



S.A(MD)No.283 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.02.2026

Delivered on : 10.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.283 of 2020

and

C.M.P(MD)No.3442 of 2020

and

C.M.P(MD)No.1357 of 2026

Santhanam

: Appellant

/Vs./

1.Subbiah Muthaliyar (died)

2.A.S.Ramasamy

3.Prema

4.Dr.Subhajothe Kumar

5.Dr.Anujothi

6.Sankaranarayanan

7.Bala Saraswathi

8.Muppudathi Alias Mallika

: Respondents

(Respondents 3 to 8 are brought on record as LRs of the deceased first respondent vide Court order, dated 14.07.2025 made in CMP(MD)No.16963, 16964 and 16925 of 2024 in SA(MD)No.283 of 2020)



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the portion of the judgment and decree, dated 28.01.2020 in A.S.No.87 of 2017 on the file of the Additional District and Sessions Court, Fast Track Court, Tenkasi, modifying the judgment and decree, dated 12.01.2017 made in O.S.No.222 of 2010 on the file of the Additional Sub Court, Tenkasi.

For Appellant : Mr.V.Meenakshi Sundaram,

For Respondents : Mr.S.Meenakshi Sundaram, Senior Counsel,
for Mr.M.Sengu Vijay, for R2.

: R1 died.

: No Appearance, for R6.

JUDGMENT

The second appeal is directed against the judgment and decree made in A.S.No.87 of 2017, dated 28.01.2020 on the file of the Additional District and Sessions Court, Fast Track Court, Tenkasi, partly reversing the judgment and decree passed in O.S.No.222 of 2010, dated 12.01.2017, on the file of the Additional Sub Court, Tenkasi.



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2. The appellant is the plaintiff. He filed a suit in O.S.No.222 of 2010, on the file of the Additional Sub Court, Tenkasi, claiming the reliefs of declaration, permanent injunction and mandatory injunction.

3. Pending suit, the plaintiff alleging that the defendants had destroyed the Kamalai Thadam and formed a layout and also obliterated irrigating channels, amended the plaint claiming mandatory injunction for restoration of the same.

4. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

5. The case of the plaintiff, in short, is as follows :

a) The suit schedule property belongs to the plaintiff. The suit second schedule Well is a common Well belonging to the both the plaintiff and the defendants. The plaintiff's father and the first defendant's father entered into a written agreement, dated 22.05.1968, whereunder both of them agreed to install an electric motor pumpset and get electric service connection and irrigate Well through the said pumpset.

b) The plaintiff is a practising Doctor at Nagercoil. When he visited the suit properties on 16.09.2010, he came to know that the defendants had filled up the



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sand and closed the Well and removed the electric motor and also destroyed the Kamalai, Kamalai Kidangu and irrigation channels.

c) The second defendant, power agent of the first defendant, in an attempt to form a layout, closed the Well and destroyed the channels. Hence, the plaintiff was constrained to send a legal notice on 24.09.2010 and having received the same, the second defendant sent a reply notice on 29.09.2010, admitting the plaintiff's $\frac{1}{2}$ share in the suit Well and electric motor pumpset, but raised false and untenable allegations.

d) The plaintiff is unable to take water from the suit Well and to irrigate his lands. He is also unable to take water from the nearby pond through the irrigation channels, as the same were destroyed by the defendants.

e) Pending suit, an Advocate Commissioner was appointed and he inspected the property and noticed the closure of Well and also the existence of the channels earlier and subsequent damages caused to them. Hence, the plaintiff was forced to amend the plaint and the plaintiff is entitled to use the motor pump set and to irrigate his lands through the suit common Well and the defendants are to be restrained from in any manner interfering with the plaintiff's right to take



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water through the motor pumpset from the Common Well. The defendants are duty bound to restore the suit common Well and to fix the motor pumpset and also to restore the Kamalai Thadam shown in the third schedule and channels shown in the fourth schedule and also the channels shown as P1 P2 P3 P4 in the Advocate Commissioner's plan.

