



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD)No.702 of 2016 & C.M.P(MD)No.10833 of 2016

T.Murugan

... Appellant/4th Appellant/
L.R of Defendant

-Vs-.

1.Karuppuchamy

2.K.Ramalingam

...Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs

3.Palaniammal

4.T.Rengasamy

5.T.Deivanai

...Respondents 3 to 6/
Appellants 2,3 & 5/
L.Rs of Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree of the lower appellate Court dated 26.11.2010 passed in A.S.No.124 of 2005 on the file of the Additional Subordinate Court, Dindigul, confirming the Judgment and Decree of the trial Court dated 27.01.2005 passed in O.S.No.199 of 2000 on the file of the District Munsif -cum- Judicial Magistrate Court, Vendasandur.

For Appellant

: Mr.R.Sreenivasan

JUDGMENT

One of the legal representatives of the defendant, who is the fourth appellant before the lower appellate Court, is the appellant in the present Second Appeal.

2. The respondents 1 and 2 herein as plaintiffs filed a suit in O.S.No.199 of 2000 on the file of the District Munsif -cum- Judicial Magistrate, Vendasandur, for declaration that the suit second schedule properties belong to the plaintiffs and also for consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit property. The suit is also for mandatory injunction to remove the branches of trees overhanging into the suit property from the defendants' property, thereby causing



obstruction to the enjoyment of the plaintiffs over the suit second schedule property.

3. The defendant filed a written statement accepting the absolute right of the plaintiffs over the suit 'B' Schedule property and their exclusive right to use the 'B' Schedule property. Hence, one of the plea raised is that there is no cause of action to file the suit. The only dispute raised by the defendant is that there is no obstruction to the plaintiffs enjoyment over the 'B' schedule properties because of over hanging branches of trees that are in property to the defendant.

4. It is also contended by the defendant that he has been periodically removing the branches of the trees and hence, the suit for mandatory injunction is vexatious and luxurious. The trial Court decreed the suit as prayed for.

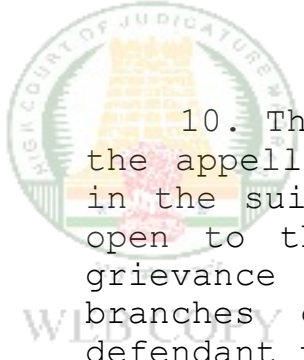
5. As regards the relief of mandatory injunction, the plaintiffs and defendant were given two months time to remove such over-hanging branches of trees. The trial Court relied upon the Advocate Commissioner's report and plan, which are available as Exs.C1 to C4.

6. Aggrieved by the Judgment and Decree of the trial Court, the defendant preferred an appeal and legal representatives of the defendant were impleaded as appellants after the death of the defendant. The appellate Court also confirmed the findings of the trial Court.

7. The only argument that was advanced before the lower appellate Court appears to be that the plaintiffs are also having the trees in the suit 'B' Schedule property and that the branches from the trees of plaintiffs which are over hanging and projecting into the property of the defendant is also causing inconvenience. Hence, there must be a direction also to the plaintiffs to cut the branches of the trees which are in existence in the property of the plaintiffs, namely, 'B' Schedule property. The lower appellate Court has negatived this request by observing that the defendant cannot get a decree in the suit filed by the plaintiffs.

8. I do not find any legal infirmity in the judgment of the lower appellate Court in dismissing the appeal.

9. The question of law raised by the appellant do not have any factual basis. The contention of the appellant is that the plaintiffs have planted trees in their lands in 'B' Schedule and that the branches of those trees are also protruding into his property. No pleading, no issue on this by the Courts below. The question of law raised by the appellant is therefore not germane to the dispute as could be gathered from the pleadings of the parties before the trial Court.



10. The Second question of law also has to be answered against the appellant as the defendant cannot get a decree in his favour in the suit filed by the plaintiffs against him. However, it is open to the defendant to file a separate suit, if he has any grievance against the plaintiffs on account of the over hanging branches of trees of plaintiffs causing obstruction to the defendant to enjoy his property.

11. Accordingly, the Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Admn.)

/True copy/

Sub Assistant Registrar

To

1.The Additional Subordinate Judge,
Dindigul.

2.The District Munsif -cum- Judicial Magistrate,
Vedasandur.

+1 CC to Mr.R.NANDAKUMAR, Advocate, SR No.74241

S.A(MD)No.702 of 2016

30.11.2016

gsr

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