

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2018

PRONOUNCED ON : 18.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1043 of 2003

1.Mariappan

2.Chinnammal ... Appellants /Plaintiffs in Trial court

Vs.

1.Muthusamy

2.Srinivasan Respondents/Defendant in Trial Court

Prayer: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 24.06.2002 in A.S.No.198 of 2001 on the file of the Principal District Court, Salem confirming the judgment and decree dated 19.09.2001 in O.S.No.85 of 1999 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.V.Sekar for Mr.D.Siva Kumaran

For Respondents : Mr.P.Jagadeesan

J U D G M E N T

This second appeal is directed against the Judgment and Decree dated 24.06.2002 passed in A.S.No.198 of 2001 on the file of the Principal District Court, Salem confirming the judgment and decree dated 19.09.2001 passed in O.S.No.85 of 1999 on the file of the Principal District Munsif Court, Salem.

2. The parties are referred to as per the rankings in the trial court.

3.Suit for permanent injunction.

4.Briefly stated according to the case of the plaintiffs, they had purchased the suit property by way of a sale deed dated 25.08.1980 and cultivating the same by taking water from the well in suit survey No.102 and the first defendant being the President of Veeranam Panchayath with the idea of constructing a ditch on the eastern side of Veeranam main road, instead of taking the ditch further towards the southern, the defendants attempted to construct a bridge across the road with a view to

let in the ditch water on the western side and thereby leaving the same into the plaintiffs' property and the second defendant being given the contract work as regards the construction of the above said ditch and bridge near the plaintiffs' property and inasmuch as the defendants' action continued in the above said endeavours despite the issuance of the notice to the plaintiffs on 19.01.1999, according to the plaintiffs, they had been necessitated to lay the suit for permanent injunction.

5.The case of the defendants in brief is that based on the resolution passed by the Veeranam Panchayth on 11.03.1998 for putting a culvert near the Public School across Veemanur main road, the ditch on the eastern side of the road had been constructed 12 years ago and the defendants did not lay any new ditch but only made repairs in the existing ditch and there is no dyeing factory in the village and no chemical is discharged in the ditch as alleged in the plaint and only 50 to 100 litres of drainage water may reach the culvert which would not in any manner affect the plaintiffs' property and the excess drainage water, if any, will only stagnate in the porambokku land in survey No.106 on the western side and therefore the plaintiffs have no cause of action to lay the suit for the relief sought for and the plaintiffs and their relatives encroached into the porambokku land in survey No.106 and when the defendants questioned the same, the plaintiffs instead of removing the encroachment, laid the false suit and hence the suit is liable to be dismissed.

7. In support of the plaintiffs' case, P.Ws.1 and 2 was examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 and B2 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has been laid.

9.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

When the admissions by the defendant clearly establish the cause of action and also the case of the plaintiff, are the Courts below correct in law in dismissing the suit on the ground that the plaintiffs have not taken out a Commissioner to prove the discharge of the effluent and other dangerous chemicals

into their land?

2. When the relief can be granted on the basis of the admissions of the defendant, are the Courts below correct in law in not considering the same to decree the suit?

10. The main grievance of the plaintiffs seems to be that the defendants are attempting to stagnate the ditch water near their lands with a view to drain the same into their lands without any authority and if the action of the defendants is approved, according to the plaintiffs, the drainage water in and around the area, would be directed to the lands of the plaintiffs and as the dyeing units are located in the vicinity, the discharge of the dyeing units if allowed to be drained into the plaintiffs' lands, the plaintiffs would be put to great loss and hardship and hence according to the plaintiffs' they had been necessitated to lay the suit for permanent injunction against the defendants.

11. At the foremost, it is contended by the defendants that the suit laid by the plaintiffs against the first defendant in his individual capacity is not maintainable. With reference to the above said point, it is found that the disputed ditch was constructed even during the year 1988 and repairs were carried on in the said ditch periodically by the first defendant in his capacity as the Veeranam Panchayath. Therefore, when the grievance of the plaintiffs is that the first defendant with the idea of putting up a bridge near the ditch area is attempting to drain the waste water into the plaintiffs' lands, it is found that as rightly found by the Courts below, the plaintiffs should have laid the suit against the first defendant only in his official capacity and not in the individual capacity and the plaintiff suppressing the fact that the first defendant is the Panchayath President and carrying on the concerned work only in his capacity as the Panchayath President, have laid the suit against him only in his individual capacity. On the above said ground alone, it is found that, as rightly determined by the Courts below, the suit filed by the plaintiffs against the first defendant in his individual capacity cannot be sustained in the eyes of law.

12. Alleging that the defendants are letting in the effluents from the dyeing factory and other drainage water into their lands, the suit has come to be laid by the plaintiffs. The defendants had denied the allegation put forth in the plaint and on the other hand, according to the defendants, they had been only carrying out the repair work in the ditch area and thereby not attempting to drain any effluent or drainage water into the plaintiffs' property. At the foremost, as rightly found by the Courts below, the plaintiffs should establish that

dyeing units are in existence in and around the area so as to the possibility of letting in the effluents and other drain water from the said units. Further, the plaintiffs have also to establish that the ditch on the eastern side and the culvert have been constructed just prior to the filing of the suit and the stagnation of the drain water in the area would seriously affect their cultivation.