6. The defence of the defendants, in short, is as follows :

a) The first defendant is the owner of the property lying north and south of the suit Well and he is a co-owner regarding the suit Well. The second defendant is the power agent of the first defendant. The entire Well became defunct even 10 years prior to the filing of the suit and there had been no cultivation in the surrounding lands including that of the plaintiff as well as the other people.

b) The plaintiff entered into a sale agreement with the second defendant in respect of his property and since the plaintiff did not act as per the agreement, the second defendant filed the suit in O.S.No.85 of 2009, seeking specific performance and due to the said enmity between the plaintiff and the second defendant, the plaintiff had instituted the present suit.

c) There is no irrigation channels as stated in the plaint. Though the plaintiff has claimed mandatory injunction, he has not furnished the measurements of the properties and the prayers are vague. The relief of



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mandatory injunction is barred by time. Since the plaintiff has no measurements, boundary, and description for the properties sought to be restored, he is not entitled to get the relief of mandatory injunction. Hence, the suit is liable to be dismissed.

7. The learned trial Judge, upon considering the pleadings of both the parties framed the following issues and additional issues :

- 1. Whether the plaintiff is entitled to get the reliefs claimed ?*
- 2. Whether the cause of action is true ?*
- 3. Whether the suit is within time ?*
- 4. To what relief the plaintiff is entitled to ?*

Additional Issues :

(i) Whether the plaintiff is having rights to take water from the second schedule common well through motor pumpset ?

(ii) Whether the plaintiff is entitled to get the relief of declaration as sought for ?

(iii) Whether the plaintiff is entitled to get the relief of mandatory injunction as sought for ?



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8. During trial, the plaintiff examined himself as P.W.1 and exhibited four documents Ex.A.1 to Ex.A.4. The defendants examined the second defendant as D.W.1 and exhibited four documents as Ex.B.1 to Ex.B.4. The report and the plans submitted by the Advocate Commissioner came to be exhibited as Court Document Ex.C.1 to Ex.C.5.

9. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both the sides, passed the judgment and decree, dated 12.01.2017, rejecting the relief of mandatory injunction with regard to the restoration of the suit Well, but granted the other reliefs of declaration, permanent injunction and mandatory injunction. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.87 of 2017 and the learned Additional District and Sessions Judge, Tenkasi, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 28.01.2020, partly allowing the appeal, confirming the reliefs of declaration and permanent injunction granted by the trial Court, but setting aside the judgment and decree with regard to the granting of mandatory injunction. Challenging the impugned judgment and decree, the plaintiff has preferred the present second appeal.



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10. Pending second appeal, the first defendant had died and his legal heirs were impleaded as respondents 3 to 8.

11. At the time of admission, the following substantial questions law came to be formulated.

a. When the Advocate Commissioner's report and plan clearly demonstrate the damage caused to 3rd, 4th and 5th suit schedule properties and there is no evidence on the defendant's side for the intervention of third parties in these act of damages, whether the first Appellate Court is correct in modifying the decree for mandatory injunction overlooking the available evidence on record?

b. Whether the First Appellate Court in modifying the decree for mandatory injunction in respect of 3 to 5 suit schedule properties granted by the trial Court, when the appellant / plaintiff proved that it is only second respondent / second defendant who caused all damages in 3 to 5 suit schedules and attempted to convert S.Nos.163, 134 into plots?

c. Was not the finding of the first appellate Court to the effect that there is no inference possible that the defendants have not arbitrated the channel and the property details in schedules 3 to 5 of the plaint perverse?



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12. The Civil Miscellaneous Petition has been filed invoking Order 41 Rule 27 of C.P.C., by the second respondent/second defendant for reception of additional evidence.

13. The case of the petitioner/second respondent in the above petition for reception of additional evidence is that originally the petitioner was prosecuting the litigation as power agent of the deceased first defendant; that the petitioner/second defendant subsequently purchased the entire properties of the first defendant from the first defendant and his children on 06.07.2018 ; that the said original sale deed was in the hands of document writer and since the petitioner has gone to north India, he has forgotten to get back the original sale deed; that during the fag end of December 2025, while the document writer's Office was cleaned, he got the original sale deed and handed over to the petitioner; that non-production of the said sale deed before the first appellate Court is neither willful nor wanton and that the petitioner will be put to irreparable loss and hardship, if the document is not received.



