

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2017
PRONOUNCED ON : 11.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos. 272 & 273 of 2001

1. V.Govindappa
2. V.Nagaraj
3. V.Mohan
4. V.Govindasami
5. Santhamma
6. Gowaramma
7. Parimala

.... Appellants in both Second Appeals

Vs.

1. Venkatasami ... first respondent in S.A.No.272 of 2001 and respondent in S.A.No.273 of 2001.
2. Venkatasappa
3. Narayanappa ... Respondents 2 & 3 in SA.No.272/01

Common prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the Judgment and decree of the Court of the Subordinate Judge, Hosur in A.S.Nos.142 & 144 of 1996, dated 27.04.2000 respectively in confirming the judgment and decree of the Court of the District Munsif, Hosur, in O.S.Nos.3 & 392 of 1989 dated 19.02.1996 respectively.

For Appellants : Mr.Muruganantham
in both Appeals for M/s.V.Ragavachari

For Respondents : Mr.D.Shivakumaran
in both Appeals

COMMON JUDGMENT

Impugning the judgment and decree dated 27.04.2000 passed in A.S.No. 142 of 1996 on the file of the Subordinate Judge, Hosur, confirming the judgment and decree dated 19.02.1996 passed in O.S.No.3 of 1989 on the file of the District Munsif, Hosur, the Second Appeal No.272 of 2001 has been preferred by the plaintiffs.

2. Impugning the judgment and decree dated 27.04.2000 passed in A.S.No.144 of 1996 on the file of the Subordinate Judge, Hosur, confirming the judgment and decree dated 19.02.1996 passed in O.S.No.392 of 1989 on the file of the District Munsif, Hosur, the Second Appeal No.273 of 2001 has been preferred by

the defendants.

3. The appellants have laid O.S.No.3 of 1989 for declaration, permanent injunction and mandatory injunction.

4. The respondents have laid O.S. No.392 of 1989 for mandatory injunction.

Inasmuch as the reliefs sought for in both the suits pertain to the same subject matter, it is found that both the suits were jointly tried.

5. The case of the appellants in brief is that following the arrangement/contract entered into between the appellants and the respondents dated 15.07.1987, the appellants were permitted to lay a pipe line underneath the land belonging to the respondents in Survey No.959 for the purpose of irrigation of other lands belonging to the appellants situated nearby and accordingly, based upon the said suit arrangement/contract, the appellants have put up a permanent pipe line underneath the above said land of the respondents and accordingly, it is the case of the appellants that the appellants had acquired easementary right for taking water through the said pipeline and inasmuch as the respondents, without any authority, had attempted to interfere with their above said right and also, made attempts to remove the pipeline, according to the appellants, they had been necessitated to lay the suit for appropriate reliefs.

6. It is the case of the respondents that following the arrangement/contract entered into between the appellants and the respondents, the appellants were permitted to lay the pipeline underneath the land belonging to the respondents in survey No.959 only as a temporary measure and the recitals found in the agreement would disclose the same and inasmuch as the said permission granted to the appellants for putting up the underneath pipeline is only a temporary measure and as the respondents had duly revoked the permission/license, it is the case of the respondents that the appellants are liable to remove the pipeline put underneath their property and inasmuch as the appellants had failed to remove the pipeline, according to the respondents, they had been necessitated to lay the suit for appropriate reliefs.

7. In support of the case of the appellants, PWs1 to 3 were examined and Exs.A1 and 2 were marked. In support of the case of the respondents, DW1 to 3 were examined and Exs.B1 and 2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, it is found that the Courts below have held that the permission granted to the appellants to put the pipeline underneath the property belonging to the respondents is only a temporary permission/license granted by

the respondents and inasmuch as the respondents had duly revoked/terminated the same, it is the determination of the Courts below that the appellants cannot claim any easementary right in respect of the said arrangement and accordingly, accepted the case of the respondents and rejected the case of the appellants. Impugning the same, the Second Appeals have been preferred.

9. At the time of admission of the Second Appeals, the following substantial questions of law were formulated for determination:

1. Whether the reasoning of the Courts below is not against the principles laid down in Section 27 of the easements Act?

2. Whether the judgments of the Courts below are not liable to be set aside, especially when the same is against Section 60 of the easements Act? And

3. Whether the Courts below are right in ignoring the permission granted by the respondents and should it not have seen that after the appellants have put up a permanent structure it is not open to the respondents to unilaterally cancel the same?

10. The short point that arises for consideration in the second appeals is the nature of the arrangement/contract entered into between the parties dated 15.7.1987. The said arrangement has been marked on the side of the appellants as Ex.A1 and the same has been marked on the side of the respondents as Ex.B2.

