



Second Appeal No.1403 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1403 of 2013

1.Sundaramoorthy
Devi (died)
2.Neelavathy
3.Minor.Monisha
4.Prabhu
5.Minor.P.Soundaram

.... Appellants

-Vs-

P.C.Shanmugham (died)
Chellammal (died)

1.Sivasubramani
2.Vadivel
3.Kandasamy
4.Venkateswaran
5.Mahudapathi

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 13.03.2013 made in A.S.No.64 of 2012 on the file of the learned I Additional Sub Court, Erode confirming the judgment and decree dated 19.01.2012 made in O.S.No.52 of 2009 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi.

For Appellants	:	Mr.M.Guruprasad
For Respondents	:	Mr.V.K.Thiruvengadam for Mr.A.Sundaravadanam -for RR 1 and 2 for 3 to 5 - Served, no appearance



Second Appeal No.1403 of 2013

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the I Additional Subordinate Judge at Erode in A.S.No.64 of 2012 dated 13.03.2013 in confirming the judgment and decree of the Court of the District Munsif-cum-Judicial Magistrate at Kodumudi dated 19.01.2012 in O.S.No.52 of 2009.

2. The defendants are the appellants. For the sake of convenience, the parties are referred to as per their rank in the suit.

3. O.S.No.52 of 2009 is a suit for declaration that the plaintiff, defendants 1 to 7 are co-owners of suit vani and vani well and for a consequential relief of permanent injunction restraining the defendants 1 to 5 and persons claiming through them from interfering with the plaintiffs' right of taking water from the vani well to irrigate their lands and for a mandatory injunction directing the defendants 1 to 5 and 8 to restore the vani to its original position. They also sought for another relief of permanent injunction restraining the defendants 1 to 5 and 8 from diverting the Kalingarayan Canal water from the suit Vani well to their private wells and to pay costs in the suit.



Second Appeal No.1403 of 2013

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4. The plaintiffs and defendants 1 to 7 claim the property in R.S.No.376 and 377 through common ancestors. According to them, one Chinnappa Gounder who was the original owner of the property executed a settlement deed dated 22.02.1949. By the settlement deed, the property was granted to the plaintiff and his brothers. Similarly, by a document executed by the first defendant and his father on 01.10.1984, the plaintiffs and defendants 6 and 7 also became entitled to the same. The plaintiff and the defendants 1 to 7 had been irrigating R.S.No.376 and 377 utilising the water from Kalingarayan Canal.

5. It is necessary to clarify what a Vani and Vani well is. The water from Kalingarayan Canal has been, from time immemorial, diverted through channels to a common private channel, which is called a Vani and the well to which the water is stored from the Kalingarayan Canal is called a Vani well. By virtue of the collective ownership of the vani and vani well, the ayacutdars have been using the same. The present suit is one such.

6. Insofar as this case is concerned, specific allegation of the plaintiff is that a Vani or Channel was dug to a length of 65.4 metres from the Kalingarayan Canal, with a width of 4.4 metre and a depth of 12 feet. The Vani and Vani well is situated in R.S.No.377/1, which is the subject matter of the present suit.



Second Appeal No.1403 of 2013

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7. The plaintiff and the defendants 1 to 7 are entitled to enjoy the Vani and Vani well in common. Disputes arose between the parties previously and the father of the first defendant filed O.S.No.1180 of 1969 on the file of the District Munsif Court at Erode against the parents of the plaintiff, his siblings and the plaintiff himself. In the said suit, an issue was framed as to whether the plaintiff is entitled to take water through the Vani and the Vani well. The suit which had been presented by the father of the first defendant was dismissed and the appeal preferred therefrom in A.S.No.14 of 1972 also ended in dismissal. There being no Second Appeal as against the judgment and decree of the Court in A.S.No.14 of 1972 holding that the plaintiff's family is entitled to take water from the suit Vani well to their lands in S.F.No.551, it has attained finality.

8. It so transpires that due to lack of water in May 2009, no water was released through the Kalingarayan Canal for irrigation. Ryots therefore used to store manure and sludge in the area left out for the Vani and Vani well. According to the plaintiffs, they decided to remove the sludge and the defendants demanded the plaintiffs to pay the actual expenses. Since they refused, the suit Vani was closed.



Second Appeal No.1403 of 2013

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9. It is the further case of the plaintiff that on 10.06.2009, the defendants 1, 2 and 8 joined together and attempted to damage the bed bolts in which the plaintiff has to install his oil engine. Further, in order to deprive the plaintiff of his right to take water from the Vani well, they dug a separate well on their own land and attempted to divert the water from the Vani well into this well that had been dug separately. Hence, they came forward with the suit.

11. On being served with summons, the defendants entered appearance and admitted to the fact that the plaintiff and the defendants have properties in R.S.Nos.376 and 377 of the village. They also did not dispute the entitlement of the plaintiff to take water from the Vani well. However, they stated that, while the suit Vani well is in existence, the suit vani is not in existence. They relied upon the report of the Commissioner, who had visited the property pending the litigation to the effect that there is vani in existence and that the water from the Kalingarayan Canal is being drawn to the vani well by way of PVC pipes. He found that bushes had grown over the area alleged to be the vani and therefore the defendants stated that the relief of mandatory injunction cannot be granted. According to them, the vani was closed as early as in 2003 and the suit having been filed in 2009, it is hopelessly barred by time.



