

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1103 of 1999

JUDGMENT:-

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful third defendant is directed against the decree and judgment dated 15.10.1999 of the learned I Additional District Judge, Cuddapah passed in A.S.No.17 of 1998. While allowing the said appeal and setting aside the decree and judgment dated 29.12.1997 of the learned Principal District Munisif, Cuddapah passed in O.S.No.448 of 1995, the learned I Additional District judge had decreed with costs the suit filed by the plaintiffs/respondents 1 to 6 herein for perpetual injunction restraining the defendants 1 to 3, their men and associates from interfering by either installing electric motor or otherwise or in any manner with the Doruvu Well situated in D.No.945 and the channels leading water thereto.

2. I have heard the submissions of the learned counsel for the appellant/third defendant ('the third defendant', for brevity) and the learned counsel for the respondents 1 to 6 /plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. It is pertinent to note that the defendants 1 and 2, who were also unsuccessful, did not join the third defendant in preferring this second appeal.

4. At the time of admission of this second appeal, this Court has taken note of the substantial questions of law mentioned in the grounds nos.11 to 14 of the grounds of appeal and the said questions are as follows:-

- 11. Whether the suit for permanent injunction simplicitor, in spite of rights over the plaint channel in dispute, is maintainable in law without any declaratory relief on such issue?**
- 12. Whether the findings of the appellate Court that the 3rd defendant failed to prove his case casting the burden on him in a suit for injunction filed by the plaintiff are sustainable either on facts or in law?**
- 13. Whether the findings of the appellate Court that the plaintiff channel "XXX" in dispute is a private channel since not supported by any material on record, is not vitiated in law?**

14. Whether the findings of the appellate Court in regard to Ex.B.4 and B.5 is contra to material on record and the said finding is vitiated in law for misconstruing their contents?

(Reproduced verbatim)

5. To answer the above questions and adjudicate the *lis*, it is necessary to first refer to, briefly, the pleadings of the parties.

6. The case of the plaintiffs, in brief, is this: "The plaintiffs are the owners of the land in plot nos.1 to 7 admeasuring Acs.6.19 cents shown in the plaint plan. The father of the plaintiffs 2 and 3 had purchased the said property under exhibit A1, the registered sale deed dated 24.04.1961. The said plots are admittedly situated in Survey nos.945 and 944. The first defendant is the owner of the land admeasuring Ac.03.09 cents, which is abutting the plot no.7 of the plaintiffs on its Northern side; and, she had purchased it under the original of exhibit A5-sale deed dated 19.07.1990 from her own father. Her father had earlier purchased the said land under the original of exhibit B2, the registered sale deed dated 16.08.1950. The said entire land of the first defendant is in Survey No.944. A Doruvu Well, which is the subject matter, is admittedly situated in plot no.2 of survey no.945, i.e., the land of the plaintiffs. The plaintiffs had installed an electric motor to the said Well and have been drawing K.C.Canal waters from it for irrigating their above said lands in a total extent of Acs.6.19 cents. The K.C.Canal water flows into the said Doruvu Well from 'XXX' feeder channel, which is connected to 'YYY' sub-channel. The said 'YYY' channel is a Government channel and the 'XXX' channel is a private channel. Admittedly, the land in survey no.231 of the third defendant is situated adjacent to 'XXX' channel on its Southern side. The plaintiffs were constrained to bring the suit, when the defendants 1 and 2 had highhandedly tried to install an electric motor to the Doruvu Well for drawing water to their lands and when the third defendant had attempted to install an electric motor at point 'M' to draw water from 'XXX' channel to his lands without any manner of right whatsoever. The source of irrigation for the lands of the plaintiffs is the Doruvu Well in their plot no.2, which is receiving water through 'XXX' feeder channel, which is a private channel, and which is, in

turn, connected to 'YYY' channel, which is a Government channel. The source of irrigation for the lands of the defendants 1 and 2 is K.C.Canal water which passes through 'ZZZ' channel, which is on the Northern side of the land of defendants 1 and 2; and, for the lands of the third defendant, the source of irrigation is another Doruvu Well situated in the South-East corner of the survey no.232 and that, therefore, the defendants 1 to 3 have no right whatsoever to draw water from 'XXX' channel, which is feeding the water to the Doruvu Well, which is admittedly in the lands of the plaintiffs. Therefore, the defendants never enjoyed the water from the Doruvu Well and also the 'XXX' channel for irrigating their respective lands at any point of time.

