

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2018

CORAM :

The Hon'ble Mr.Justice N.Seshasayee

S.A.No.326 of 2008
and M.P.No.1 of 2008

Deivasigamani ...Appellant/Defendant

Vs.

A.Subbanagounder ...Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.80 of 2006 dated 11.1.2007 on the file of the 1st Addl. Subordinate Judge, Erode confirming the judgment and decree passed in O.S.No.60 of 2004 dated 17.6.2005 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Appellant : Mr.V.S.Kesavan
For Respondent : Mr.J.Ramakrishnan

JUDGMENT

The defendant in O.S.No.737 of 2000 on the file of Sub-Court, Erode, which was later transferred to the file of District Munsif-cum-Judicial Magistrate, Kodumudi and was numbered as O.S.No.60 of 2004, has come forward with this appeal, having suffered a decree before the trial Court and lost his first appeal in A.S.No.80 of 2006 before the I Additional Sub Court, Erode.

2. The Appeal is yet to be admitted. Therefore, both sides were briefly heard to understand the substantial questions of law which are said to be involved in the case. Parties would be referred to by their rank before the trial Court.

3. The case of the plaintiff is that he owned a piece of agricultural land comprised in old S.No.908/1, situate in Sivagiri Village, Erode Taluk. On the northern extremity of S.No.908/1, according to the plaintiff, there runs an irrigation channel. This channel, in essence runs from west to east and branches out from LBP channel, which lies on the further west, approximately about 2 K.M from the channel in dispute. Towards

northern side of the channel in S.No.908/1, is situate the defendant's property. The whole dispute arose on the allegation of the plaintiff that the defendant has dumped his harvest on this channel, blocking the free flow of water therein.

4. In the written statement, the defendant has inter alia pleaded that the channel situate in the property belongs to him, and that the suit is not maintainable without the plaintiff seeking a decree for declaring his title over the same before seeking the decree for injunction. The other defence taken by the defendant is that in the plaintiff's property, there is a well, that the radiant of the terrain at that relevant place is such that the land slopes from the level of the well towards the rivulet from south to north, and in order to discharge the excess water in the well, the plaintiff has formed an subterranean passage, linking the well to the irrigation channel in question, owing to which there is overuse of the channel.

5. On appreciating the evidence before it, the Courts below have concurrently held that the plaintiff was entitled to a decree as prayed for.

6. Both the learned counsels made their submissions based on the evidences available on record and also as per the instructions they have received.

7.1 The learned counsel for the appellant argued that the east-west channel, which is now in dispute, has been formed as part of the LBP Project and almost all the owners of the land on both sides (the riparian owners) have contributed their lands for its formation, and so far as this particular portion over which the channel runs it is actually situate in defendant's property and not in S.No.908/1.

7.2 The learned counsel for the appellant further added that the defendant has not obstructed the said channel, nor made any attempt to obstruct the same. Having stated thus, the learned counsel appearing for the appellant added that without seeking a relief for declaration of title over the property, the respondent/plaintiff cannot sustain a suit for bare injunction.

8. It is not so much about to whom the property over which the channel now runs belong as on today, for, irrespective of to whom it belongs to, the land appears to have been dedicated for public use, which as on today cannot be restored to its original position even if the owners who contributed their lands to the formation of the channel intend to. However, this issue is left open, and this Court is only keen to address the issue involved in this case. So far as the core issue, on the basis of which

the plaintiff has rested his cause of action is concerned, the appellant has made a fair statement that he is in no mood to sue further.

9. On perusal of records, this Court does finds that inasmuch as this channel is constructed for the benefit of the owners of the lands on both the sides of the channel, none including the defendant has a right to obstruct it. Perusal of the papers indicate that the plaintiff has made out a case for grant of injunction, and the approach of the Courts below to the issue before it and the findings they have entered in support of the plaintiff's action are fair and appropriate, and this Court does not find any question, much less, any substantial question of law, to warrant an interference with the decree of the first Appellate Court.

10. In the result, the Second Appeal stands dismissed and the judgment and decree passed in A.S.No.80 of 2006 dated 11.1.2007 on the file of I Additional Sub Judge, Erode confirming the judgment and decree passed in O.S.No.60 of 2004 dated 17.6.2005 on the file of the District Munsif cum Judicial Magistrate, Kodumudi is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

tsg/sd
To

1. The I Addl. Subordinate Judge,
Erode.
2. The District Munsif cum Judicial Magistrate,
Kodumudi.
3. The Section Officer,
VR Section, High Court, Madras.

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