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14. The learned counsel appearing for the respondent/appellant/plaintiff would submit that the said document may be received subject to its relevancy.

15. It is pertinent to note that though the petitioner/second defendant had participated in the trial proceedings as the power agent of the first defendant, subsequently, he has purchased the properties and upon the demise of the first defendant, the petitioner is now defending the second appeal, in the capacity as the owner of the properties.

16. In view of the above and no objection stated by the respondent/appellant side, this Court is inclined to allow the petition. Accordingly, this Civil Miscellaneous Petition is allowed. Consequently, the original sale deed, dated 06.07.2018 is received in evidence and marked as Ex.B.5.

17. At the outset, it is necessary to refer the prayers claimed by the appellant/plaintiff.

அ) வாதிக்கு 2ம் தபசில் பொதுக்கிணற்றில் மின் மோட்டார் மூலம் தண்ணீர் இறைத்துக் கொள்ள உரிமை உள்ளது என்பதை பிரதிவாதிகளுக்கு எதிரில்

10/22



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தீர்மானம் செய்வதன் மூலம் வாதியை பிரதிவாதிகள் எவ்வகையிலும் ஷை

உரிமையை அனுபவிக்க விடாமல் இடைஞ்சல் செய்யக்கூடாதென்று ஒரு நிரந்தர

தடை உத்தரவு வழங்கியும்,

ஆ) இதன் 2ம் தபசில் பொதுக்கிணற்றிலிருந்த மின்மோட்டாரை மின் இணைப்புடன் பொருத்திக் கொடுக்கவும், பொதுக்கிணற்றை தூர்வாரி சுத்தம் செய்து கொடுக்கவும், பொதுக்கிணற்றை சுற்றியிருந்த சுத்தடி நிலத்தை மீண்டும் முன்பிருந்ததுபோல் அமைத்துக் கொடுத்துப் போக உத்திரவிட்டு ஒரு Mandatory injunction உத்தரவு பிறப்பித்தும்,

இ) கமலைக்கிடங்கிற்கு மேல்புறமுள்ள இதன் 3ம் தபசிலாகக் காட்டியிருக்கும் கமலைத்தடத்தை Restore செய்து கொடுக்க உத்திரவிட்டு ஒரு Mandatory injunction உத்தரவு பிறப்பித்தும்,

ஈ) இதன் 2ம்தபசில் கிணற்றிலிருந்து வாதியின் நிலங்களுக்கு செல்லும் இதன் 4ம் தபசிலாய் விவரிக்கப்பட்டிருக்கும் வாய்க்காலை அதற்கு முன்பிருந்தபடியே அமைத்துக் கொடுக்க உத்திரவிட்டு ஒரு Mandatory injunction உத்தரவு பிறப்பித்தும்

உ) கமிஷனர் பிளானில் P1 P2 P3 P4 ஆக விவரிக்கப்பட்டுள்ள வாய்க்காலை Restore செய்து மீண்டும் அது ஸ்தலத்தில் இருந்தவாறு அமைத்துக் கொடுக்க உத்திரவிட்டு ஒரு Mandatory injunction உத்தரவு பிறப்பித்தும்,



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ஊ) வாதிக்கு பிரதிவாதிகளிடமிருந்து வழக்கு செலவு தொகை

கிடைக்கும்படிக்கும்,

எ) மற்றும் கேசின் தன்மைக்கேற்ற இதர பரிகாரம் வழங்கும்படி வாதியின் வழக்கை செலவுடன் அனுமதித்து உத்தரவு செய்ய வாதி வணக்கமாய் பிரார்த்திக்கின்றார்.

18. It is pertinent to mention that the trial Court, while rejecting the relief of mandatory injunction for restoration of the suit Well, granted the other reliefs in prayer column (அ) and also the other prayers in ஆ, இ, ஈ and உ. But, the appellate Court, while confirming the judgment and decree with regard to the granting of prayer (அ) ie., declaration and consequential permanent injunction, set aside the judgment and decree with regard to the granting of all other mandatory injunctions.

