

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.551 of 2013

1.K.P.Shanmugam

2.S.Sekar

3.C.Venkatesan

4.A.Kamaraj

5.M.Punithavathi

6.Minor Gokul @ Kavin Prakash
rep. by Guardian & next friend
Mother M.Punithavathi

... Appellants/Appellants/Defendants

Vs.

D.Sundaram

... Respondent/Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.06.2011 passed in A.S.No.59 of 2010 on the file of the learned I Additional Subordinate Judge, Salem confirming the judgment and decree dated 24.11.2009 made in O.S.No.103 of 2009 on the file of the learned Principal District Munsif, Salem.

For Appellants : Mr.T.Murugamanickam

For Respondent : Mr.I.Abrar Mohamed Abdullah

J U D G M E N T

The defendants who are the appellants, who lost their case before both the Courts below, have filed this Second Appeal against the judgment and decree dated 29.06.2011 passed in A.S.No.59 of 2010 on the file of the learned I Additional Subordinate Judge, Salem, confirming the judgment and decree dated 24.11.2009, made in O.S.No.103 of 2009 on the file of the learned Principal District Munsif, Salem.

2.The brief facts of the case is as follows:

a.The plaintiff had filed the suit for permanent injunction. The suit property was owned by one V.S.Subramaniam who got the same by virtue of a Partition Deed dated 09.06.1980. After his death, it was divided among the legal heirs in the year 1999. The suit properties were allotted to his son, daughter and one K.Sulochana. The plaintiff had purchased the said property from the legal heirs of V.S.Subramaniam on 18.08.2008. The plaintiff had also purchased 2/3rd share of his vendor's mother Kamalam. The total extent of property is about 69 cents of agricultural land marked as M and N

in the plaintiff rough plan filed as Ex.A4 along with a common well marked as W in the suit. The dispute is with regard to the irrigation channel connected to the common well. From the main channel, water is now taken to the lands of the plaintiff and there are two branch channels on North in the East West direction, for irrigating the land in survey No.64/5. The dispute between plaintiff and the defendants is with respect to the two channels flowing, which are marked as ST and XY points. These two channels divide the lands of the defendants and in view of that, the plaintiff has to take water to his lands on the western side through defendants' property. As there was a dispute, the defendants refused to allow the plaintiff to take water from the common well. Hence, the suit came to be filed.

b.The same was resisted by the defendants on the ground that plaintiff had no right to take water through the above said channels from East to West. According to the defendants, the channel ST is not a common channel and the same was made by the defendants for their own purpose for irrigating water to their fields. It was further submitted that there was no necessity to maintain two branch channels as alleged by the plaintiff and the defendants also further denied any kind of objection as alleged by the plaintiff.

3.On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A10 and PW.1 to P.W.3 were examined on the side of the plaintiff. D.W.1 and D.W.2 were examined on the side of the Defendants and no exhibits were marked. The report and plan of the Advocate Commissioner were marked as Ex.C1 and C2.

4.The Trial Court, after considering both the oral and documentary evidence, decreed the suit and the first appeal filed as against the Judgment and Decree of the Trial Court was also dismissed by the lower Appellate Court. Hence, this second appeal has been filed by the defendants.

5.This court heard the submissions of the learned counsel for the Appellants and the respondent and also perused the material records placed.

6.Though the defendants/appellants denied the right of the plaintiff in the ST channel, it is admitted that the channel ST is in existence near to the land of the plaintiff. The only contention of the defendants is that there is no necessity for the plaintiff to have two channels to reach the western side lands of the plaintiff. According to the defendants, ST channel absolutely belongs to them and it was created for their own purpose for irrigating water to their own field. An Advocate Commissioner was also appointed in this regard, who also had filed a report in conformity with the case of the plaintiff. So the existence of ST channel is not denied by the parties but however, the right to irrigate the land by the plaintiff has been denied by the defendants.

