

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1203 of 2002

and

CMP.No.9937 of 2002

Ramasamy Reddiar

... Appellant/Plaintiff

Vs .

1.Jyothi Reddiar

2.Ramadoss

3.Rajaram

... Respondents

Prayer : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree passed in A.S.No.166/1997 dated 08.12.1999 on the file of the Additional District Judge, Villupuram confirming the Judgment and Decree dated 26.06.1997 and made in O.S.No.284/1991 on the file of the Principal District Munsif, Thirukoilur.

For Appellant : M/s.A.L.Ganthimathi

For RR1 : Mr.S.Parthasarathy

For RR2 & RR3 : No appearance

J U D G M E N T

The unsuccessful plaintiff, who lost the case before the courts below filed the Second Appeal before this court.

2. The case of the plaintiff is as follows:

The suit schedule property absolutely belongs to the plaintiff and to the west of the channel, his terraced house is situated. The rain water and also the sewage water from his house is taken only through this channel to the street on the East. The channel which lies on the east of his property was built with cement for 23 feet. Due to the passage of time, it has been changed into a mud channel. The plaintiff is in possession of the said channel for more than 100 years. To the east of the said channel, the defendant has got his house and the vacant site. Except this channel, there is no other way to bale out the sewage water from the plaintiff's house. While the position being so, on 17.04.1991, the defendants prevented the

plaintiff to use the channel and since the plaintiff apprehend that the defendants may try to interfere and damage the channel at any time, he has come forward with the suit seeking to declaration of his title to the suit channel and also for also permanent injunction.

3. The sum and substance of the defendants is as follows:

The defendants denied the water passing through the channel of appellant/plaintiff's property and there is no channel as alleged by the plaintiff. To the east of the plaintiff's house and the house belonging to defendants 2 and 3, the 1st defendant has got his vacant site. Both are neighbours. In the early days, they used it and at no point of time, the plaintiff was using the back portion as drainage channel.

4. While such being the position, on 26.12.1990, the appellant/plaintiff converted the above suit property as drainage channel which was objected by the respondent/defendant thereby without any title, the appellant/plaintiff filed vexatious suit against the respondent/defendant. The lower court declined to grant the relief of declaration. Accordingly, the lower court dismissed the suit. Aggrieved by the same, the appellant /plaintiff filed the appeal. The lower appellate court has also dismissed the suit. As against the concurrent findings, the present second appeal is filed.

5. Learned counsel appearing for the appellant would submit that the appellant filed Two Interlocutory Applications before the lower appellate court. One is I.A.No.69/1990 to receive the document as additional evidence and another is I.A.No.70/1990 for appointment of the Advocate Commissioner. However, without verifying the appellant's rights, the lower appellate court has dismissed the Interlocutory Application praying for appointment of an Advocate Commissioner on the ground that already the Advocate Commissioner, based the available materials, had given his report and the same was marked before the lower court. Hence, there is no necessity for appointment of a fresh Advocate Commissioner for the very same issue. However, the lower court as well as the lower appellate court, after framing issues, analysed the same with regard to entitlement, declaration and permanent injunction and whether it is necessary to appoint an Advocate Commissioner. Both the issues answered against the appellant is not sustainable. Unless the physical features is noted by the competent person, the court cannot arrive at a conclusion, who uses the channel.

6. Learned counsel for the appellant further contended that the said channel is used for more than 100 years and initially, the appellant/plaintiff constructed the channel. Thereafter, due to passage of time, the channel was converted into mud. Even then, they are using the channel as a drainage channel. The lower court as well as the lower appellate court, without considering the above aspects, dismissed the case, which was confirmed by the appellate court. Accordingly, the appellant/plaintiff is entitled to succeed the second appeal.

7. Learned counsel for the first respondent herein would submit that admittedly the plaintiff is the neighbour of the defendant. All the properties are situated in the west road. However, in order to use the west Road, the plaintiff wanted to drain water to the eastern side of the road and for which, the appellant/plaintiff concluded the defendant's properties to the drainage channel which was objected by the defendants, aggrieved against the same, the present vexatious suit is filed. Moreover, the plaintiff did not file any document to show that the channel belongs to him. Without establishing the title, praying for declaration, is not sustainable. Admittedly, the appellant/plaintiff not marked any documents before the lower court with regard to declaration of the channel exclusively belongs to the appellant except house receipts. The house receipts will not confer any title over the property. Unless the appellant mark any title with regard to the suit schedule property, the relief sought by the appellant will not be considered.

8. At the time of admission, no substantial question of law was framed. However, on perusal of the grounds of appeal, the following questions of law were framed.