Second Appeal No.1403 of 2013

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11. Insofar as the plea for prohibitory injunction, the defendants took a specific stand that they have diverted the water through pits and are irrigating their lands only with respect to the suit vani well lands and not to the other lands, which they own. According to them, the plaintiff is not entitled to claim any right on the basis of the judgment and decree in O.S.No.1180 of 2009 on the file of the District Munsif Court at Erode.

12. On the basis of these pleadings, the learned trial Judge framed the following issues:

1. Whether the plaintiff is entitled to the relief of declaration ?
2. Whether the plaintiff is entitled to the relief of permanent injunction ?
3. Whether the plaintiff is entitled to the relief of mandatory injunction ?
4. To what relief?
5. Whether the plaintiffs are entitled to a relief of permanent injunction restraining the defendants 1 to 5 and 8, their men and agents from diverting the Kalingarayan Canal water from the suit vani well into their separate well in any manner?



Second Appeal No.1403 of 2013

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13. After a detailed discussion, the learned trial Judge decreed the suit insofar as the declaration and permanent injunction are concerned, but dismissed the suit with respect to mandatory injunction.

14. Aggrieved by the same, an appeal was preferred by the defendants alone to the file of the I Additional Subordinate Judge, Erode in A.S.No.64 of 2012. In the said appeal, the plaintiffs filed a Cross Objection. Insofar as the denial of mandatory injunction is concerned, the I Additional Subordinate Judge concurred with the findings of the trial Court and therefore dismissed the appeal confirming the declaration and permanent injunction. He concurred with the denial of the relief of mandatory injunction. Against the same the present Second Appeal has been brought forth before this Court.

15. This Court had not admitted the appeal, but ordered notice regarding admission on 05.02.2014. On service of notice, Mr.A.Sundaravadanam entered appearance for the respondents.

16. Today I heard Mr.M.Guruprasad for appellant and Mr.V.K.Thiruvengadam for the respondents.



Second Appeal No.1403 of 2013

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17. Mr.Guruprasad would vehemently contend that, as the suit vani had been closed in the year 2003 itself, there is no cause of action for the present suit. He would further contend that the plaintiffs are not drawing water from the suit vani to irrigate the lands in S.No.551 and the same can be inferred from the Advocate Commissioner's report. He would state that no one has prevented the plaintiffs from drawing the water from the suit vani well nor have the defendants diverted the flow of water. Since there was no attempt made by the defendants 1 to 5 and 8, he would state that the passing of the decree is irregular and requires to be interfered with.

18. According to him, the following substantial questions of law arise for consideration in this Second Appeal.

1. Is it right on the part of the courts below to grant permanent injunction when the respondent / plaintiff had not produced any evidence in whatsoever manner to show that he was prevented by the appellant ?
2. Whether the Courts below are right in partly decreeing the suit when the alleged cause of action itself has been falsified by cogent, impeccable and unimpeachable evidence of the appellant ?



Second Appeal No.1403 of 2013

WEB COPY

19. Mr.V.K.Thiruvengadam would submit that, insofar as the right of plaintiffs over the well is concerned, the issue had been tried as early as in 1969 in the suit filed by the father of the first defendant and the right of the plaintiffs to enjoy water from Kalingarayan Canal through the suit vani into the suit vani well had been heard and finally concluded. Therefore, the question of reconsidering the said issue does not arise. He would state that the first defendant's father, aggrieved by the decree granted to the plaintiffs, had filed an appeal and the appeal also ended against him. He would state that the attempt of the defendants to draw water from the Vani well to their private well is illegal and contrary to the previous decree and therefore, the decree had been rightly granted by the trial Court.

20. Insofar as the relief of permanent injunction is concerned, he would state that if the defendants 1 to 5 and 9 are permitted to divert the water from the suit vani well to their private lands, it will lead to deprivation in the share of the plaintiffs in the water, as defendants 1 to 5 had separate electric connection to their well and that will lead to drawing of more water than their entitlement. He would also state that the vani well was closed in May 2009 and therefore presentation of the plaint in the year 2009 itself is not barred by time.



Second Appeal No.1403 of 2013

21. I have carefully considered the submissions made by both sides. Let

me first deal with the issue of mandatory injunction. It is not in dispute that pending litigation, an Advocate Commissioner had been appointed for the purpose of visiting the suit vani and vani well and to submit a report. The Advocate Commissioner had visited and inspected the suit property on 02.08.2009. He has submitted a report which shows the drawing water from Kalingarayan Canal to the vani well. As already premised in this judgment earlier, vani is the colloquial usage for the channel used for drawing of water from the Kalingarayan Canal to a common private pool. It is not disputed by either side that the plaintiffs are entitled for usage of water from the Kalingarayan Canal. By passage of time and the development of technology, the farmers stopped using the vani and the vani / channel was closed. However, the water that was being drawn from Kalingarayan Canal through the Vani is now being drawn by using of PVC pipes. These PVC pipes perform the same task for which the Vani Channel was used. Since the holding of the farmers were reduced due to the Vani, the farmers found it more convenient for collection of water drawn from the Kalingarayan Canal by using PVC pipes.

