

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1775 of 2000

1.Rangaswami Gounder
2.Rajendran

...Appellants/Respondents/
Plaintiffs

Vs

M.Chinnasami

... Respondent/Appellant/
Defendant

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.52 of 1999 dated 31.08.2000 on the file of the learned Additional Subordinate Judge, Gobichettipalayam thereby reversing the judgment and decree made in O.S.No.89 of 1997 dated 29.01.1999 on the file of the learned District Munsif, Sathiyamangalam.

For Appellant : Mr.P.V.Ramachandran

For Respondent : No Appearance

JUDGMENT

This Second Appeal is directed against the judgment of the First Appellate Court in modifying the judgment of the trial Court for permanent injunction in respect of using the suit pipeline to draw water and to irrigate the land of the defendant.

2.Aggrieved by the trial Court decree of injunction, the defendant has preferred the First Appeal. The First Appellate Court taking note of the pleadings and the evidence let in by the parties have re-appreciated the evidence in the light of the Additional documents marked in the First Appellate Court and modified the decree of the trial Court to the effect that the defendant is entitled to draw water from the subject pipeline to the extent of the land which he has taken on agreement from one Chinnanna Gounder and the same cannot be extended further to the lands which he purchased subsequently more particularly, from

one Subamma. Aggrieved by the same, the plaintiffs are before this Court with this Second Appeal.

3.While admitting the Second Appeal, this Court has formulated the following substantial questions of law:-

"1.Whether the Lower Appellate Court was correct in holding that the respondent could draw water to his lands in respect of which an agreement was allegedly entered by respondent with Chinnanna Gounder without giving any findings as to the right and entitlement of the said Chinnanna Gounder and the respondent to draw water ?

2.Whether the agreement dated 12.09.1996 (Ex.B.1) entered between the respondent and Chinnanna Gounder would bind the plaintiffs ?

3.Whether the Lower Appellate Court had complied with the requirement of Order 41 Rule 31 C.P.C.,

4.Whether the Lower Appellate Court was correct in law in allowing the I.A.No.21/2000 filed for receiving additional documents when no reasons for not filing before the trial Court were assigned by the respondent ?"

4.Heard the learned counsel for the appellants and the learned counsel for the respondent and also perused the decrees and judgments of the Courts below.

5.On scrutinizing the judgment of the First Appellate Court, this Court finds no violation of Order 41 Rule 31 C.P.C., as submitted by the learned counsel for the appellants/plaintiffs. In fact, the judgment of the First Appellate Court rest upon the evidence of P.W.1 (the second plaintiff). His admission during the course of cross examination has led to conclude that there is an admission by the second plaintiff (P.W.1) himself in favour of Chinnanna Gounder, who is the predecessor to the defendant/respondent to draw water from the subject pipeline to irrigate the land in question. Therefore, on application of mind and on appreciation of evidence, the First Appellate Court has restricted the right of the defendant/respondent in respect of the land which he has acquired from one Chinnanna Gounder.

6.Further, the other ground of attack regarding the

acceptance of additional documents Exs.B.19, B.50 to 56. These documents relates to the revenue records of subject property to show that the defendant/respondent is irrigating the land drawing water from the subject pipeline and being revenue records, the First Appellate Court has admitted those documents in evidence, without examining any witness to that effect.

7.Though there is some irregularity in admitting those documents, de hors of these exhibits also, the finding of the First Appellate Court is sustainable and hence, there is no reason to interfere the modified order of the First Appellate Court, on this score. No doubt, the said Chinnanna Gounder himself has no explicit right to use the pipeline of the appellants/plaintiffs to draw water however, the admission of the second plaintiff (P.W.1) in the cross examination makes sea change effect in this case since, he has permitted Chinnanna Gounder to draw water through the subject pipeline as per the agreement and in turn, Chinnanna Gounder has entered into an agreement with the defendant for irrigation of the said land. Hence, the appellants/plaintiffs are estopped from restraining the respondent/defendant from using the subject pipeline, in so far as irrigating the land which he got through Chinnanna Gounder. Therefore, I do not find any reason to interfere with the judgments the Courts below.

8.In the result, the Second Appeal is dismissed thereby confirming the decree and judgment of the First Appellate Court. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Subordinate Judge,
Gobichettipalayam,Erode District

2.The District Munsif,
Sathiyamangalam, Erode District.

3.The Section Officer,
VR Section, High Court, Madras-104.

+lcc to M/s.P.V.Ramachandran,Advocate sr.56754

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rsk(co)
ss(18/9/2017)