuppam village. The above said pathway was used by both the villagers to reach their lands from time immemorial. The defendants 2 and 3 are the sons of



the first defendant and they are influenced persons in the locality and they enumerated the property in S.F. 201/1C, thereby they created block for the flow of water from the lake and the water flows was turned into the patta lands. The water run through S.F.Nos.190,199,200 and 201 of Kalvai village and S.F. No.292,294,296,297 of Nellikuppam Village. Further the defendants attempted to create fence over the suit properties. If they succeeded in their attempts the villagers of Kalvai and Nellikuppam cannot be have access to their lands to raise crops and to take cattle to their lands. The said attempt of the defendant were averted by the plaintiff. Hence this suit.

3. The averments made in the written statement filed by the first defendant and accepted by defendants 2 and 3 are as follows.

The suit is not maintainable either in law or on facts. It is true that the water flow from the lake was proceedings towards S.F.No.201/1A, 201/1C through odai poramboke. It is false to state that, ABCD portion of the plaint land is the only pathway to reach the land of the plaintiffs. Infact, in S.F. No.201/1C, the defendants have encroached two acres of land and they are enjoying the same for the past 35 years by digging well and raising crops. In S.F. No.201/1C, there was no pathway as alleged by the plaintiffs. The plaintiffs have no right, title and enjoyment over the property in S.F. No.201/1C. The suit was filed at the instigation of sons of Swaminatha Naicker namely, Nagarajan and Nagappan and the first plaintiff and one Thamodharan attempted to remove the fence over the property of the first defendant. Already the suit in O.S. No.277 of 1997 was filed as against



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them. Infact there is a canal running northern side of the defendants land and lake water is running through that canal. It is false to state this defendants encroached the property in S.F.No.201/1C which has been under the enjoyment of the defendants and they created fence over the property. Whiles, in the year 1998, the plaintiffs trespassed into the property and damaged fence worth about Rs.50,000/-. The defendants have been in possession and enjoyment of the property by raising crops and they also gave application for grant of patta and the Village Administrative Officer has also given no objection, to give service connection to the defendants for the suit property. Therefore, the suit filed by the plaintiffs is liable to be dismissed.

4. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1)வாதி வழக்குரை கல்வாய் கிராம நம்பர் 48 மற்றும் நெல்லிகுப்பம் கிராம நம்பர் 100க்காக பாட்டை மற்றும் ஓடை பட்டாதாரர்களுக்கு எதிராக நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற தகுதியுடையவரா?
- 2) வழக்கு சொத்தில் வாதி பயிர் செய்வதற்காக நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற தகுதியுடையவரா?
- 3) வேறு என்ன பரிகாரம் வாதிக்கு கிடைக்கக்கூடியது?

5. Inorder to prove the case of the plaintiffs, they have examined P.W.1 to 5, marked Exhibits Exs.A.1 to A11. On the side of the defendants, they have



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examined D.W.1 and marked Exs.B.1 to B.19. After evaluating oral and documentary evidence adduced on either side, the trial Court, partly decreed the suit and permanent injunction was granted in respect of S.F. No.201/1A and S.F. NO.201/1B. So far as S.F.No.201/1C is concerned, the suit was partly decreed in respect of 20 feet pathway. ABCD plan shown in plaint plan and in respect of other land, the suit was dismissed.

6. As against the decree and judgment, the plaintiffs 2 to 5, have filed appeal in A.S.No.54 of 2003 on the file of the Sub Court, Chengalpattu. The first appellate Court, dismissed the appeal by confirming the judgement and decree of the trial Court.

7. As against the decree and judgment passed in A.S. No.54 of 20003 the present second appeal has been preferred on various grounds, including the following substantial question of law:

Having regard to the nature of the property concerned in the suit, over which every citizen has a right of usage, have not the courts below committed an error of law in not injuncting the defendants from interfering with such usage

8. The learned counsel appearing for the appellants would contend that the property classified as odai poramboke and the respondents 1 to 3 /defendants 1 to 3 attempted to encroach the property and also created obstructions for the flow of



the water and if they permitted to do so, the patta lands of the appellant/ plaintiffs and other patta holder will be affected by flood. Further, all the villagers are using the said land in S.F.No.201/1C as pathway to reach their respective lands but, the trial Court without considering the above said aspects only decreed the suit in respect of 20 feet pathway and dismissed the suit in respect of remaining lands. The appellate court also without considering the real facts, dismissed the appeal. Therefore, the decree and judgment passed by the trial Court as well as the first appellate are liable to be set aside in respect of S.F.No.201/1C.