13.As seen from the materials placed by the defendants marked as Ex.B2 there is no dyeing unit functioning in Veeranam vilage and the same is clearly spoken to by the V.A.O examined as D.W.2. Therefore, the case of the plaintiffs' that the defendants by their action are attempting to drain the effluents of the dyeing factory into the plaintiffs' lands as such cannot be accepted, when there is not contra evidence produced on the part by the plaintiffs to Ex.B2 and the reliable evidence of D.W.2.

14.The defendants have denied the allegation of the plaintiffs that they are attempting to let in the effluents and other drainage water into the lands of the plaintiffs. As rightly determined by the Courts below, the best evidence that could be made available for establishing the above case of the plaintiffs is to take out a Commission of the inspection of the area concerned. If a Commission had been taken, as rightly found by the Courts below, the plaintiffs could have very well established the discharge of effluents and other drainage water into their lands, if any, as the result of the work contemplated by the defendants in the ditch area. On the other hand, the plaintiffs had not endeavoured to take out any Commission with reference to the same. They had chosen to be satisfied only with the examination of P.W.2, the resident of the locality and when the evidence of P.W.2 about the existence of the dyeing units are found to be not buttressed by any acceptable materials and when it is found that, as determined by the Courts below, P.W.2 is already inimical towards the first defendant and the Block Development Officer and already a suit is pending between the above said parties in O.S.No.219 of 1999, no safe credence could be attached to the evidence of P.W.2 for accepting the plaintiffs' case.

15.Even otherwise, it is argued by the plaintiffs, if the dyeing factories are also not found to be located in the area, still the defendants are not entitled to let in the ditch water into the lands of the plaintiffs. However, it is found that the plaintiffs have not established that there is a possibility of the stagnation of the drainage near their lands and from the evidence adduced in the matter, it is found that considering the position of various houses in the area, particularly, in and around Veeranam High Road and accordingly, it is noted that the

construction of the ditch on the eastern side of the road had been initiated for discharging the water from the public water tank and the pipe on the eastern side of the road and accordingly, it is seen that only a minimum quantity of drainage water would be let in and no stagnation is even remotely possible near the plaintiffs' lands and with reference to the above aspects, the first defendant examined as D.W.1 has clearly spoken to in a convincing manner. Nothing has been culled out during the cross examination to dis-believe his version. Further, as seen from the lie of the area, particularly, the Veeranam High Road, it is found that any amount of ditch water passing through the culvert would only pass through Porambokku which is situated at the western side and therefore there is not even a remote chance of the water being let into the plaintiffs' lands.

16. Further, it is also noted from the materials placed that the ditch in question had been constructed even in the year 1988 and this could be evidenced from the measurement book of the Panchayath marked as Ex.B1 and therefore to say that the defendants are attempting to put up a new ditch in the vicinity of the plaintiffs' lands, with a view to drain the effluents and the drainage water to spoil his lands or cultivation, as such, cannot be accepted in any manner.

17. Another factor to be noted in this matter is that the lie of the land is that it is sloping from north to south and such being the position, the ditch water would have itself natural course and therefore there is no possibility at all for the ditch water to get stagnated and flow into the lands of the plaintiffs and therefore the contention of the plaintiffs that the defendants are attempting to put up the ditch near the plaintiffs' lands, with a view to let in the effluents into their lands, as such, cannot be countenanced in any manner.

18. In the light of the above discussions, it is found that the Courts below on a proper appreciation of the materials placed on record, both oral and documentary evidence held that the plaintiffs had failed to establish any cause of action against the defendants and also further rightly held that the plaintiffs in order sustain their case had not even taken care to take out a Commission to prove their case of the discharge of the effluents and other dangerous chemicals into their lands by the defendants unlawfully. Accordingly, it is seen that the Courts below had rightly taken an adverse inference against the plaintiffs coupled with the fact the plaintiffs having failed to establish that the defendants are attempting to put up any new ditch near their lands prior to the filing of the suit and when the materials disclose that the ditch had been constructed even during the year 1988, as already discussed, there is no dyeing

unit in and around the area and further considering the lie of the land and other factors, it is seen that as rightly put forth by the defendants, there is no possibility at all for any stagnation and letting in of the drainage water into the plaintiffs' lands and if at all there is any stagnation, the same would only to be directed to porambooku lands and in such view of the matter, the substantial questions of law formulated in the second appeal are answered against the plaintiffs and in favour of the defendants.

19.At the end, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mfa

To

1.The Principal District Judge,
Salem.

2.The Principal District Munsif,
Salem.

+1cc to Mr.D.Shiva Kumar, Advocate SR.No.3923

+2cc to Mr.P.Jagadeesan, Advocate SR.No.4342, 2683

S.A. No.1043 of 2003

GJ(CO)
GN(23/02/2018)

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