

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

PRONOUNCED ON : 25.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.452 of 2011

and

M.P.No.1 of 2011

The Chairman cum Managing Director
Neyveli Lignite Corporation Limited,
Neyveli - 1.

...
Vs.

Appellant

1.J.Angela
2.The State of Tamil Nadu
Rep.by the Collector of South Arcot
Cuddalore.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.11.2010 passed in A.S.No.50 of 2007 on the file of the Subordinate Court, Cuddalore confirming the judgment and decree dated 19.02.2007 passed in O.S.No.295 of 2004 on the file of the Principal District Munsif Court, Chidambaram.

For Appellant : Mr.N.Nithyanandam

For Respondent : Mr.K.Sakthivel
No.1

For Respondent : No representation

No.2.

JUDGMENT

Challenge in this second appeal is made by the first defendant against the judgment and decree dated 26.11.2010 passed in A.S.No.50/07 on the file of the Sub Court, Cuddalore, confirming the judgment and decree dated 19.02.2007 passed in O.S.No.295/2004 on the file of the Principal District Munsif Court, Chidambaram.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal:

“ Whether the judgment and decree of the Courts below are based upon perverse findings and misdirected against the evidence on record.”

3. The suit has been laid by the plaintiff for damages.

4. According to the plaintiff, in brief, due to the excess water let

out by the first defendant corporation into the Paravanaar River, after the commissioning of the second mine, the plaintiff's land and other lands had become stagnated and thereby, the plaintiff, in particular, had been prevented from cultivating the lands belonging to her and according to the plaintiff, if she had cultivated her lands, she would have derived considerable income and on account of the acts of the defendants, despite repeated requests, they had not cared to remove or prevent the excess outflow of water from the first defendant corporation and allowed the water to stagnate in the plaintiff's land, therefore, the plaintiff has laid the suit for damages from the defendants. The second defendant is the State of Tamil Nadu. The defendants have repudiated the case of the plaintiff and stated that as pleaded by the plaintiff, there is no excess outflow from the first defendant corporation, after the commissioning of the second mine into the Paravanaar River and therefore, there is no stagnation of water in the plaintiff's land and as such, the plaintiff had not been prevented to enjoy her lands and therefore, there is no question of the plaintiff sustaining any damages as put forth in the plaint and hence, the plaintiff should be non-suited.

5. As rightly argued by the first defendant's counsel, the plaintiff

having come forward with the suit seeking for specific relief and when the plaintiff's claim has been vehemently resisted by the defendants, the plaintiff has to establish her case by adducing acceptable and convincing evidence and as far as this case is concerned, according to him, the plaintiff has miserably failed to establish her case other than marking Exs.A1 and 6 and further according to him, the courts below have erred in placing reliance upon the above said documents for upholding the plaintiff's case, despite the resistance to the same by the defendants and in such view of the matter, according to him, the courts below had misdirected themselves in their approach erroneously against the evidence on record and also accepted the plaintiff's case on perverse findings and conclusions.

6. Two documents upon which reliance was placed by the courts below for accepting the plaintiff's case are Exs.A1 and 6. Ex.A1 is a letter of the first defendant to the Member of Parliament. As seen from the document, it could be seen that it only reveals that representations have been received against the inundation of fields due to the water entering into the Paravanaar river and there is no reference in particular that due to the excess flow in Paravanaar River, the plaintiff's lands had become inundated and stagnated and

thereby, the plaintiff had been prevented from cultivating her lands. Therefore, it could be seen that the first defendant in particular has not accepted that the excess flow of water in Paravanaar River is due to the out let of water from the first defendant's corporation after the commissioning of the second mine. Now, according to the defendants, due to the encroachment made by the public at large and also due to the growth of weeds in the adjoining area of Paravanaar River and other factors, water would have stagnated and thereby there would have been excess flow of water in Paravanaar River and that apart, the first defendant is in no way connected with the non cultivation of the lands by the plaintiff due to stagnation of water from Paravanaar River and further according to the first defendant it is not in any manner responsible for any loss said to have been sustained by the plaintiff. When Ex.A1 does not in any manner advance the case of the plaintiff that particularly due to excess flow of water in Paravanaar River, the plaintiff's land as such had become inundated, it could be seen that the courts below have erred in placing reliance upon Ex.A1 to sustain the plaintiff's case. Under Ex.A1, as rightly argued by the first defendant counsel, the first defendant has not owned any responsibility for the stagnation of alleged water in the plaintiff's land, as pleaded by the plaintiff. Therefore, Ex.A1 cannot be relied upon to uphold the

plaintiff's case in any manner.

