

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.02.2018
PRONOUNCED ON:15.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1400 and 1401 of 2003

S.A.No.1400 of 2003

1.L.Kumaraswamy
2.K.Janaki

..Appellants/Respondents/
Plaintiffs

Vs.

1.K.Sellakkumar
2.R.Kandaswamy
3.R.Murugesan

..Respondents/Respondents/
Defendants

S.A.No.1401 of 2003

1.L.Kumaraswamy
2.K.Janaki

..Appellants

Vs.

1.K.Sellakkumar
2.R.Kandaswamy
3.R.Sellakumaraswamy
4.R.Murugesan
5.Arumugham
6.Venkatesan

..Respondents

Prayer in S.A.No.1400 of 2003 :

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.01.2003 made in A.S.No.83 of 2002 on the file of the Principal District Judge's Court at Erode, confirming the judgment and decree of the District Munsif cum Judicial Magistrate Court of Kodumudi dated 30-04-2002 made in O.S.No.109 of 2000.

Prayer in S.A.No.1401 of 2003 :

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.01.2003 made in A.S.No.82 of 2002 on the file of the Principal District Judge's Court at

Erode, confirming the judgment and decree of the District Munsif cum Judicial Magistrate Court of Kodumudi dated 30-04-2002 made in O.S.No.40 of 2001.

For Appellants : Mr.B.Ramamoorthy

For RR1 and R3 in S.A.No.1400 of 2003 :Mr.Naveenkumar Murthi
For RR1 and R4 in S.A.No.1401 of 2003

For RR2 in S.A.No.1400 of 2003 :No appearance, Set
exparte

ForRR2,R3,R5,R6 in S.A.No.1401 of 2003 Vide order dated
02.02.2018

C O M M O N J U D G M E N T

The S.A.Nos.1400 of 2003 and 1401 of 2003 are directed against the common judgment and decree dated 30.01.2003 passed in A.S.Nos.83 and 82 of 2002 on the file of the Principal District Court, Erode confirming the common judgment and decree dated 30.04.2002 passed in O.S.Nos.109 of 2000 and 40 of 2001 on the file of the District Munsif Court, Kodumudi.

2. O.S.No.109 of 2000 has been laid for permanent injunction O.S.No.40 of 2001 has been laid declaration, permanent injunction and mandatory injunction.

3. The case of the appellants in both matters in brief is that the first appellant purchased the first item of the suit properties on 14.02.1996 and the second appellant purchased the second item of the suit properties on 15.02.1996 from M.Venkatesan respectively and accordingly since the date of purchase, the appellants had been in possession and enjoyment of the properties acquired by them by paying Kists etc., and on the southern side of the said properties, the respondents are cultivating the properties and the first respondent is cultivating and extent of 0.50 acts in RSF No.53 as lessee and the second respondent is cultivating an extent of 0.50 acres in RSF No.52 and 53 as a lessee and the third respondent owns lands of an extent of 3 acres in RSF No.308 and the appellants are irrigating their properties with Kalingarayan canal water from the sluice Manangadu since the date of the purchase and the respondents have no right over the above said sluice and having a separate source of irrigation for irrigating their lands with the different sluice and on the other hand, the respondents attempted to take water from the sluice Manangadu madhagu to which they are not entitled to and thereby interfered with the possession and enjoyment of the properties acquired by the appellants, according to the appellants, they had been

necessitated to lay the suit against the respondents in O.S.No.109 of 2000 and further , it is the case of the appellants that the respondents are not entitled to obtain the reliefs claimed in the suit laid by them in O.S.No.40 of 2001 and prayed for the dismissal of the said suit.

