

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.2274 of 2003

Muthusamy

... Plaintiff/Appellant/Appellant

Vs

Kolandan
S/o.Chinna Gounder

... Defendant/Respondent/Respondent

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 30.09.2003 made in A.S.No.24 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 30.09.1993 passed in O.S.No.136 of 1992 on the file of the District Munsif Court, Namakkal.

For Appellant : Mr.I.Abrar Mohammed Abdullah
for Mr.R.Subramanian
For Respondent : Mr.C.Prakasam

J U D G M E N T

The second appeal arises out of the judgment and decree dated 30.09.2003 made in A.S.No.24 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 30.09.1993 passed in O.S.No.136 of 1992 on the file of the District Munsif Court, Namakkal.

2. The learned counsel appearing for the appellant would submit that the appellant herein as plaintiff has filed the suit for declaration of the title in respect of the channel mentioned in 'CEFG' to take water through the channel from the well 'W' to irrigate the lands mentioned in P1, P2 and also for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the channel and also for declaration of his right to take his men, cattle through the 'KL' portion of the land and for mandatory injunction to restore the pathway. The respondent/defendant contested the suit.

3. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.3, D.W.1 and Exs.A.1 to A.10 and Exs.B.1 to B.3 and Exs.C.1 to C.6, dismissed the suit. Aggrieved against the judgment and decree of the trial court, the plaintiff preferred an appeal in A.S.No.24 of 2002 on the file of the Subordinate Court, Namakkal.

4. The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the appellant/plaintiff.

5. The learned counsel appearing for the appellant would submit that the Trial court has failed to consider that the appellant herein is having the right to use the channel to take water from W well to irrigate the lands at P1 and P2. The learned counsel also contended that as per Ex.A.1/Released Deed, there was a specific mention about the existence of the channel and a right was given to take water through the channel. That factum was not considered by the Trial Court and hence, the learned counsel for the appellant prayed for allowing the appeal.

6. Resisting the same, the learned counsel appearing for the respondent would submit that the entire suit property has been sold out and a layout has been formed and the same was also sold to different persons. Hence, the learned counsel would submit that nothing survives in this appeal and the same has become infructuous.

7. At this juncture, the learned counsel for the appellant would also fairly concede that a layout has been formed in the suit property and it was sold to different persons. In such circumstances, when there is no agricultural land in existence, there is no question of taking water through the channel and hence, I am of the view that the prayer sought for by the appellant/plaintiff has become infructuous. Consequently, the second appeal is dismissed as infructuous.

8. In fine,

(a) The Second Appeal is dismissed as infructuous. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Subordinate Court,
Namakkal.

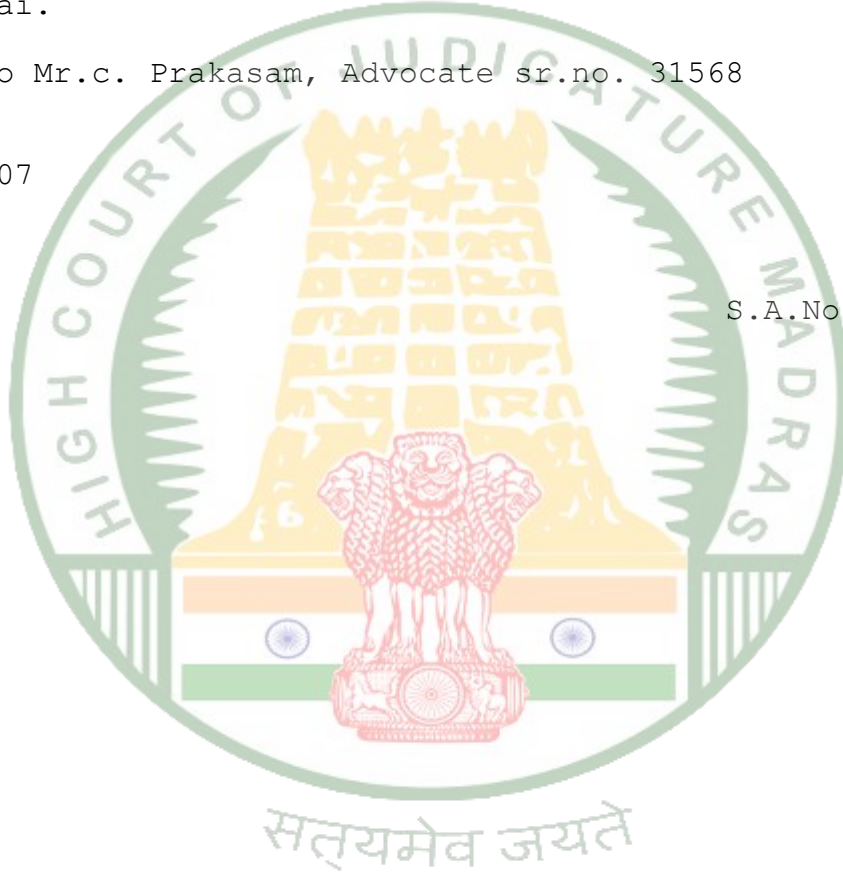
2.The District Munsif Court,
Namakkal.

3.The SECTION OFFICER
V.R.Section, High Court,
Chennai.

+ 1CC To Mr.c. Prakasam, Advocate sr.no. 31568

jsv[col]
srg 22.07

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