1. In the light of the Commissioner's report Ex.C-1 and plan Ex.C-2, whether the finding of the lower appellate court is sustainable?
2. Whether the suit drainage channel belongs to the plaintiff/appellant and entitled for the relief as claimed?

9. A careful perusal of the available materials, records and the findings of the courts below disclosed that the plaintiff is the neighbour of the defendants and the properties of the plaintiff and the defendants are situated on the western side of the road. The plaintiff's bathroom and Well are situated in the backside corner of the suit 'A' schedule property. The drainage water runs through the backside of the second and third defendants' house. Thereafter, it reaches to the plaintiff's another property which is situated adjacent to the third defendant's house. From there, it reaches to the eastern side of the road and defendants 2 and 3 obstructed the drainage water which was let out by the plaintiff on the ground that the

drainage water runs through the properties of the defendants 1 to 3.

10. Apart from the above facts, the plaintiff did not file any documents to show that the channel belongs to him. Thus, without establishing the title with regard to 'B' schedule property, praying for declaration is not sustainable with regard to the question of law raised by the plaintiff. Perusal of the Commissioner's Report reveals that the drainage channel was started from the plaintiff's properties and runs through the properties of the defendants 1 to 3. Thereafter, it reached the eastern side of the road and the Commissioner's Report clearly reveals that the drainage channel runs through the property of the defendants'. Admittedly, the report of the Commissioner is only a piece of evidence to ascertain the physical features of the property. Admittedly, the defendants did not mark any document to show that the 'B' schedule property is in exclusive possession and enjoyment of the appellant. Merely marking the house receipts and tax receipts will not confer any title over the property unless the appellant establishes the title by way of any appropriate document.

11. In view of the above, I do not find any error in the judgment passed by the lower court as well as the lower appellate court. Therefore, the substantial questions of law are answered against the appellant.

In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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gv

To

1.The Additional District Judge,
Villupuram

2.The Principal District Munsif,
Thirukoilur.

Copy to

The Section officer

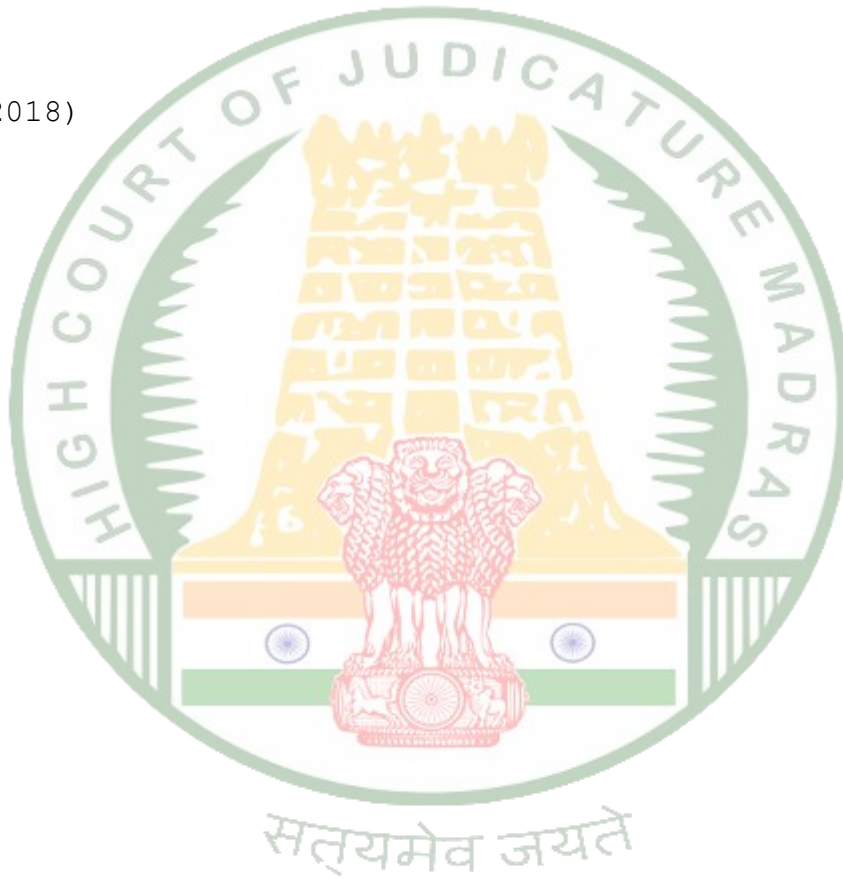
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+1 Cc to Ms.A.L. Gandhimathi, Advocate sr 7723.
+1 CC to Mr.S. Parthasarathy, Advocate sr 7521.

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VD(CO)
SP(21/03/2018)



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