

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.12.2017

Judgment pronounced on: 15.12.2017

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A.No.707 of 2000

1.V. Kannusamy

2.M.Kesavan

3.G.Nagappan

4.S. Kaliyamurthy

5.S.Krishnamurthy

6.Radhakrishnan

7.Natarajan

8.Durairaj

- for themselves and as representatives
of Mirasdars and inhabitants of
Kilimangalam, Muthur and
Narasinganatham villages
Tranquebar Tk.Nagapattinam Dt.

.... Appellants/
Plaintiff 1 to 5 & 7 to 9

Vs .

1. Karthikeyan

2. T.Kaliaperumal

- for themselves and as representatives
of Mirasdars and inhabitants of
Agara Adhanur village, Tranquebar Tk.
Nagapattinam Dt.

3. State of Tamilnadu
Rep.by District Collector
Nagapattinam.

4. Tahsildar
Tranquebar Tk,
Tranquebar, Nagapattinam Dt.

.... Respondents/Defendants 1 to 4
(Respondents 3 and 4 given up)

Prayer :

Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed by the Principal Subordinate Judge, Mayiladuthurai, in A.S.No.104 of 1994 dated 27.01.2000 reversing the Judgment and Decree passed in O.S.No.1046 of 1986 dated 18.08.1994 on the file of the District Munsif Court, Mayiladuthurai.

For Appellants : Mr.A.Muthukumar
For Respondent Nos.1 & 2 : Mr.S.Sounthar

J U D G M E N T

This second appeal has been filed by the plaintiffs against the Judgment and Decree dated 27.01.2000 passed in A.S.No.104 of 1994 by the Principal Subordinate Judge, Mayiladuthurai, reversing the Judgment and Decree dated 18.08.1994 passed in O.S.No.1046 of 1986 on the file of the District Munsif Court, Mayiladuthurai.

2. The averments made in the plaint are in brief as follows:

The plaintiffs are the Mirasdhars of Kilimangalam, Muthur and Narasinganatham villages. They have filed the above suit as the representatives of other Mirasdhars and inhabitants of the aforesaid villages. The defendants 1 and 2 are the Mirasdhars of Agara Adhanur village. They are representing the other villagers and Mirasdhars of the said village. The entire Nanja lands of the said three villages viz., Kilimangalam, Muthur and Narasinganatham are being irrigated from the water drawn from Kadazhalai river. From the said river, the irrigation channel is running in the north-south direction through R.S.Nos.111 and 112 of Kilimangalam village. The said channel joins at the junction of Kilimangalam and Muthur villages and goes further east and another channel is running in the east west direction in R.S.No.113 also joins there and the junction point is a culvert (madagu) and the same is shown as ABCD in the plaint plan. The said culvert do not have any permanent shutter. Kilimangalam villagers put up a wooden shutter and during rainy season it will not be lifted so that excess water from Agara Adhanur village will directly go to further north and joins the Kadazhali river. During the irrigation season, the said wooden shutter will be lifted and the water will go to further east and it will be used for irrigating major portion of the three villages viz., Kilimangalam, Muthur and Narasinganatham. The system referred to above is in vogue for several generations. The plaintiffs -villagers have inherited the prescriptive rights of irrigation and drainage facilities and the same cannot be abridged by the defendants 1 and 2. But in the month of December, 1985, the defendants 1 and 2-villagers preferred

petitions to the Revenue Officials making request to lift the said shutter during rainy season. The plaintiffs also appeared before the Officials and pleaded that if the shutter is lifted during rainy season, the three villages will be submerged under water. But the Revenue Officials did not consider the request of the plaintiffs and opened the shutter in the beginning of the year 1986, at the instigation of the defendants 1 and 2 villagers. As a result, the plaintiffs' villages submerged in the water and caused heavy loss. Hence the plaintiffs have filed the above suit to declare that they are entitled to irrigate through the channel which runs in R.S.Nos.111 and 112 of Kilimangalam village by lifting the shutter at the junction point as shown as ABCD in the plaint plan and consequently to restrain the defendants 1 and 2 from interfering in irrigating the water by the plaintiffs by means of permanent injunction and also to declare that the defendants 1 and 2 are not entitled to let the excess water drawn through R.S.No.113 to be drawn from east-west by lifting the shutter at the aforesaid junction point and for consequential permanent injunction.