7. From the perusal of document Ex.A3/Partition Deed, it is clear that there is an existence of channel from East to West which is common to all. From the above recital, it is seen that the vendor of the plaintiff had right to irrigate his land from the common well. However, it was contended by the appellants' counsel that plaintiff is only entitled to irrigate his land by using XY channel. He also further contended that without asking for the relief of declaration of title, the suit cannot be maintained. From a perusal of the plaint plan as well as the report of the Commissioner, it is clear that ST channel as well as XY channel end in the plaintiff's land and in between those two channels is the defendants' land. This fact was not disputed by both the owners of the properties. The dispute is only with respect to the right over ST channel. The land in between Y and T as per plan belongs to the defendants and it is also situated higher than the land of the plaintiff. From the plaintiff's property, it is inferred that ST channel is lower than the land of the defendants. While that is so, it is not possible for the plaintiff to irrigate water from XY channel, which is higher in level. Unless the plaintiff is permitted to irrigate through ST channel, he cannot irrigate his lands on the west or in other words, it will be difficult for him to irrigate the lands. The vendor of the plaintiff also had right in ST channel and therefore, whatever the right the vendor had would enure to the purchaser. The other aspect is that ST channel ends in plaintiff's property. If the defendants had exclusive right over ST channel, there is no necessity for the ST channel to end in the plaintiff's land. In such circumstances, the plaintiff is entitled for ST channel for the purpose of irrigating water through the same from the well marked as "W" in the plan. In view of the same, the Courts below, after taking into consideration the factual findings, correctly found that the plaintiff is entitled for the decree as prayed for. As there is no question of law arising for consideration, the second appeal deserves to be dismissed.

8. Accordingly, the Second Appeal is dismissed and therefore, the judgment and decree dated 29.06.2011 passed in A.S.No.59 of 2010 on the file of the learned I Additional Subordinate Judge, Salem is hereby confirmed. No costs.

Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

1.The I Additional Subordinate Judge,
Salem.

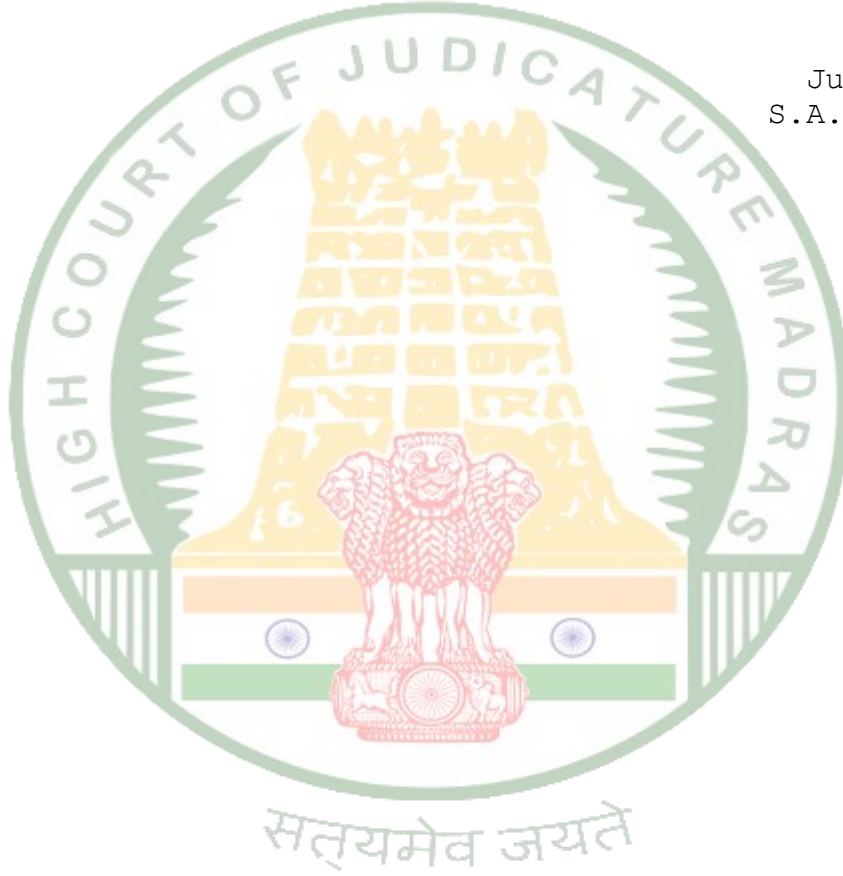
2.The Principal District Munsif,
Salem.

+1 cc to Mr.R.Subramanian, Advocate,SR.20459

+1 cc to M/s.T.Murugamanickam, Advocate,SR.20580.

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Judgment made in
S.A.No.551 of 2013



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