4.The case of the respondents in both matters in brief is that they are in possession and enjoyment of the suit properties by paying Kists etc., and the aforesaid lands are included in the Ayacut of Kalingarayan canal and the respondents are irrigating the Kalingarayan canal water through the sluice number 367 locally called as Manangadu madhagu and the said sluice was in existence from the inception Kalingarayan canal scheme and the respondents are not entitled to avail other sluice for irrigating their lands and the sluice number 367 passess through the lands of the appellants and thereafter reaches the lands of the respondents and accordingly, the respondents had been taking water through the said sluice for several years and prescribed their right by way of prescription and also entitled to the same as easement of necessity and custom and while so, the appellants due to enmity, with a view to prevent the respondents from enjoying their properties, obliterated the portion of the suit channel running through their lands to which they are not entitled to and even the Public Welfare Department authorities had confirmed the rights of the respondents to take water through the suit channel and inasmuch as the appellants interfered with the right of the respondents to irrigate their lands through the suit channel, according to the respondents, they had been necessitated to lay the suit against the appellants in O.S.No.40 of 2001 and also contended that the appellants had laid a false suit against them in O.S.No.109 of 2000 and therefore prayed for the dismissal of the suit laid by them.

5.The above suits were jointly tried and common evidence was recorded in O.S.No.40 of 2001 and accordingly in support of the respondents' case, P.Ws 1 to 4 were examined and Exs.A1 to A8 were marked and on the side of the appellants, D.ws 1 and 2 were examined and Exs.B1 t B7 were marked. Exs.C1 and C2 were also marked.

6.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 appellants and decreed the suit preferred by the respondents. Impugning the same, the present second appeals have been laid.

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

(i)When admittedly the appellants are the owners of the suit lands comprised in O.S.No.109 of 2000, D.M.C., Kodumudi, whether the Courts below are right in law in refusing to grant a decree for injunction in favour of the appellants and in granting a decree for mandatory injunction in favour of the respondents to form a suit channel in the middle of the lands of the appellants without finding the nature of right claimed by the respondents?

(ii)In the absence of any plea or evidence as to easementary right of taking water through the channel to be formed as required under Sections 13 & 15 of the Easement Act, whether the Courts below are justified in law in granting a decree for mandatory injunction to form a channel in the patta lands of the appellants?

(iii)Whether the Courts below are right in law in casting burden upon the appellants to prove the non existence of the channel in their lands, particularly when it is for the respondents/plaintiffs to fall or succeed on the strength of their own case and not on the alleged weakness of the defence? - vide Volume 95 LW 708 and 2000 3 LW 793.

(iv)Whether the Courts below are right in law in not considering the admission of P.Ws.1 & 2 to that effect that their lands are nearer to sluice No.365 and that they irrigate their lands through drainage channel water as found by the commissioner in this Exs.C1 and C2 Report and land?

(v)Whether the Courts below are right in law in not giving effect to the Report and Plan of the Commissioner marked as Exs.C1 and C2 which would clearly falsify the case of the respondents and would demonstrate that the respondents have approached the Court in seeking injunction with false case?

8.The subject matter involved in the litigations laid in between the parties appears to be whether the respondents are entitled to irrigate their lands through the sluice number 367, locally called as Manangadu madhagu. As far as the ownership/possession of the lands of the respective parties are

concerned, there is no dispute as such. The only dispute is whether the respondents are also entitled to irrigate their lands through the sluice number 367, which runs through the lands of the appellants. From the plaint plan attached to O.S.No.40 of 2001, it is found that from the Kalingarayan canal, sluice number 367 branches and proceeds west to east and at point "A", branches towards south and further at point "F", "B", "E" passes through the lands of the appellants and at point "E" proceeds towards the eastern direction through the lands of the appellants and takes the course further and the channel continues to run to the lands of the respondents as depicted in the plan and the third parties. It is the case of the respondents that the appellants had obliterated the above said channel running through their lands and inasmuch as the lands of the respondents are also the Ayacut lands of Kalingarayan canal, they are entitled to take the water through the sluice number 367 and been taking water from the said sluice from the inception of Kalingarayan scheme, however on account of the obliteration of the channel as above stated by the appellants, according to the respondents, they had been necessitated to lay the suit in O.S.No.40 of 2001 against the appellants. Per contra, it is case of the appellants that the lands of the respondents do not fall under the Ayacut scheme of Kalingarayan canal and have other source of irrigation for their lands and not entitled to draw water through the sluice number 367 and hence according to the appellants, the respondents by attempting to draw water through the sluice number 367 attempted to interfere with the possession and enjoyment of the appellants as regards their lands and hence, according to the appellants, they had been necessitated to institute the suit against the respondents in O.S.No.109 of 2000.