7. The defendants 1 and 2 through the written statement filed by the 1st defendant had claimed that 'XXX' feeder channel runs through patta land in survey no.231 and feeds the Doruvu Well in survey no.945 and that there is another channel in the middle of the lands in survey nos.944 and 495 supplying water to the lands of these defendants 1 and 2 from the said Doruvu Well and that the father of the 1st defendant had purchased the land in Northern portion of the lands in survey nos.944 and 945 and that he used to irrigate the said lands with the help of the water from Doruvu Well in survey no.945 and that he had later sold his lands in both the said survey numbers to the 1st defendant under sale deed dated 19.07.1990 i.e., exhibit A5 and that since then she has been cultivating her lands with the help of the waters from the Doruvu Well and that they have 1/3rd share in the Doruvu Well and that the averment that the 1/3rd share in Doruvu Well was purchased under an agreement from third parties is false and that the said agreement is only fabricated and that they have been using the water from the said Well for irrigating their lands and that at about some time prior to the suit, the plaintiffs have highhandedly removed a portion of the channel running from the lands in said survey numbers and that the 'XXX' channel runs through land in survey no.231 and the 1st defendant had sold away her lands in survey nos.231/2,3 & 4 to the third defendant under a registered sale deed dated 16.04.1986 with all rights and that the third defendant is cultivating it with the

help of water from 'XXX' channel and that the water in the Doruvu Well in survey no.945 is the only source of irrigation for the defendants 1 and 2 and that the version of the plaintiffs that the lands of these defendants are getting water from the 'ZZZ' channel is false as these defendants have no such right.

8. *Per contra*, the case of the third defendant is this: 'Apart from the land purchased from the 1st defendant under sale deed dated 16.04.1986, this defendant is the owner of the land in that survey number and he and his brother have purchased the remaining land under a sale deed dated 12.09.1995 from the 1st defendant. This defendant has been cultivating the lands in survey No.231 only with the water which is passing through 'XXX' channel shown in the plaint plan and the said channel runs through the land of this defendant and his brother up to point 'C' in the plaint plan. This defendant and his brother are using the K.C Canal water with the help of 'XXX' channel for cultivating their lands in survey no.231 and the said channel is abutting the land of this defendant in survey no.231. This defendant has been installing electric motor whenever necessary to irrigate his land and he has no other source of irrigation and the plaintiffs have no right to prevent him from drawing water from 'XXX' channel. The contention of the plaintiffs that the source of water for this defendant's land is the Doruvu Well situated in the South-East corner of survey No.232 is false.

9. Having regard to the pleadings, the trial Court had framed the following issues for trial:

1. **Whether the plaintiffs are entitled to permanent injunction as prayed for?**
2. **To what relief.**

10. At trial, on behalf of the plaintiffs, PWs1 to 4 were examined and exhibits A1 to A9 were marked and on behalf of the defendants DWs1 to 4 were examined and exhibits B1 to B5 were marked. Exhibits C1 and C2 were also marked.

11. After full-fledged trial, the trial Court had dismissed the suit of the plaintiffs. As already noted, the first appeal preferred by the plaintiffs was

allowed by the Court below and the suit of the plaintiffs was decreed as prayed for.