19. The Courts below granted the relief of declaration and permanent injunction in favour of the plaintiff and admittedly, the defendants have not preferred any second appeal or cross appeal/cross objections and that therefore, the said portion of the judgment of the Courts below had attained finality.



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20. The learned counsel appearing for the appellant/plaintiff would submit that the trial Court, based upon the report and plans of Advocate Commissioner under Ex.C1 to Ex.C.5, has specifically found that the mandatory injunction prayer is maintainable and the second defendant, who is the power agent of the first defendant, in the process of converting the land into layout, made all illegal changes to the physical features of the suit schedule properties.

21. He would further submit that the defendants have filed their objections to the Commissioner's reports and plans, but they have not taken any steps to examine the Advocate Commissioner and establish the veracities of their objections; that the evidence of the second defendant as D.W.1 would made it clear that there is a process of converting the agriculture land into unapproved layouts by D.W.1 and to create pathway for the unapproved layout, he illegally converted the physical features of the suit 3, 4 and 5 schedule properties. He would also submit that Ex.C.1 to Ex.C.5 would establish the physical features of water channels and other channels from the well, but, the first appellate court, by completely overlooking the available evidence on record, has refused to grant mandatory injunction.



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22. The learned counsel for the respondents would submit that it is evident from the Commissioner's report and plans that the common well had become extinct long back; that the plaintiff in his plaint has nowhere stated at what point of time the alleged change of character of agricultural land had taken place; that the plaintiff has not produced any material to show that he has been doing cultivation in his lands taking water from the suit Well by using the Kamalai Thadam and the irrigation channels stated in the plaint; that the Commissioner had stated that the properties surrounding the Well had been converted into house plots and that the plaintiff has not chosen to examine any witnesses from nearby to show that the defendants had alone damaged the irrigation channels and closed the Well.

23. The learned counsel for the respondents would further submit that the plaintiff had nowhere whispered anything about the length, breadth of irrigation channel, which is said to be lying in his field; that he has also not furnished any particulars about the length, breadth, area of Kamalai Thadam and also area of the surrounding lands of the well; that the measurements given in the 2th to 4th schedules are not supported by any evidence; that the plaintiff's right over the items 3 and 4th schedule of properties have also not been proved; that the plaintiff



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has not disputed the pendency of the suit between himself and the second defendant regarding the sale agreement and that therefore, the first appellate Court has come to a right decision that the plaintiff is not entitled to get the relief of mandatory injunction.

24. It is not in dispute that the first schedule property belongs to the plaintiff. Insofar as the second schedule is concerned, the plaintiff has described the same as comprising the common well, Kamalai Thadam, irrigation channels, electricity service connection and motor pumpset. The third schedule relates to the Kamalai Kidangu situated on the western side of the suit well. The fourth schedule consists of two items, namely: (i) the north–south irrigation channel situated on the southern side of the suit well; and (ii) the east–west irrigation channel lying to the west of the said north–south channel. The fifth schedule refers to the north–south channel originating from the irrigation pond.

25. It is admitted by both parties that the plaintiff's father and the first defendant's father had entered into a written agreement dated 22.05.1968, marked as Ex.A.1, wherein they acknowledged their joint enjoyment of the common well situated in S.No.162/3. Under the said agreement, they had agreed to install an electric motor pumpset for their mutual benefit, to obtain the electricity service



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connection in the name of the first defendant, and to share the expenses equally.

In Ex.A.1, the extent of the land in which the suit well is situated is mentioned as 4 cents; however, according to both parties, upon re-survey, the extent stands revised to 5 cents.

26. As rightly contended by the learned counsel for the defendants, it has been specifically pleaded in the written statement that the common well forming part of the second schedule had become defunct nearly ten years prior to the institution of the suit. It is their further case that the plaintiff had not been carrying on any cultivation in the first schedule property for several years and, consequently, there was no occasion for him to make use of the suit well.

27. During the cross-examination of P.W.1, it was suggested that he had not undertaken any cultivation for the past 30 years; though he denied the said suggestion, he admitted that he had not engaged in cultivation for the past 4 to 5 years. He has also admitted that he has not produced any Adangal extract to substantiate his claim of cultivation.