7. The other document on which reliance was placed by the Courts below is Ex.A6, the copy of the letter of the District Collector. Even at the time of marking the said document, objection had been raised for marking the same and subject to objection only the said document has come to be marked. In such view of the matter, when the defendants have resisted the marking of the document, the burden is cast upon the plaintiff to take further steps to mark the original of the same in the manner known to law and also establish that the same is a genuine document in support of her case. However, despite the resistance offered by the defendants in marking Ex.A6, the same has come to be marked and relied upon by the Courts below. When Ex.A6 has come to be resisted by the defendants, it could be seen that the plaintiff cannot be allowed to raise any contention by simply marking Ex.A6 and argue that inasmuch as the defendants have not adduced any contra evidence challenging Ex.A6, her case should be accepted. The objection having been put forth by the defendants in marking Ex.A6 and when no further steps have been taken by the plaintiff to establish the authenticity of Ex-A6 in the manner known to law by either producing the original or by examining the author of the same

or by calling upon the original document from the authorities concerned in the manner known to law and marking the original in the Court to substantiate her case, the approach of the Courts below in accepting Ex.A6 in its entirety despite the resistance without the plaintiff having taken any steps to prove the same, as rightly argued, is nothing but an erroneous approach of the matter and cannot be upheld in the eyes of law.

8. The plaintiff having come forward with the suit seeking for damages and when her claim for damages is opposed by the defendants, tooth and nail, the courts below have erred in accepting the plaintiff's case without proof whatsoever, upon an inadmissible document, the marking of which has been stoutly resisted by the defendant. Not stopping there the courts below have also erred in finding fault on the part of the defendants in failing to adduce contra evidence to disprove the authenticity of Ex.A6 forgetting for a moment that it is for the plaintiff to establish her case on the basis of acceptable and reliable evidence. The plaintiff has to fall and stand on the strength of her own case and cannot pick holes in the defendant s' case and thereby try to succeed in her case without proof whatsoever other than marking Ex.A6. No material whatsoever has been placed by

the plaintiff to show that on account of the excess flow of water in Paravanaar River and thereby, her lands had become inundated. No material whatsoever has been placed by the plaintiff to hold that her lands had been actually deluged inundated incapacitating her to do any cultivation thereby in her suit lands. At the foremost, the plaintiff has not even produced the cultivation Adangal to establish that during the relevant faslis, her lands remained uncultivated. Secondly, the plaintiff failed to establish that after commissioning of the second mine there had been excess flow of water from the first defendant Corporation. Thirdly the plaintiff has failed to establish that during the relevant period there had been excess flow of water in Paravanaar River. Fourthly, the plaintiff has failed to establish due to excess flow of water, her lands in particular had become inundated and became unfit for cultivation. Lastly, the plaintiff has failed to establish that she had been earlier cultivating her lands and reaping income from her lands as claimed in the plaint by placing supporting materials and when the only material marked on her side viz., Ex.A6 has been stoutly resisted by the defendants and despite the same when the plaintiff has not cared to substantiate her case by establishing the authenticity of Ex.A6 in the manner known to law, it could be seen that the Courts below have completely erred in accepting the plaintiff's case upon an inadmissible

document on the footing that the defendants have not placed contra material to suspect its authenticity. The counsel for the first defendant has rightly argued that the courts below on misplaced sympathy have accepted the plaintiff's case without following the canons of law that it is for the plaintiff to establish her case and the plaintiff, having failed to substantiate her case by placing convincing material, it has to be held that the courts below have misdirected themselves in wrong perspective and accepted the plaintiff's case against the evidence on record and also upon the perverse findings and conclusions.

(a) Considering the facts and circumstances of the case, the failure on the part of the defendants to send a reply to the plaintiff's notice, is not fatal to the defendants version sans any proof on the side of the plaintiff to substantiate her case.

9. The plaintiff's counsel contended that the plaintiff has established her initial onus of proof by placing Exs.A1 and A6 and inasmuch as the defendants have not placed contra material shifting their burden to rebut the authenticity of Ex.A6 in particular the courts below have rightly accepted the plaintiff's case. In this connection, he placed reliance upon the decisions reported in **2003 AIR SCW 5316**

(R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another), 2003 1 CLR 341, **AIR 1971 ORISSA 224 (V.58 C 72) (Dhobani Dei V.Lingaraj Bhuyan and others)** and **AIR 1964 Supreme Court 136(1) (A.Raghavamma and another Vs. A.Chenchamma and another)**. As rightly argued by the first defendant's counsel when the plaintiff has not placed any acceptable material as such other than Ex.A6, the same being an inadmissible document, the Courts below have erred in holding that the plaintiff has initially established her burden of proof. The above argument of the first defendant's counsel is acceptable and convincing. As rightly argued by him, the principles of law outlined in the above said decisions cited by the plaintiff counsel do not support the plaintiff's case and on the other hand support only the defendants case. In so far as this case is concerned, the plaintiff has not placed any material shifting her onus of proof for claiming the relief sought for in the suit. In such view of the matter, the defendants cannot be asked to place contra evidence to the plaintiff's case much less when there is no material at all placed to uphold the plaintiff's case.

10. In the light of the above discussions, I hold that the substantial question of law formulated for consideration in this second

appeal is answered in favour of the first defendant as well as the second defendant and against the plaintiff.

In conclusion, the judgment and decree of the Courts below are set aside and the suit laid by the plaintiff is dismissed against both defendants and accordingly, the second appeal is allowed. The plaintiff is ordered to pay the court fees due on the plaint. No costs. Consequently, connected miscellaneous petition is closed.

25.01.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Subordinate Court, Cuddalore.
2. The Principal District Munsif Court, Chidambaram.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.452 of 2011
and
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