12. Aggrieved of the decree and judgment of the Court below, the third defendant alone had preferred this second appeal.

13. To begin with, it is to be noted that the defendants 1 and 2, who were unsuccessful and who had suffered a decree for perpetual injunction, did not prefer any second appeal and as such, there is no need to dilate on the rights of the defendants 1 and 2 in this second appeal. Therefore, the decree of the Court below in favour of the plaintiffs and against the defendants 1 and 2 needs no interference. Suffice if it is observed that the resolution of the dispute in this second appeal is limited to the claims of the plaintiffs insofar as the reliefs claimed in the suit against the third defendant and the resistance of the third defendant in regard to the entitlement of the plaintiffs to the said reliefs against the third defendant.

14. The learned counsel for the appellant/third defendant would contend as follows:

The plaintiffs would succeed only if they are successful in establishing their exclusive right over the water passing through 'XXX' channel, which is feeding water to the Doruvu Well situate in the plaintiff's land. However, the plaintiffs had failed to prove their case and, therefore, they are not entitled to the perpetual injunction as prayed for. The plaintiffs are not entitled to contend that the appellant/third defendant has alternative source of irrigation to the land in survey No.231. The said alternative plea has no foundation in the pleadings. Admittedly, 'XXX' channel is passing by the side of the land of the third defendant and it is abutting the land of the third defendant and therefore, he had every right for irrigating the land with the water from the 'XXX' channel by fixing a motor at point 'M'. It is borne out by the evidence brought on record that there are private field channels in the entire locality to supply water to the Doruvu Wells in various lands from K.C.Canal and its subsidiaries. Since 'XXX' channel is a private subsidiary channel, which is passing by the side of the land of the third defendant and which is receiving

water from the K.C.Canal and which is a feeder channel providing water to the land of the third defendant, the trial Court, having properly considered the facts and evidence brought on record had rightly dismissed the suit of the plaintiffs. The Court of first appeal, without properly appreciating the evidence and the facts, has erroneously upset the decree and judgment of the trial Court and had decreed the suit of the plaintiffs, though the plaintiffs had failed to establish their pleaded case. The Court below has wrongly cast the onus of proof on the third defendant. The Court below was in error in not placing reliance on exhibit B4 dated 12.09.1995 executed by the first defendant in favour of the third defendant, wherein, there is a clear recital regarding the right to take water from the Doruvu Well in survey No.945 to the land of the first defendant. The Court below was in error in recording a finding that exhibit B4 registered sale deed dated 12.09.1995 is brought into existence subsequent to the suit only for supporting the defence of the defendants.

15. On the other hand, the learned counsel for the plaintiffs, while supporting the decree and judgment of the Court below, had *inter alia* contended as follows: 'Exhibit B5-the copy of the registered sale deed of the third defendant, which is of the year 1986, does not contain any recital about the third defendant's claim or right to use the water from 'XXX' channel by fixing a motor at point 'M'. One week after the suit was instituted, the exhibit B4 sale deed dated 12.09.1995 was brought into existence by defendants 1 and 3 in collusion by making recitals in support of their intended defence in the suit. The Court of first appeal had rightly rejected exhibit B4 sale deed by assigning valid reasons. The trial Court had not considered the evidence of PW4 and also the Commissioner's report, whereas the Court below before coming to its conclusions had considered the entire evidence and the cumulative effect of the evidence and also the fact that the defendants 1 and 2, who had claimed a share in the Doruvu Well, could not establish their right. Admittedly, the Duruvu Well is in existence in plot No.2 i.e., the land in S.No.945 of the plaintiffs and the plaintiffs had installed an electric motor to the said Well and have been drawing water for irrigating the land which is of

a considerable extent of Acs.6.19 cents. Evidence is brought on record to show that the water into the Doruvu Well in the land of the plaintiffs flows through 'XXX' feeder channel and that if the third defendant and defendants 1 and 2 are allowed to fix motors to draw water from the 'XXX' channel, the water which flows into the Doruvu Well gets diminished. Therefore, the judgment of the Court below, which is well considered and well reasoned, does not call for any interference. The questions sought to be raised in this second appeal are blended questions of fact and law and are not pure questions of law, muchless substantial questions of law. There is no merit in the second appeal and as such, the appeal is liable to be dismissed.

