

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2018

PRONOUNCED ON : 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1511 of 2004

1. Lakshmana Gounder (deceased)

2. Kuppanna Muthu

...

Appellants 1 & 2/Plaintiffs

(Memo is recorded. 1st appellant died memo dated 23.04.2018, 2nd appellant is recorded as LR of the deceased 1st appellant vide order of Court dated 27.04.2018 made in S.A No.1511/2004)

Vs.

Govindarajan

...

Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 11.10.2002 passed in A.S.No.69 of 2002 on the file of the Additional District Court, Namakkal, partly confirming the Judgment and Decree dated 21.02.1995 passed in O.S.No.670 of 1987 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.R.Abdurrahman
for Mr.M.Muthappan

For Respondent : Mrs.P.Mahalakshmi

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JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 11.10.2002 passed in A.S.No.69 of 2002 on the file of the Additional District Court, Namakkal, partly confirming the Judgment and Decree dated 21.02.1995 passed in O.S.No.670 of 1987 on the file of the District Munsif Court, Rasipuram.

2. The second appeal has been admitted on the following substantial question of law:

" Whether the Lower appellate Court erred in not granting the relief of mandatory injunction to the plaintiff particularly when it has granted decree for declaration and permanent injunction with regard to suit cart-track."

3. It is found that the deceased first appellant has laid the suit against the respondent/defendant in respect of the cart track for the reliefs of declaration, permanent injunction and mandatory injunctions.

4. The defendant resisted the plaintiff's suit by putting forth the various contentions and denied the entitlement of the reliefs sought for by the deceased first appellant/plaintiff in all aspects.

5. Considering the materials placed on record by the respective parties both oral and documentary, the trial Court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate Court, on a re-appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and it is found that in respect of the suit cart track, the first appellate Court determined the existence of the same and also the entitlement of the plaintiff to the usage of the same and found that the defendant is not entitled to obstruct the plaintiff's usage and enjoyment of the suit cart track as set out in the plaint, accordingly, declaring the plaintiff's right to enjoy the suit cart track and also restraining the defendants from preventing the plaintiff's enjoyment of the suit cart track as put forth, accordingly, granted the reliefs of declaration, permanent injunction and also mandatory injunction in favour of the plaintiff as prayed for. However, it is found that the first appellate Court had not granted the relief of mandatory injunction sought for by the plaintiff as regards the removal of the culvert/stone construction, which, according to the plaintiff, had fallen from the Well belonging to the defendant adjoining the suit cart track and causing hindrance to the usage of the said cart track by the plaintiff. Aggrieved over the refusal of the abovesaid relief of mandatory injunction prayed for by the plaintiff, the present second appeal has been laid.

6. Though the defendant has entered appearance in this second appeal through an advocate, it is found that as regards the reliefs granted in favour of the plaintiff by the first appellate Court, the defendant has not preferred any appeal or cross-objection in the present appeal, challenging the abovesaid reliefs granted by the first appellate Court. That apart, no valid material as such has been projected by the defendant to disturb the determination of the existence and availability of the suit cart track and the entitlement of the plaintiff to use

the same as declared by the first appellate Court and also the direction given by the first appellate Court restraining the defendant from preventing the plaintiff to the usage of the suit cart track and the grant of the relief of mandatory injunction had not been shown to be unacceptable or perverse and accordingly, it is found that the abovesaid findings and conclusions of the first appellate Court do not warrant any interference as such.

7. The only point that arises for consideration in this second appeal is, as to whether the defendant is liable to remove the culvert or stone construction of the Well, which, had fallen on the suit cart track and whether by way of the same, the plaintiff's usage and the enjoyment of the suit property had been hindered in any manner. With reference to the said aspect of the case, it is found that according to the plaintiff, the defendant owned the Well adjoining the suit cart track and the stone construction of the Well or the culvert fell down on the suit cart track and thereby, hindering the access of the said cart track by the plaintiff and therefore, the plaintiff had sought for the relief of mandatory injunction with reference to the same.

8. Though in the written statement, the defendant as such had admitted the falling of the culvert/stone construction of the Well, according to him, the same does not measure as projected in the plaint and on the other hand, measures to a lesser extent and further, according to the defendant, the said Well belongs to him as well as his paternal uncle Nalla Gounder and the abovesaid culvert/stone construction fell about 15 & 16 years ago and by way of the same, the passage, via, the said cart track is not hampered or disturbed in any manner and therefore, prayed for the rejection of the abovesaid relief sought for by the plaintiff.

