

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.410 of 2018

Vijayarajan .. Appellant/Appellant/Defendant

Vs.

Sattaiyappan .. Respondent/ respondent /Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 10.11.2016 made in A.S.No.25 of 2015 on the file of the District and Sessions Court, Thiruvarur, confirming the judgment and decree dated 08.01.2015 made in O.S.No.86 of 2012 on the file of the Sub Court, Mannargudi.

For Appellant : Mr.S.Shanmuga Sundaram
for Mr.R.Muruga Bharathi

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 10.11.2016 made in A.S.No.25 of 2015 on the file of the District and Sessions Court, Thiruvarur, confirming the judgment and decree dated 08.01.2015 made in O.S.No.86 of 2012 on the file of the Sub Court, Mannargudi.

2.The appellant/defendant who is unsuccessful in both the Courts below have come out with the present Second Appeal, challenging the findings of the Courts below. The respondent/plaintiff filed the suit O.S.No.86 of 2012 on the file of the Sub Court, Mannargudi against the appellant/defendant for permanent injunction restraining him from using water from common pond in the suit property.

2(a).According to the respondent, the suit property with larger extent was purchased by his father, from the grandfather of the appellant with right to take water from common pond. The respondent and his brother partitioned the properties on 31.03.1982. The B Schedule properties in the partition deed was allotted to the respondent with right to take water from the pond. The appellant with a view to form a layout and sell the land

to the third parties, tried to drain water in the pond by using oil engine. The respondent gave complaint to the concerned Police. The appellant was warned not to drain water from the pond. The respondent came to know that patta was wrongly issued to the appellant, he has taken steps for cancellation of patta and the said proceedings are pending. The appellant threatened the respondent that he would drain all the water from the pond and plant banana saplings. The appellant has no right to prevent the respondent from taking water from the common pond and on these averments, the respondent filed the suit.

3.The appellant filed written statement and denied all the averments made in the plaint. According to the appellant, the suit pond belongs exclusively to their family and they are using water to their land. The respondent was not cultivating the land for more than 50 years and the same is kept barren. Due to enmity, the respondent has filed the suit and prayed for dismissal of the same.

4.Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the respondent examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and 9 documents were marked as Exs.A1 to A9. The appellant examined himself as D.W.1 and two other witnesses as D.Ws.2 and 3 and marked 5 documents as Exs.B1 to B5. The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit.

5.Against the said judgment and decree dated 08.01.2015 made in O.S.No.86 of 2012, the appellant filed A.S.No.25 of 2015. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge independently considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the appeal.

6.Against the judgment and decree dated 10.11.2016 made in A.S.No.25 of 2015, the appellant has come out with the present Second Appeal.

7.The learned counsel for the appellant contended that the suit for bare injunction without relief of declaration is not maintainable. Title of the respondent is disputed by the appellant and respondent cannot maintain the suit for bare injunction. The appellant has not admitted in the cross examination that appellant's grandfather sold the suit property with larger extent to the father of the respondent and gave a right to draw water from the suit pond. In the partition deed, which is

marked as Ex.A2 dated 31.03.1982, easementary right of the respondent is not mentioned. The respondent has not taken water for more than 50 years and the said land is kept barren for more than 50 years and therefore, the respondent is not entitled for any easementary relief.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. The two documents relevant to decide the issue in the suit is Ex.A1, sale deed dated 02.11.1953 and Ex.A2, partition deed dated 31.03.1982. By Ex.A1, sale deed, the father of the respondent purchased the suit property with larger extent from grandfather of appellant. Father of the respondent, the respondent and his brother partitioned the extent by deed of partition dated 31.03.1982. The Courts below have considered the recitals in both these documents and held that respondent's father was given right by appellant's grandfather to draw water from the common pond and in the partition deed dated 31.03.1982, marked as Ex.A2, the said right is mentioned. The learned counsel for the appellant contended that in Ex.A1, the right to take water is mentioned, while in Ex.A2, such a right is not mentioned. These contentions are not correct as Courts below only after considering both the documents have concluded that respondent has right to draw water from the suit pond. The contention of the appellant that respondent is not drawing water for past 50 years and therefore, he is not entitled to draw water is without merits. It is not a valid ground for refusing to grant permanent injunction in favour of the respondent as prayed for.

10. The learned Trial Judge has extracted the deposition of appellant, wherein he has claimed that he has document to prove that suit pond is exclusive pond for his family, but he did not file any document to prove his contention. The learned Trial Judge has extracted portion of deposition of the appellant, wherein he admitted his grandfather's grant of right to take water from the pond forever to the respondent's father. He also admitted that he does not have any document to show his exclusive possession. The Courts below considering the pleadings, oral and documentary evidence in proper perspective, decreed the suit and dismissed the appeal. There is no error of law in the judgments passed by both the Courts below warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second Appeal.

11.In the result, this Second Appeal is dismissed.
No costs. Consequently, connected Miscellaneous Petition
is closed.

Sd/--
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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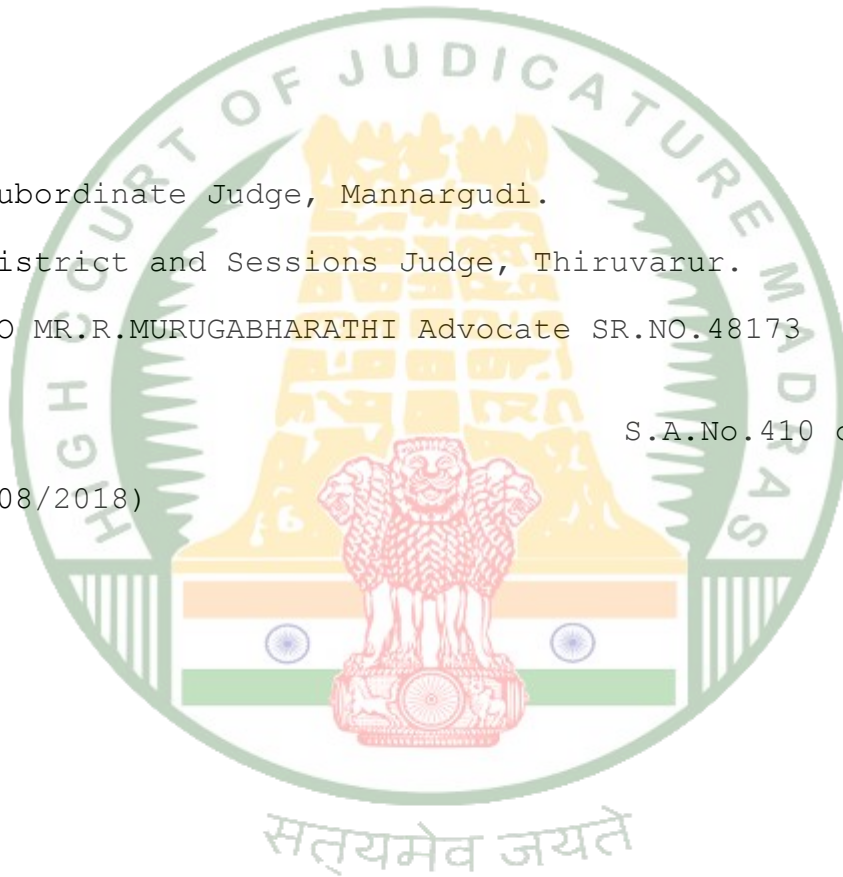
1.The Subordinate Judge, Mannargudi.

2.The District and Sessions Judge, Thiruvarur.

+1 CC TO MR.R.MURUGABHARATHI Advocate SR.NO.48173

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PVS (cO)
ASK (24/08/2018)



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