16. I have thus carefully gone through the pleadings and the evidence brought on record and I have given earnest consideration to the facts and the evidence and I have noted the submissions.

17. The evidence brought on record clearly shows that the plaintiffs are the owners and possessors of Acs.6.19 cents of land, which is in plot Nos.1 to 7 in survey nos.945 and 944. The Doruvu Well is in Plot No.2 of the plaintiffs' land in S.No.945. I have perused the copy of the plan, which is annexed to the copy of the decree of the trial Court wherein the location of the Doruvu Well is shown in plot No.2 of the plaintiffs land. It is admittedly receiving water from the 'XXX' channel, which is a subsidiary channel of K.C Canal. The plaintiffs are, admittedly, using the water in the Doruvu Well for irrigating their lands by installing an electric motor to the said Well. The third defendant is having lands in survey No.231. 'XXX' channel is passing by the side of the land of the third defendant. Though the third defendant, had at one breath contended that the said channel passes through his said land, neither the Commissioner's report nor his documents support the said contention. Therefore, he is the owner of the said land adjacent to the 'XXX' channel is the safe conclusion which can be arrived at, based on the evidence brought on record. The third defendant did not ask the Advocate Commissioner to visit the properties to localize 'XXX' channel. Exhibit B2 is the sale deed under which the 1st defendant's father had originally

purchased Ac.3.09 cents of land and this document describes the schedule land of the said document as dry land and there is no reference in this document to a Doruvu Well as a source of irrigation. In exhibit A1-registered sale deed of the year 1961 under which plaintiffs predecessor in title had purchased the land, there is a reference to water rights and in regard to use of water from Doruvu Well; and, from the evidence on record, it is established that the plaintiffs' predecessors in title were given 2/3 share in Doruvu well for irrigating their lands. Therefore, it is established that the Doruvu Well came into existence during the period between 1950 and 1961 and not before 1950. In the 1st defendant's document under exhibit A5 of the year 1990 there is no recital or reference to Doruvu Well water rights. It is not the case of the third defendant that he is the owner of the remaining 1/3rd share in the Doruvu Well and no evidence in that regard was also adduced on behalf of the third defendant. On the other hand, there is evidence on record in the form of exhibit A2-unregistered agreement in favour of the father of the plaintiffs for the remaining 1/3rd share in the Doruvu Well; and, the said agreement was executed by P.Venkata Subbaiah and Y. Kataiah. The plaintiffs' case is that their predecessors and the vendors under exhibit A2 jointly dug the Doruvu Well in the land in survey no.945. Even otherwise, the third defendant is not claiming a 1/3rd share in the Well itself. Reverting to the *lis* insofar as the claim of the plaintiffs and the rival claim of the third defendant, it is to be reiterated that third defendant is the owner of a land adjacent to the land of the plaintiffs and his land is in survey no.231 and as already held the 'XXX' channel is abutting his said land and not passing through his said land. In the sale deed of the third defendant under exhibit B5 dated 16.04.1986 there is no reference to his right to draw water from the 'XXX' channel. Then, the only document which the third defendant places reliance upon is exhibit B4, the sale deed dated 12.09.1995 executed by the first defendant in favour of the third defendant for a part of the land in survey No.231. Much reliance is placed on the recitals of the said document, as it is recited therein that that the third defendant has right to take water from the K.C.Canal through 'XXX' channel. In the first place, it is to be noted that in