9.The materials placed in the matter go to disclose that both the lands of the appellants as well as the lands of the respondents are the Ayacut lands of Kalingarayan canal, accordingly, it is seen that both the appellants as well as the respondents are entitled to irrigate the lands by utilizing Kalingarayan canal water. In this connection, as rightly put forth by the counsel appearing for the respondents, the Assistant Engineer, Public Works Department (Irrigation Division) examined as P.W.4 has deposed that the total extent of the lands in their area comprising of an extent of 106.02 acres of land are being irrigated only through the sluice numbers 367 to 379 and also deposed that as far as the lands of the respondents are concerned, as they are located near the sluice number 367, they are entitled to irrigate their lands only through the sluice number 367 and other sluices are relatively far away from the lands of the respondents and he has also admitted that in this connection he had issued the certificate marked as Ex.A7 in favour of the respondents and

accordingly it is seen that P.W.4, the Assistant Engineer being the competent person to speak about the irrigational facilities of the lands in question, had clearly come out that lands of the respondents are also being irrigated only through the sluice number 367 and not through the other sluices. Accordingly, it is found that the Courts below have rightly placed reliance upon the evidence of P.W.4 and the evidence of P.W.4 also derive support from the Commissioner's report and plan marked as Exs.C1 and C2 and it is found that the topography of the lands of the parties lie on ground as depicted in the plaint plan attached to O.S.No.40 of 2001 and so seen, it is found that the channel course available in the lands of the appellants is not now available and been obliterated and thereby it could be seen that the respondents had been prevented from irrigating their lands by drawing water from Kalingarayan canal through the sluice number 367. Though from the evidence of P.W.4, it could be seen that sluice numbers 367 and 365 are almost at an equal distance from the respondents' lands, however, when as per the scheme formulated, the respondents are to draw water from the Kalingarayan canal only through the sluice number 367 and not through the sluice number 365 and accordingly, from time immemorial i.e., from the inception of Kalingarayan scheme, the respondents have been irrigating their lands only through sluice number 367. It is found that the Courts below were right in accepting the case of the respondents by placing reliance upon the evidence of P.W.4, the Assistant Engineer of P.W.D. Similarly, from the evidence of the other witnesses examined on behalf of the respondents, it is found that the appellants had obliterated the suit channel running in their lands and in this connection, representations had been made to the concerned authorities by the respondents for restoring the obliterated channel and inasmuch as the appellants had failed to restore the channel, it is seen that the respondents had been necessitated to lay the suit for appropriate reliefs against the appellants.

10. Materials placed disclose that the lie of the lands of the respective parties in the area is such that the respondents as well the appellants are to draw water from the Kalingarayan canal only through sluice number 367 and not by way of other sluices and in such view of the matter, it is found that P.W.4 Assistant Engineer had accordingly deposed in support of the case of the respondents and despite the cross examination of P.W.4, nothing has been culled out from him to disbelieve his evidence in any manner and therefore coupled with evidence of P.W.1 with other oral evidence adduced in the matter, it is found that the respondents are entitled to irrigate their lands through sluice number 367 and inasmuch as, appellants had obliterated the portion of the suit channel in their lands and thereby prevented the respondents from enjoying their lands, the

Courts below had rightly upheld the case of the respondents and granted the necessary reliefs in favour of the respondents. A perusal of the judgment and decree of the Courts below would go to show that both the Courts have correctly and properly assessed the materials on record, both on factual as well as the legal aspects and accordingly determined the case in favour of the respondents and in such view of the matter, no interference is called for with reference to the same, at the second appeal stage.