11. A perusal of Ex.A1, as rightly found by the Courts below, only disclose that the permission had been granted to the appellants by the respondents to lay the pipeline only as a temporary measure and accordingly, it has been specifically recited in Ex.A1 that in case, the respondents seek to level the concerned land, it has been explicitly mentioned that the appellants would be responsible for the consequences thereof i.e. the appellants would be squarely held responsible for the damage that may be caused to the pipeline while the respondents seek to level the land and in such view of the recitals found in Ex.A1, it is seen that the arrangement entered into between the parties under Ex.A1 is only a temporary arrangement and by way of the same, it is found that the appellants cannot claim any permanent easementary right in respect of the arrangement agreed to between the parties with reference to the laying of the underneath pipeline in the property belonging to the respondents. Merely because, the recitals in Ex.A1 also state that the arrangement contemplated under the said document would also bind the sandhaddhis of the respondents, as rightly argued by the respondents' counsel and also, as rightly determined by

the Court below, on a combined reading of all the recitals found in Ex.A1 cumulatively would only go to show that the permission to lay the pipeline underneath the property concerned, was granted to the appellants only as a temporary measure and not as by way of any easementary right and in such view of the matter, the appellants cannot be held to be granted any easement right by the respondents for laying the pipeline underneath the property concerned.

12. The above position is also reiterated by the recitals found in Ex.B2. Though in respect of the same arrangement, two documents have been effected between the parties on the same day, it is found that the wordings found in the arrangements/agreements are found to be different. Considering the recitals found in Ex.B2, as a whole, it is seen that there is a specific mention that the appellants would be subject to Panchayat determination, if the respondents are put to any loss and hardship in the event of laying of the pipeline by the appellants underneath the property belonging to the respondents. Therefore, it could be seen that agreeing to the above said determination of the Panchayat, it is found that the arrangement/contract marked as Ex.B2 had been entered into between the parties on the same date i.e., 15.7.1987 under Ex.B1 and if the arrangement granted to the appellants under Ex.B2 is of a permanent nature, such recitals would not have been incorporated in Ex.B2 and by the conduct of the appellant in agreeing to the Panchayat determination, in case of any dispute between the parties with reference to the laying of the pipeline underneath the property concerned, it is found that the appellants had been granted only a temporary permission to put up the pipeline underneath the property concerned and in such view of the matter, the contention of the appellants that the appellants had been permanently granted the right to put up the pipeline underneath the property concerned as an easementary right and the same could not be interfered by the respondents in any manner, as such cannot be countenanced.

13. In toto, it is found that on a reading of the recitals found in Ex.B2 in conjunction with the recitals found in Ex.A1, it is found that only as a temporary measure, the appellants had been granted the permission to put up the pipeline underneath the property concerned and when the said permission had been duly revoked by the respondents in the manner known to law, it is seen that the appellants cannot be granted the reliefs sought for in their suit. As rightly put forth by the respondents' counsel, the recitals found in Exs.A1 and B2 seen together would go to show that the permission granted in the said arrangement effected between the parties is only a temporary nature and accordingly, necessary revocation power had also been reserved by the respondents under the same impliedly and accordingly, the said revocation power has been exercised by the respondents duly. It is thus found that the appellants have to remove the pipeline put up by them in the property belonging

to the respondents and cannot resist the same claiming to be an easementary right and in such view of the matter, as rightly put forth by the respondents' counsel, Section 27 of the Indian Easements Act would not be applicable to the case at hand. As rightly put forth by the respondents' counsel only on the establishment of the easementary right, the appellants could be allowed to raise the defence conferred under Section 27 of the Indian Easements Act. When the appellants have failed to establish that they have been granted any easementary right in the arrangements effected between the parties under Exs.A1 and B2 respectively and on the other hand, in the light of the above discussions, when it is found that the permission under the same had been granted to the appellants only as a temporary measure to put up the underneath pipeline and when the said permission had been duly revoked by the respondents, it is found that the Courts below have rightly discountenanced the case of the appellants and accepted the case of the respondents.

14. In the light of the above discussions, the reasonings, determinations and conclusions of the Courts below for accepting the case of the respondents and rejecting the case of the appellants are found to be in inconsonance with the principles of law and also, on the correct appreciation of the facts in question and in such view of the matter, the substantial questions of law formulated in the second appeals are answered against the appellants and in favour of the respondents.

15. The counsel for the appellants, in support of his contentions, relied upon the following authorities reported in AIR 1974 SC 471 (Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Ors., AIR 1978 SC 1051 (G.Appaswami Chettiar and Anr. Vs. R.Sarangapani Chettiar and Ors., AIR 2007 SC 2306 (P.Chandrasekharan and Ors Vs. S.Kanakarajan and Ors., similarly, the counsel for the respondents, in support of his submissions relied upon the following authority reported in CDJ 2017 MHC 1347 (K.Devabalkan & Another Vs. Arumugam). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16. In view of the aforesaid discussions, the second appeals fail and accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sli

To

1.The Subordinate Judge, Hosur.

2.The District Munsif, Hosur.

+2cc to Mr.V.Raghavachari, Advocate SR.No.72810/17,72812/17

+1cc to Mr.D.Shivakumaran, Advocate SR.No.73208

Judgment in
S. A.No. 272 & 273 of 2001

KGK(CO)
sm:13.12.2017



WEB COPY