9. The learned counsel appearing for the respondents 1 to 3 /defendants 1 to 3 would contend that originally the property is oadi poramboke land and the first respondent/first defendant encroached the property for an extent of 2.0 acre in S.F.No.201/1C and he is cultivating the land for more than 35 years and he also digged well and constructed hut. Therefore, the trial court has correctly dismissed the suit in respect of the agricultural properties, which is under the enjoyment of the defendants 1 to 3. The trial Court after considering the evidence adduced on either side correctly dismissed the suit in respect of the cultivable lands which are under the possession of the respondents 1to3/defendants 1 to3. Therefore the appeal is liable to be dismissed.

10. This is the case filed by the appellants/plaintiffs 2 to 5 as against the respondents 1 to 3/ defendants 1 to 3 for the relief of permanent injunction in respect of the suit properties. According to the appellants/plaintiffs the properties



are odai poramboke and the respondents 1 to 3/defendants 1 to 3 attempted to encroach the property and caused obstructions to the flow of water from the lake.

According to the respondents 1 to 3/defendants 1 to 3, they encroached property in S.F.No.201/1C for a extent of 2 acres and they have been enjoying the property for more than 35 years and there is no pathway in the suit property in S.F. No.201/1C. To prove the case of the plaintiffs, they have examined P.W.1 to P.W. 5 and marked Exs.A1 to A11 and on the side of the defendants, D.W.1 was examined and Exs.B.1 to B.19 were marked.

11. After evaluating the oral and documentary evidence, the trial court had decreed the suit by granting injunction in respect of the properties situated in S.F. NO.201/1A, 201/1B and the 20feet pathway situated in S.F No.201/1C. For the remaining land in S.F.No.201/1C the suit was dismissed. As against the dismissal of the suit in respect of lands in S.F. No.201/1C the appellants/plaintiff herein have filed an appeal before the first appellate Court and the same was also dismissed. The respondents 1 to 3 /defendants in the suit also did not file any appeal against the decree and judgment of the trial Court. The appellants/ plaintiff have filed the documents that already the revenue authorities have initiated eviction proceedings as against the respondents 1 to 3 /defendants 1 to 3 stating that the property belongs to the Government ie.odai poramboke. The respondent 1 to 3 /defendants also admitted that the property is odai poramboke and he has paid B-memo charges to the said property. Since the respondents 1 to 3/defendants themselves admitted that the property belongs to the Government and the property is odai



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poramboke, they have no right over the properties of odaiporamboke for agricultural purpose and every citizen has right to usage of odai poramboke and thereby, the defendants have to be enjoined from the interfering with the usage of the every citizen.

12. The plaintiffs also filed suit for permanent injunction not to create any disturbance for the water flow. Therefore the trial Court as well as the appellate court ought to have decreed the suit in favour of the plaintiffs but the Courts below have restricted the injunction only in respect of 20 feet pathway situated in S.F.No.201/1C. But, at the same time, the Court below have decreed the suit in respect of S.F.No.201/1A and 201/1B which are also oadi poramboke. As far as S.F.No.201/1C is concerned 20 feet pathway alone was decreed. In respect of other properties, the respondents 1 to 3 /defendants have encroached the property and they are in possession and enjoyment of the same. Since the property is odai poramboke, they are not entitled to create any obstructions in the flow of the water. As far as the cultivation is concerned, since the respondents 1 to 3 / defendants are cultivating for more than 35 years they are entitled to cultivate the lands without causing any disturbance to the flow of water from the lake and the villagers to reach their lands. But the trial court as well as the first appellate Court have failed to consider the above said aspect and only decreed the suit in respect of 20 feet pathway. Therefore, the decree and judgment passed by the trial Court as well as appellate Court are liable to be modified.



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13. In view of the above said discussion, the substantial question of law is answered as follows. Since the property is odai poramboke over which every Citizen has a right of usage the Courts below committed an error of law in not enjoining the defendants from interfering with such usage and the defendants are to be restrained from causing obstructions to the usage of every Citizen over the properties in S.F. No. 201/C.

14. In the result, this second appeal is partly allowed and the decree and judgment passed in A.S. No. 54 of 2003 on the file of the Additional Sub Judge, Chengalpattu and decree and judgment passed in O.S. No. 64 of 1998 are modified in respect of prayer for the property in S.F. No. 201/1C and the suit is decreed and the defendants are restrained by an order of permanent injunction from causing any disturbance to the water flow from the lake and the usage of villagers as pathway. In other aspects the decree and judgments of the Courts below are confirmed. No costs.

05.01.2024

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Index : Yes/No

Speaking order/non-speaking order

To

1. The Additional Sub Judge, Chengalpattu District.
2. The District Munsif, Chengalpattu



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P.DHANABAL, J.,

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Pre-Delivery judgment in
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