3. The averments made in the written statement filed by the second defendant and adopted by the first defendant are in brief as follows:

The plaintiffs are not the representatives of the village viz., Kilimangalam, Muthur and Narasinganatham. Since the subject matter of the suit is a right of irrigation and drainage in a poramboke channel, the Government of Tamil Nadu is a necessary party. The suit is bad for non-joinder of necessary parties. The averment that the lands in Muthur and Kilimangalam villages are irrigated from Kadazhali river is not correct. These villages are irrigated by water from Veeracholan river through Agara Adhanur - Muthur channel. The water from Veeracholan river flows through Agara Adhanur village up to the junction point marked as ABCD in the plaint plan. In the entire course of the channel, the water flows from west to east for the purpose of irrigation and drainage and nobody have right at all to block or obstruct the course of the channel. The relief asked for by the plaintiffs would amount to obstruction to the course of the said channel. The allegations that there is a shutter at the junction point of ABCD and the plaintiffs used to close during rainy season and lift during irrigation season are not true. It is false to state that the plaintiffs have inherited the prescriptive rights of irrigation and drainage facilities. During the beginning of the year 1986, the plaintiffs made a feable attempt to obstruct the water course at the junction point ABCD. The Revenue Officials severely warned the plaintiffs and advised them not to obstruct the water course. The suit is misconceived and hence the defendants 1 and 2 prayed to dismiss the above suit.

4. Originally the suit was filed against the defendants 1 and 2 only. Subsequently at the instance of the plaintiffs, the defendants 3 and 4 were impleaded as parties.

5. The averments made in the written statement filed by the defendants 3 and 4 are in brief as follows:

The subject matter of the suit is a natural stream classified as 'A' channel in the Revenue Records and it is only the Government who can exercise a right of regulating the irrigation in poramboke channels. No individuals or body of individuals can exercise the right of regulating the irrigation and drainage. The course of drainage in the suit channel cannot be obstructed by the plaintiffs. In 1985, there was a heavy flood in this area. The plaintiffs for the first time, obstructed the suit channel in the junction point causing a huge water stagnation in Agara Adhanur village. On application from the villagers of Agara Adhanur village, the Revenue Divisional Officer inspected the place and ordered the subordinates to remove the obstruction. The plaintiffs' claim that they have been blocking the channel at the junction point for several decades is not true. Therefore, the defendants 3 and 4 prayed to dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, five witnesses were examined as PWs.1 to PW5 and Exs.A1 to A3 were marked as Exhibits. On the side of the defendants, three witnesses have been examined as DWs.1 to DW3 and Exs.B1 to Ex.B6 were marked. The report filed by the Advocate Commissioner and his plan have been marked as Exs. C1 and C2 respectively.

7. The learned District Munsif after considering the materials on record decreed the suit as prayed for. Aggrieved by the same, the defendants 1 and 2 have preferred an appeal in A.S.No.104 of 1994 on the file of the Principal Sub-Judge, Myladuthurai. The learned Sub-Judge reversed the Judgment and Decree of the trial court and dismissed the suit. As against the same, the plaintiffs have preferred this second appeal.

8. At the time of admitting the second appeal, the following substantial questions of law were formulated:

"1. Whether the learned Subordinate Judge erred in holding that the suit is barred as per Sec.4 of the Tamil Nadu Irrigation Tanks (Improvements) Act 1949 when no reliefs are sought against defendants 3 and 4.

2. Whether the lower Appellate Court erred in

dismissing the suit in entirety when defendants 1 and 2 preferred appeal only against clause 2 of the trial Court's decree and not against the decree for declaring that the plaintiffs are entitled to draw water for their irrigation through R.S.Nos.111 and 112."

9. Heard both sides.

10. The learned counsel for the appellants/plaintiffs contended that since the appellants/plaintiffs have not asked any relief against the Government, the finding of the first appellate court that the suit is barred as per Section 4 of the Tamil Nadu Irrigation Tanks (Improvements) Act, 1949 is not correct.

