

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2016

PRONOUNCED ON: 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.500 of 2011

and

M.P.No.1 of 2011

K.R.Easwaran

... Appellant/Defendant

Vs.

1.Rangasamy

2.Ramesh

3.Jaganathan

... Respondents/Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.44 of 2008 dated 29.08.2008 on the file of the I Additional Sub Court, Erode, Erode district in partly allowing the judgement and decree made in O.S.No.663 of 2006 dated 30.10.2007 as to the permanent injunction relief alone on the file of the Principal District Munsif Court at Erode, Erode - District.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.A.K.Kumarasamy

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 29.08.2008 made in A.S.No.44 of 2008 on the file of the First Additional Sub Court, Erode, in partly allowing the judgment and decree dated 30.10.2007 made in O.S.No.663 of 2006 on the file of the Principal District Munsif Court, Erode.

2. The suit has been laid by the plaintiffs for permanent injunction and mandatory injunction.

3. At the end of the trial on the basis of the evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. Challenging the same, the

defendant preferred the first appeal. The first appellate court has confirmed the relief granted to the plaintiffs by the trial Court as regards the prayer for permanent injunction, however set aside the relief of mandatory injunction granted by the trial court and accordingly, disposed of the appeal. As against the dismissal of the relief of mandatory injunction by the first appellate court, the plaintiffs have not preferred any appeal. However, the defendant has preferred the present second appeal, challenging the concurrent findings of the courts below in granting the relief of permanent injunction to the plaintiffs.

4. The plaintiffs claim right to the "A" schedule property under the exchange deed marked as Ex.A1 and further according to the plaintiffs, the "B" schedule property is their ancestral property. Now, according to the plaintiffs, they have come forward seeking the relief of permanent injunction against the defendant to restrain him from preventing the peaceful possession and enjoyment of the plaintiffs over the suit "C" schedule property or obliterating the same, in order to annex the same along with his land. To put it sort, "C" schedule property is stated to be east-west Vaikkal to the north of the "B" schedule property belonging to the plaintiffs in R.S.No.1148/9 to 12 and the property owned by the defendant in R.S.No.1148/13. Now, according to the plaintiffs, the defendant is entitled to only 0.71 ½ acres of land adjacent to the "B" schedule property in R.S.No.1148/13 under Ex.A9 and it is further stated that with the help of the revenue officials, the defendant has altered the entries in the revenue records and created document as if he owns 0.90 acres in R.S.No.1148/13 and thereby, attempted to interfere with the plaintiffs' enjoyment of the "C" schedule channel, which has been used for irrigating their properties and according to the plaintiffs, they also have easementary right over the "C" schedule channel.

5. The existence of the "C" schedule channel has been disputed by the defendant. Further, according to the defendant, the plaintiffs have requested him to allot a portion of his property to rearrange and widen the cart track and in turn, the plaintiffs have promised to allot portion of their lands to the defendant for having access and accordingly, the defendant also had taken steps to rearrange his fence. However, during his absence, the plaintiffs have encroached the strip 3' of land and thereby, changed the physical features and when the defendant has questioned the same, troubles erupted between the parties, as such, according to the defendant, the plaintiffs are not entitled to seek the relief of permanent injunction as claimed in the plaint.

6. The courts below have held that the plaintiffs are entitled to seek the relief of permanent injunction. In this

connection, reliance has been placed on the field map marked as Ex.A8. As rightly found by the courts below, a perusal of Ex.A8 would go to disclose that there is a pucca cart track in survey 1148/5 and touching the above said east-west cart track and abutting the northern end of the defendant's property, a channel is branching from the north-south LBP canal on the eastern extreme of the defendant's land and the channel is running towards west. Therefore, it could be seen that as rightly found by the courts below, the channel described in the "C" schedule property has been in existence, even prior to the resurvey proceedings done during the year 1977. That apart, the courts below have also found that the exchange deed, on the basis of which, the plaintiffs claim title to the "A" schedule property also denote the existence of the east -west channel to be situated on the northern line of resurvey No.1148/13, 10, 9 and it is also described that the plaintiffs are entitled to irrigate their lands through the east-west channel. Further, as per Ex.A8, the field map, the east-west channel runs through the survey No.1148/13,10 and 11. That apart, in addition to the above evidence, the courts below have also found that the case of the plaintiffs as regards the east-west channel has been buttressed by the report and plan of the commissioner marked as Exs.C1 & 2 and a perusal of the same would go to show that the east-west channel described in the "C" schedule property is in existence as described in the plaint and the plaintiffs are irrigating their lands only through the said channel. Therefore, it could be seen that east-west channel has been in existence for a long time much prior to 1977 and therefrom, plaintiffs and their predecessor in interest have been irrigating their lands and therefore, it could be seen that as rightly found by the courts below, the plaintiffs have established their easementary right also over the same. Further, the courts below have also analysed the evidence of DW1 and also found that he has admitted the existence of the east-west channel as described in the plaint and that considering the slope of the lands, found the natural existence of the east-west channel described in the "C" schedule property and came to the conclusion that only through the same, the plaintiffs are irrigating their lands. In such circumstances, the defendant is not entitled to prevent the plaintiffs from irrigating their lands through the aid of east-west channel i.e. "C" schedule property.

7. As regards the defence of the defendant that the plaintiffs have encroached a portion of his property and thereby, altered the physical features and further, the plaintiffs have not kept their promise of allotting a portion of their land to the defendant etc., the courts below have disbelieved the above case of the defendant.

8. In view of the above position, it could be seen that the courts below have rightly come to the conclusion that the plaintiffs are entitled to seek and obtain the relief of permanent injunction as prayed for.

9. Nothing has made out in this second appeal to warrant any interference to the findings and conclusions of the courts below for upholding the plaintiffs claim of the relief of permanent injunction.

In conclusion, it has to be held that no substantial question of law is involved in this appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To

1. The I Additional Sub Judge,
Erode, Erode district.
2. The Principal District Munsif,
Erode, Erode - District.

+1cc to M/S.A.K.Kumarasamy, Advocate Sr.71452
+1cc to M/S.M.Guruprasad, Advocate Sr.70776

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S. A.No.500 of 2011
and
M.P.No.1 of 2011

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