exhibit B5, which is the earliest document of the year 1986 under which the third defendant had purchased a part of land in survey No.231, there is no reference to his rights to draw water from the 'XXX' channel to his lands. In the second document i.e., exhibit B4 of the year 1995, which was executed a week after filing of the suit, the vendor of the third defendant, i.e., the first defendant had made a mention about her right to take water from the Doruvu Well in survey No.945 to her land of Ac.03.09 cents, though there was no need to make such a recital in exhibit B4-sale deed, where under she was selling a part of the land in survey No.231 to the third defendant. This very circumstance is enough to say that it was brought up to serve the defence version. The conduct of the defendants in bringing forth exhibit B4 document subsequent to the suit with a recital that is un-necessary and unrelated to the sale transaction under the said document would lay bare that their claim is false and that they are trying to somehow improve their untenable defence. If really the only source of water to the land in survey No.231 belonging to the third defendant is 'XXX' channel and there is no other source, a recital with reference to 'XXX' channel should have been made in exhibit B5, which is the earliest sale deed of the third defendant pertaining to the year 1986. In exhibit B5, there is only a recital that he can use the water from the K.C Canal. Basing on that recital, it is sought to be contended that the third defendant is entitled to draw water from the 'XXX' channel with the help of a motor fixed to the said channel at point 'M'. But, when PW4, the Commissioner, visited the subject lands, no such motor was found fixed to 'XXX' channel at point 'M'. Further, the third defendant also could not produce any record like service connection to the motor or any receipt showing payment of electricity consumption charges. If at all the third defendant was drawing waters from 'XXX' channel by fixing an electric motor at point 'M', the Commissioner would have found the existence of the motor or some traces at point 'M' which would have indicated that a motor was fixed at that point some time in the past. Further, the third defendant did not produce and exhibit the electricity consumption bills and service connection details. Further, adjacent to 'XXX' channel, there should have been a Doruvu Well in the land of the third defendant in survey No.231, if he was drawing

waters from 'XXX' channel by fixing a motor at point 'M' of that channel as contended by him. But, no such Well was also found by the Commissioner in the land of the third defendant. There was no link channel as per the report of the Commissioner to the land of the third defendant from 'XXX' channel. Be that as it may, the Commissioner has also found that there is an alternative source of supply of water to the lands of the third defendant. The Commissioner had found that there is a Doruvu Well in the South-East corner of the land of the third defendant. Thus, the documents of the plaintiffs establish their right to receive water from the 'XXX' channel to the Doruvu Well which is admittedly in their lands and on the other hand, the documents of title of the third defendant do not establish any right of the third defendant as pleaded in his defence including a right to use water from the 'XXX' channel. Further, as already noted, the Commissioner had also found that there is a source of water for the third defendant's land from a channel other than 'XXX' channel, i.e., a Doruvu Well on the South-East corner of his land. The plaintiffs could also establish that except the plaintiffs, no other ryot was drawing water from the 'XXX' channel and that no other ryot is also making a claim except the third defendant. On an analytical examination of the evidence brought on record in juxtaposition with the facts, this Court finds that the third defendant could not establish his right to draw water from the 'XXX' channel and that on the other hand, the plaintiffs have sufficiently established that 'XXX' channel is an exclusive channel feeding water to their Duruvu Well in plot No.2 of their lands. The Court of first appeal is having powers to re-appreciate the evidence and come to its own conclusion independent of that of the trial Court. In the facts and circumstances of this case, the decree granted by the Court below on that basis is not liable for interference by this Court as the conclusions are not against settled principles of law or arbitrary or perverse. The view of this Court finds support from the decision of the Supreme Court in **Rathnavathi v. Kavita Ganashamdas**.^[1]

18. Viewed thus, this Court finds that none of the questions sought to be raised in the appeal are substantial questions of law and that there is no substance in the said questions raised and that no substantial questions of

law are involved in this appeal and that the Court below had appreciated the facts and evidence in proper perspective and that the decree and judgment of the Court below, which are well reasoned, do not call for any interference.

19. In the result, the second appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal, shall stand dismissed.

M. Seetharama Murti, J

13th July, 2015
Bvv

[\[1\]](#) (2015)5 SCC 223