11. The learned counsel for the respondents 1 and 2 / defendants 1 and 2, on the contrary, contended that though the plaintiffs have not asked any relief against the Government, the suit was in reality for restraining the State Government from exercising its power under Section 3 of the Tamil Nadu Irrigation Tanks (Improvements) Act, 1949 and therefore, the first appellate court has rightly held that the suit is barred under Section 4 of the said Act.

12. Sections 3 and 4 of the Tamil Nadu Irrigation Tanks (Improvements) Act, 1949 are read as follows:

"Sec.3(1). Notwithstanding anything contained in any other law for the time being in force, the Government shall have power to raise the full-tank level of any tank or to take any other measures for increasing its capacity of efficiency, wherever it may be situated and whether in a ryotwari, zamindari, inamdari or other area."

Sec.4. "Suits and applications for injunctions barred:- No Court shall entertain any suit or application for the issue of any injunction to restrain the exercise of any powers conferred on the Government by section 3".

13. From the reading of the abovesaid provisions, it is clear that the Government have power to take any measure for increasing the efficiency of the tank and that the civil court is not competent to issue an injunction restraining the powers of the Government, which is aimed to improve the channel. The dispute is with regard to regulating and distributing the supply of water for irrigation from the stream flowing in natural channels. So, the right to regulate and distribute

the supply of water for irrigation vested with the Government only. The plaintiffs also have stated in their plaint at para-9 that the Revenue Officials did not heed the request of the plaintiffs and opened the shutter in the beginning of 1986 at the inducement of the defendants 1 and 2 villages. But without impleading the Government, the plaintiffs have originally filed the above suit against the defendants 1 and 2 only.

14. It is seen from the trial court records that after concluding trial, when the suit was posted for arguments, the plaintiffs have filed an Interlocutory Application to implead the defendants 3 and 4 (State Government and Tahsildar). The said application was allowed. Consequently, the defendants 3 and 4 were impleaded as parties, but no relief was asked against them in the plaint. The trial court has specifically framed an issue as to whether the defendants 3 and 4 are necessary parties to the suit and answered that since the defendants 3 and 4 are regulating and distributing the supply of water for irrigation from the river and channels, they are necessary parties to the suit. But in this Second Appeal, the appellants/plaintiffs have given up the respondents 3 and 4/defendants 3 and 4.

15. The suit was in reality for restraining the State Government from exercising its powers under Section 3 of the Tamil Nadu Irrigation Tanks (Improvements) Act, 1949, though framed in such a manner as to give the appearance of a suit for mere asking relief against the defendants 1 and 2. In my opinion, it would be a circumvent of Section 4 of the Tamil Nadu Irrigation Tanks (Improvements) Act, 1949, to entertain a suit of this nature. As already pointed out that it is the prerogative right of the State to regulate the supply of water. In order to get over the bar created under Section 4 of the said Act, it appears that the plaintiffs have not asked any relief against the defendants 3 and 4. Since the State is regulating and distributing the supply of water for irrigation, the plaintiffs should have asked relief only against the State. But Section 4 of the said Act specifically created a bar for asking any relief against the State and that must be the reason for not asking any relief against the State. If any relief is granted in the present suit, that would amount to restraining the Government from exercising the power conferred under the Statute 3 (1).

16. In the State of Tamilnadu, represented by the District Collector, Tirunelveli, Collectorate, Tirunelveli Vs. Sudalaipothi Nadar and 2 others in 1998 (II) CTC 718, this court has held that in view of the statutory bar under Section 4 of the Tamil Nadu Irrigation Tanks (Improvements) Act 1949, a Civil Court cannot grant an injunction restraining the Government from exercising the power conferred under Section 3

(1) of the Act. Therefore, the above suit is barred under Section 4 of the Tamil Nadu Irrigation Tanks (Improvements) Act 1949. Accordingly, the questions of law are answered.

In the result, this second appeal is dismissed confirming the Judgment and Decree passed in A.S.No.104 of 1994 on the file of the Principal Subordinate Judge, Mayiladuthurai. Considering the circumstances of the case, no cost is ordered.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The District Munsif Court,
Mayiladuthurai.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.90035

+1cc to Mr.S.Sounthar, Advocate, S.R.No.89781

S.A.No.707 of 2000

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