

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.182 of 2015

1.Chakravarthi
2.Tamiz Mani
3.Balakrishnan

... Appellants/Defendants

vs.

V.GanesaGounder

...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the Subordinate Judge, Gingee, in A.S.No.4 of 2010, dated 31.01.2014 partly allowing the judgment and decree passed by the Principal District Munsif, Gingee, in O.S.No.367 of 2002 dated 30.10.2009.

For Appellants : Mr.R.Krishnan
For Respondent : Ms.B.Jaya
for M/s.S.Dawood Khan

J U D G M E N T

The appellants are the defendants in a suit for mandatory injunction. The respondent as the plaintiff filed the suit for directing the defendants to restore the pipeline put up by the plaintiff under the property belonging to the defendants and for paying damages. The case of the plaintiff is that he has laid a pipeline in the property belonging to the defendants in pursuant to an agreement between the parties entered into on 18.10.1976 permitting the plaintiff to draw water by laying such pipeline in defendants' property and that the defendants in violation of such agreement have damaged the pipeline.

2.The defendants contested the suit and disputed the claim of the plaintiff and also the said agreement dated 18.10.1976.

3.The trial court based upon the pleadings of the respective parties and the evidence let in by them dismissed the suit by holding that the plaintiff has not proved his right to draw water through the defendants' land.

4.The plaintiff preferred an appeal before the First Appellate Court. The said appeal came to be allowed and the defendant was directed to restore the pipeline.

5.Challenging such reversing finding, the present second appeal is filed before this court.

6.At the time of admitting the second appeal, the following substantial questions of law were framed:

"i) Whether the lower appellate court was right in holding that Ex.A1 has been proved and that it is enforceable even in the absence of registration?

ii) Whether the suit as framed for mandatory injunction is maintainable, when the relief as sought for is the enforcement of a contract?

Iii) Whether the lower appellate court was right in decreeing the suit without deciding as to whether the so called right claimed by the plaintiff is that of the licensee or that of the easement? And

iv) Whether the lower appellate court was right in making reliance heavily on the Commissioner's report?"

7.Heard the learned counsel for the appellants and the learned counsel for the respondent.

8.It is not in dispute that the plaintiff sought the relief of mandatory injunction for restoring the pipeline laid in the property admittedly belonging to the defendants. But he claimed that he has right to draw water through the defendants' lands in view of the agreement executed on 18.10.1976, marked as Ex.A1. The defendants are not admitting such agreement and on the other hand, disputing such execution. Therefore, it is for the plaintiff to seek appropriate relief viz., a relief of declaration to declare his right based on such agreement by proving the same in a manner known to law. Without seeking any relief of declaration, in my considered view, seeking the relief of mandatory injunction alone is not maintainable, especially when it is admitted by the plaintiff that the suit pipeline was originally laid only in the defendants' property. Therefore, the trial court has rightly dismissed the suit, while the Appellate Court has erroneously reversed such finding and granted the decree without going into this aspect. Accordingly, I find that the findings rendered by the lower Appellate Court by not appreciating the above stated facts and circumstances, cannot be sustained and the same has to be set aside. Consequently, the second appeal is allowed and the substantial questions of law raised in this appeal are answered in favour of the appellants. Thus, the judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court are restored. However, it is open to the respondent herein/plaintiff to file a separate suit for declaration and for consequential relief, if the plaintiff is having any such right. If any such suit is filed, the same shall be considered and

decided on its own merits and in accordance with law. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Gingee.

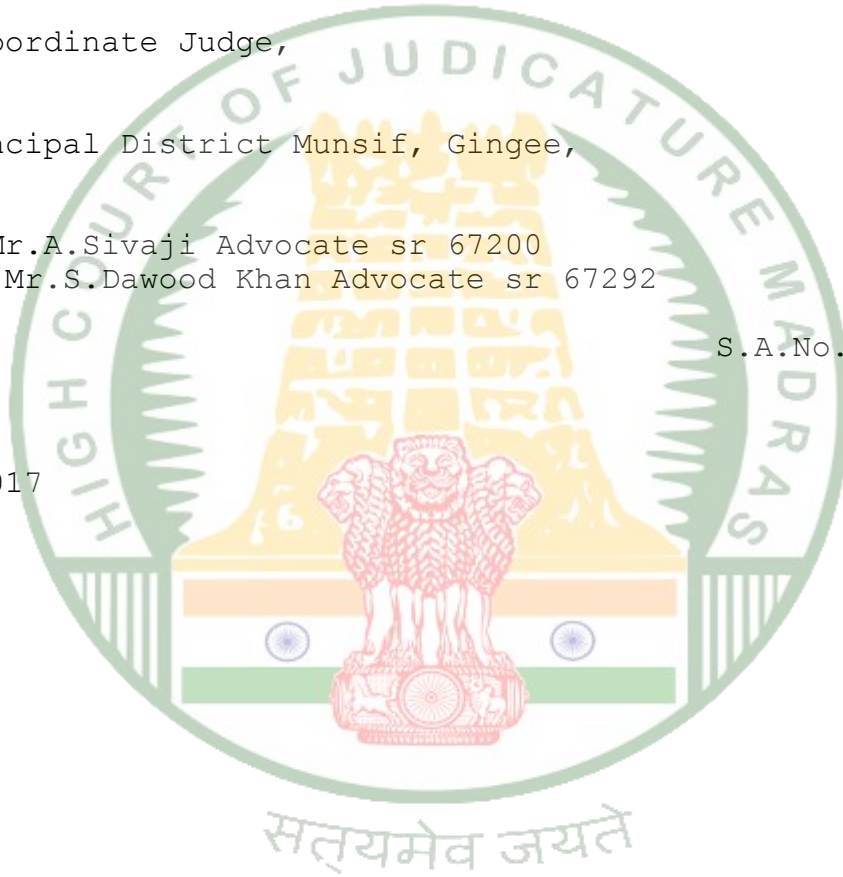
2.The Principal District Munsif, Gingee,

+1 cc to Mr.A.Sivaji Advocate sr 67200

+2 ccs to Mr.S.Dawood Khan Advocate sr 67292

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