

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03 - 09 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 744 of 2009

and

M.P. No. 1 of 2009

1. Karunambal
2. Sigamani
3. Tamilmani
4. Thirugnanasambandam ... Appellants/Respondents/
Defendants

Vs.

Chidambarasamy ... Respondent/Appellant/Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.10.2008 passed in A.S. No. 61 of 2007 on the file of the Additional District and Sessions Judge, (Fast Track Court NO.III) Dharapuram, reversing the judgment and decree passed by the District Munsif, Dharapuram, in O.S. No. 98 of 2002 on 19.06.2007.

For Appellants : Mr. S. Saravanan

For Respondent : Mr. A. Raghupathy Raj

JUDGMENT

The challenge by the defendants by means of this Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the First Appellate Court dated 07.10.2008 passed in A.S. No. 61 of 2007 reversing the judgment of the trial Court dated 19.06.2007 passed in O.S. No. 98 of 2002 decreeing the suit as prayed for.

2. The respondent as plaintiff had filed the suit O.S. No. 98 of 2002 claiming relief of permanent injunction restraining the defendants from interfering with his rights from irrigating the suit schedule lands in S. Nos. 38 A 2 and 28 B 1 through the pipeline running through S. No. 28 C and for injunction against them for obstructing him from maintaining the said pipeline.

3. The defence of the defendants was that they never objected or obstructed to get irrigated from the well situate in S.No. 38 A2 to S.No. 28 B 1. According to the defendants, their predecessor Chellamuthu Gounder already obtained necessary permission to take Amaravathy water to irrigate his lands and that the plaintiff has been illegally taking water from the said river for irrigation of his land in S. No. 38 A2. It is further stated by the defendants that the relief sought for by the plaintiff is in respect of Government poramboke for which the Government is a necessary party. Therefore, according to the defendants, the suit without adding the Government as a party is not maintainable.

4. It is also the case of the defendants that the first defendant was granted 2 C patta to a tamarind tree situated in S. No. 28 C and that if the pipeline is taken nearby to tamarind tree, it would affect the tree also. Therefore, according to the defendants, the plaintiff is not entitled to take pipeline through S.No. 28 C and sought for dismissal of the suit.

5. The trial Court, before which the parties examined themselves and marked documents, and also the report and sketch of the Commissioner, dismissed the suit holding that the plaintiff is not entitled to the relief of permanent injunction. On appeal, the Lower Appellate Court, on appreciation of the facts and materials placed thereon, decreed the suit in entirety. From this judgment, the defendants have appealed.

6. Heard the learned counsel appearing for the parties and perused the records.

7. The point to be determined in this Second Appeal is whether the decretal of the suit passed by the Lower Appellate Court requires any interference by this Court.

8. The main contention of the learned counsel appearing for the appellants / defendants is that the pipeline passes through nearby tamarind tree for which the appellants obtained 2 C patta for maintaining the same. According to the learned counsel, if the respondent / plaintiff is allowed to take water through the said area, it will affect the tree. The further contention of the learned counsel for the appellants / defendants is that since the appellants got house site patta under Exs. B.1 and B.2 in S. No. 28 C which is a natham poramboke, the respondent cannot be permitted to use his land for taking pipeline. During the course of argument, learned counsel for the appellants / defendants also submitted that the respondent / plaintiff has been taking water from Amaravathy river to irrigate his land in S. No. 38 A 2 without obtaining permission from the Government.

9. Though it is the contention of the learned counsel for the appellants / defendants that the respondent / plaintiff has

not obtained permission from the Government to take water from Amaravathy river, the same is only to be rejected as the said problem is not the subject matter of the suit. On the contrary, the prayer sought for in the suit is with regard to ABC pipeline from the well in S. No. 38 A 2 and reaching the land in S. No. 28 B1 through common ittery and Government poramboke land.

10. Moreover, the ownership and right of the respondent / plaintiff with regard to the well and land in S. No. 38 A 2 as well as the land in S. No. 28 B 1 is admitted by the appellants / defendants. Therefore, it is clear that the case of the respondent / plaintiff is genuine and bona fide. In such circumstance, if ABC channel or pipeline passes through S. No. 29 ittery and S. No. 28 C poramboke land, the appellants / defendants cannot have any objection.

11. It is also not denied that the respondent / plaintiff seeks permission to take the pipelines about 10 to 12 feet away from the tamarind tree. It is also pertinent to point out that the defendants also are taking pipeline through poramboke land in S. No. 28 C. The appellants / defendants have not stated or proved in what way the laying of the pipeline by the plaintiff to take water, will affect their rights. Nor is it shown by the appellants / defendants that by laying the pipeline, there is any interference of the passage or access to their land caused. Even during the time of laying of the pipeline, the defendants will not be disturbed as they own only 5 cents of land in S. No. 28 C. As such, having failed to prove the same, I am of the view that the appellants / defendants will not be put to any hardship or injury to their rights. It is also not proved by the appellants / defendants as to how they will be prejudiced or their tamarind tree will get affected if the respondent / plaintiff takes pipeline about 10 to 12 feet away from the tree. Therefore, the said contention of the learned counsel for the appellants / defendants cannot be sustained.

12. Further more, it is also seen from the records that the defendants 1 and 3 got house site patta under Exs. B.1 and B.2 to an extent of only 5 Cents in S.No. 28 C. As such, they can claim absolute right only to the said 5 Cents and not beyond that. In such circumstance, they cannot object to the plaintiff's pipeline passing through some other area of S. No. 28 C not covered under any house site patta. Therefore, as rightly held by the Lower Appellate Court, there is no substance in the objection raised in this regard.

13. In view of the above discussion, this Court is of the considered view, that the respondent / plaintiff is entitled to have the pipeline connection to his land through S. No. 28 C as prayed for and the defendants are restrained from interfering with the same. The Lower Appellate Court has rightly decreed the suit

and the same requires no interference by this Court. The point is answered accordingly. However, the decree shall be implemented with the following directions:-

- (i) The respondent / plaintiff on the basis of the decree granted by the Lower Appellate Court, may move the Executing Court for appointment of the Commissioner to supervise the underground pipeline laying in S. No. 28 C.
- (ii) After completion of the laying of pipeline, the area in S. No. 28 C, where the work was done, has to be restored to its original position.
- (iii) The parties may work out their rights for laying the underground pipeline by instructing the Commissioner regarding the depth or the distance at which the pipeline has to be taken.
- (iv) The respondent / plaintiff is to take necessary precaution to avoid any damage to the standing tamarind tree.

In the result, the Second Appeal is disposed of with the above directions. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

gri

To

1. Additional District and Sessions Judge
Fast Track Court No.III, Dharapuram, Erode.
2. District Munsif
Dharapuram
3. Record Keeper
High Court, Madras

+1 cc to Mr.D.Krishnakumar, Advocate, sr.47315

+1 cc to Mr.A.Ragupathy Raj, Advocate, sr.47502

S.A. No. 744 of 2009

gj co

kra 15.12.2015