22. This case is not an exception. A perusal of the report filed by the Advocate Commissioner makes it clear that the Kalingarayan Canal is situated to the North of the suit lands. From the Kalingarayan Canal to the suit vani well



Second Appeal No.1403 of 2013

there exists PVC pipeline. The plaintiff, during the cross examination has admitted that vani was closed in the year 2003, hence filing of the suit in the year 2009 is hopelessly barred by time and therefore the findings of the court below on this issue are confirmed.

23. Insofar as the right to draw water is concerned, with every obstruction of denial, a fresh cause of action commences. However, since the parties themselves have agreed to close the vani and have utilized modern technology for drawing of water from the Kalingarayan Canal, the issue of restoration of the vani does not arise because an alternate method of drawing of water from the Kalingarayan Canal has been developed by the parties to the suit. Hence, that portion of the decree stands confirmed.

24. Now turning to the relief of declaration, it is pertinent to point out that the defendant has admitted in his cross examination that the plaintiffs and the 7th defendant are co-owners of the suit vani well and that he has no objection to take water from the suit vani well to their respective lands. It is pertinent to note that, objecting to the rights of the plaintiffs and their predecessors-in-title, the defendant's father had filed a suit in O.S.No.1180 of 1969 on the file of the District Munsif Court at Erode. In the said suit, it had been declared that the first defendant's father is equally entitled to draw the water as are the plaintiff's



Second Appeal No.1403 of 2013

family. As pointed out above, the said decree had been carried in appeal and had ended in a dismissal. It has become final.

25. In the light of the admission that had been made by the first defendant as well as the decree that had been passed by the District Munsif Court, Erode in O.S.No.1180 of 1969, the declaration that had been sought by the plaintiffs cannot but be granted. Hence, the declaratory relief will necessarily have to be confirmed by me.

26. Mr.Guruprasad would vehemently contend that, all that is being done by the defendants insofar as the relief of prohibitory injunction is concerned, is to take the water from the vani well to the well situated in their private lands and from those lands water was being taken to the lands which are depending on those private wells. He would state that there is only apprehension that the water may be diverted to other areas and therefore prohibitory injunction ought not to have been granted.

27. It has been seen that, by usage of over seven centuries, for the benefit of ayacutdars the water from the Kalingarayan Canal, is collected in the said vani well. The farmers or ayacutdars are entitled to use the water on turn basis for the purpose of irrigating their lands. If electric motor is utilised for the



Second Appeal No.1403 of 2013

purpose of drawing water by diversion, what cannot be done directly is sought to be achieved indirectly. As co-owners of the well and the water that is being supplied to the well, the plaintiffs as well as the defendants are entitled to use the same within their turn to their maximum benefit. Insofar as the vani wells are concerned, the Government has prohibited the usage of pumps assisted by electricity. The farmers are entitled to draw the water according to their share and take to their respective lands.

28. According to Mr.Guruprasad, by using the electric pump in their private suit lands in which the water from Kalingarayan Canal is collected, no prejudice would be caused to the other sharers. In fact, it begs the issue. If one farmer draws extra water from the collection point ie., the Vani well, it will not only affect the turn of the other farmers, but would also result in deprivation of the rightful share of the other farmer by virtue of usage of electric pumps to draw water. Electric pumps, by their very nature, pump out more water than those which are used by way of natural gravitational force or by physical extraction of water by the farmers. If the appellants are permitted to divert the water from the vani well to their separate well, they will be in a position to draw more water as against their entitlement. It is in that line that the Courts below had granted the relief of permanent injunction. This order of permanent injunction no way affects the common turn that is being developed by custom amongst the farmers for



Second Appeal No.1403 of 2013

drawing their respective share of water. In other words, the plaintiffs will be entitled to as much share as the defendants. If the defendants were to utilise electricity for the purpose of drawing water from the water that is being diverted from the Kalingarayan Canal to their separate wells, there is every possibility that this usage will affect the others and the defendants will draw more water. Therefore, I am not in a position to take any exception to the findings of the Court below as regards declaration and prohibitory injunction granted in favour of the plaintiff nor do I find any mistake in the denial of mandatory injunction.

28. In fine, the Second Appeal stands dismissed. The judgment and decree of the Court of the I Additional Subordinate Judge at Erode in A.S.No.64 of 2012 in confirming the judgment and decree of the District Munsif-cum-Judicial Magistrate, Kodumudi in O.S.No.52 of 2009 dated 19.01.2012 stands confirmed. No costs.

14.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



Second Appeal No.1403 of 2013

To

- 1.The I Additional Subordinate Judge, Erode.
- 2.The District Munsif-cum-Judicial Magistrate, Kodumudi.



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Second Appeal No.1403 of 2013

V.LAKSHMINARAYANAN, J.

KST

S.A.No.1403 of 2013

14.03.2024