11.The issues involved/formulated in the matter centering around on factual aspects and as the determination of the factual aspects by the Courts below had been properly done, in my considered opinion, no question of law much less any substantial question of law is involved in the second appeal. Therefore, it is found that the Courts below were right in refusing the relief of permanent injunction sought for by the appellants and right in granting the appropriate reliefs in favour of the respondents as prayed for as regards the suit channel is concerned and when the respondents have established their right to draw water from Kalingarayan canal through the sluice number 367 for irrigating their lands through the suit channel as depicted in the plaint plan of O.S.No.40 of 2001, the Courts below on determining that the appellants had obliterated the portion of the suit channel running in their lands were justified in granting the relief of mandatory injunction in favour of the respondents. The Courts below had not shifted the burden of proof upon the appellants and on the other hand, it is found that the respondents have clearly established the existence of the suit channel as projected by them and accordingly, exposing that it is only the appellants who had obliterated the suit channel mid way which runs through their lands, resultantly, it is found that no interference is called for in the judgments and decrees of the Courts below in dismissing the suit laid by the appellants and decreeing the suit levelled by the respondents. The substantial question of law formulated in the second appeals are accordingly answered.

12.In conclusion, both second appeals fail and accordingly, are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Erode.

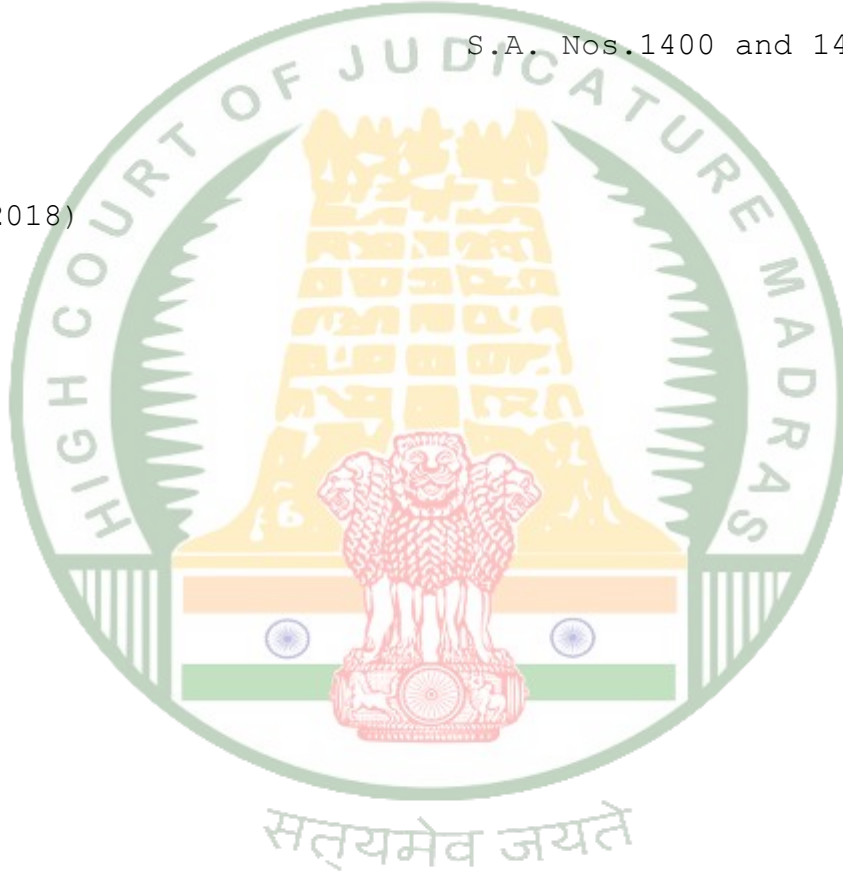
2.The District Munsif cum Judicial Magistrate,
Kodumudi.

+ 1 cc to Mr. B. Ramamoorthy, Advocate Sr.11412

+ 2 ccs to Mr.Naveenkumar Murthi, Advocate Sr.11814, 11815

S.A. Nos.1400 and 1401 of 2003

RR(CO)
EU(23/04/2018)



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