28. As rightly contended by the learned counsel for the defendants, the plaintiff has not chosen to produce any Adangal extract to prove the last year in



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which, cultivation was allegedly carried on. As already pointed out, the plaintiff, in his evidence, has admitted the filing of the suit in O.S.No.85 of 2009 by the second defendant before the IV Additional District Court, Tirunelveli, which was subsequently transferred to the Principal Sub Court, Tenkasi and the same was taken on file in O.S.No.130 of 2010.

29. P.W.1 has further admitted that the said suit was decreed against him and that an appeal preferred by him is pending. It is also pertinent to note that the plaintiff himself has admitted that, while forming a layout in the first defendant's property, the second defendant had entered into a sale agreement with him in the year 2006 for the purchase of 8 cents of land for the purpose of providing a pathway for the said layout, and that the second defendant had instituted the aforesaid suit seeking specific performance of the said agreement.

30. Though P.W.1 has denied the suggestion that the layout had been formed as early as in the year 2006, he has categorically admitted the execution of the agreement in the said year for the sale of 8 cents of land for forming a pathway to the proposed layout.



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31. The learned counsel appearing for the defendants would contend that it is only on account of the enmity arising from the institution of O.S.No.85 of 2009 that the plaintiff has come forward with the present suit in the year 2010.

32. Having regard to the facts and circumstances of the case and the admissions made by the plaintiff, the said contention advanced on the side of the defendants cannot be lightly brushed aside. As rightly observed by the learned first appellate Judge, the evidence available on record would indicate that the common well had not been in use for several years. There is also no acceptable evidence to show that the electric motor pumpset was in operation at any relevant point of time or that the same was subsequently removed by the defendants.

33. As rightly contended by the learned counsel for the defendants, the plaintiff claims rights over the well, Kamalai, Kamalai Thadam and the channels on the strength of Ex.A.1. However, as correctly observed by the learned trial Judge, Ex.A.1 does not contain any reference to the properties described in Schedules 3 to 5, and the plaintiff has not produced any cogent evidence to establish his right of user in respect of the said schedules.



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34. On a consideration of the evidence on record, the learned first appellate Judge has also specifically found that there is no material to show that the channel originating from the irrigation pond is the exclusive property of the plaintiff or that he has any legally enforceable right to use the same under Ex.A.4. Though the said channel has been described as a common channel, the plaintiff has not chosen to implead the Government, despite seeking the relief of mandatory injunction in respect of a channel which is stated to be Government-owned.

35. As rightly observed by the learned counsel for the first defendant and as recorded by the learned first appellate Judge, in the absence of any evidence to show that the defendants had in fact caused damage to the irrigation channels or the Kamalai Thadam, the mere proximity of the defendants' lands and their alleged half share in the 'B' schedule properties cannot, by itself, lead to the inference that the acts of destruction, if any, were committed by the defendants alone.

36. On a comprehensive consideration of the entire evidence available on record, this Court finds no infirmity in the conclusion arrived at by the learned



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first appellate Court that the plaintiff is not entitled to the relief of mandatory injunction. Consequently, this Court holds that the second appeal is devoid of merits and is liable to be dismissed. Having regard to the facts and circumstances of the case, this Court further directs that the parties shall bear their own costs. Accordingly, the substantial questions of law are answered.

37. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.87 of 2017, dated 28.01.2020 on the file of the Additional District and Sessions Court, Fast Track Court, Tenkasi, partly reversing the judgment and decree passed in O.S.No.222 of 2010, dated 12.01.2017, on the file of the Additional Sub Court, Tenkasi. CMP(MD)No.1357 of 2026, is allowed. C.M.P.(MD)No.3442 of 2020 is closed. The parties are directed to bear their own costs.

10.04.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

***Note : Registered sale deed, dated 06.07.2018,
is marked on the side of the defendants as Ex.B.5.***

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To:

- 1.The Additional District and Sessions Court,
Fast Track Court, Tenkasi.
- 2.The Additional Sub Court,
Tenkasi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.283 of 2020
and
C.M.P(MD)No.3442 of 2020
and
C.M.P(MD)No.1357 of 2026

Dated: 10.04.2026