9. Despite the above defence projected by the defendant, there is no material forthcoming on the part of the plaintiff that the Well located adjoining to the suit cart track belongs exclusively to the defendant. That apart, there is no material placed by the plaintiff to show as to when the culvert/stone construction of the Well fell down on the suit cart track and whether the relief of mandatory injunction as such with reference to the same is sought for within the time allowed by law. That apart, on the materials placed on record and as seen from the commissioners' report and plan marked as Exs.C1 & C2 as well as the other documents projected in the matter, it is found that the usage of the cart track is not in any manner disturbed or hindered by the falling of the culvert/stone construction of the adjoining Well and despite the same, it is found that the plaintiff as well as the other parties had been using the suit cart track as such and therefore, when the above factual scenario is seen, the plaintiff having not established the

exclusive ownership of the defendant to the said Well and also as to when the said culvert/stone construction of the Well fell down and whether he is entitled to seek the abovesaid relief of mandatory injunction, particularly, against the defendant alone and also on the point of limitation, on a cumulative analysis of the materials placed on record, it is found that the first appellate Court had rightly declined the abovesaid relief sought for by the plaintiff and accordingly, disposed of the first appeal as above seen, granting the other reliefs prayed for by the plaintiff.

10. On an analysis of the abovesaid aspects of the matter and the available materials placed on record, it is found that declinement of the abovesaid relief of mandatory injunction prayed for by the plaintiff having been determined by the first appellate Court on the correct appreciation of the materials placed on record and when the said determination is not shown to be perverse or illogical and that apart, when the usage of the cart track, despite the falling of the culvert/stone construction, had not been in any manner hindered and the plaintiff is able to use the cart track as such without any burden, it is found that the abovesaid determination of the first appellate Court being purely a question of fact and based on the proper appreciation of the materials placed on record, in my considered opinion, the same does not call for any interference in this second appeal.

11. In the light of the above discussions, I do not find any error in the declinement of the relief of mandatory injunction by the first appellate Court in favour of the plaintiff as regards the removal of the culvert/stone construction, which had fallen from the adjoining Well, as the same has not in any manner caused interference to the usage of the suit cart track by the plaintiff. The substantial question of law formulated in this second appeal is accordingly, answered against the plaintiff.

In toto, the Judgement and Decree dated 11.10.2002 passed in A.S.No.69 of 2002 on the file of the Additional District Court, Namakkal are confirmed and accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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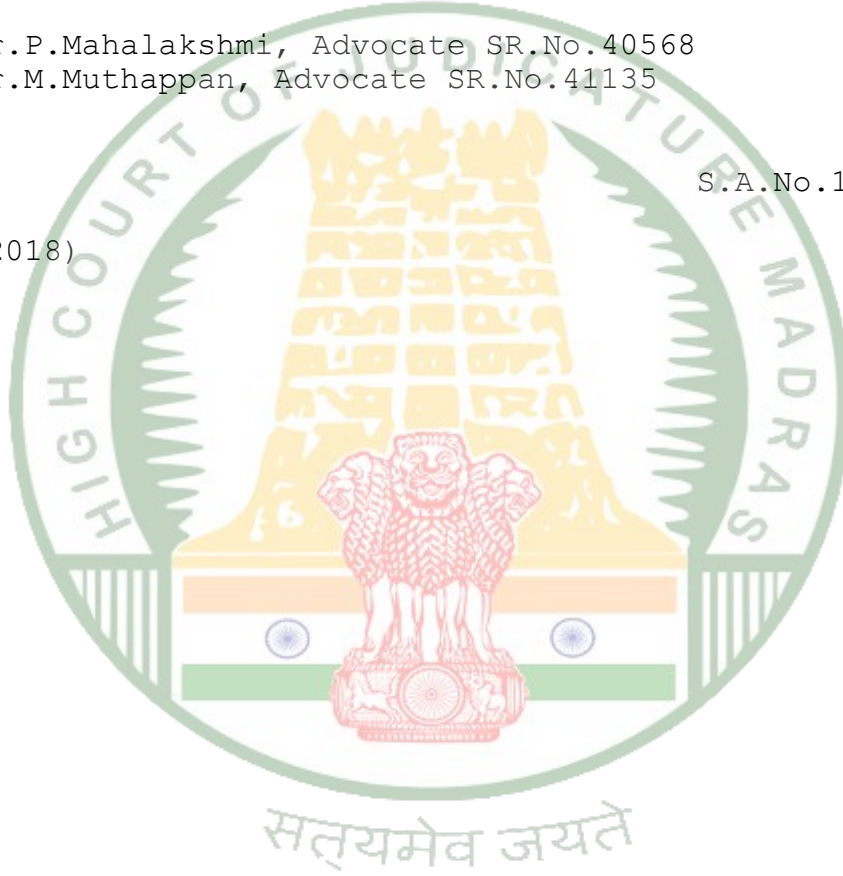
1. The Additional District Court,
Namakkal.
2. The District Munsif Court,
Rasipuram.
3. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.P.Mahalakshmi, Advocate SR.No.40568

+1cc to Mr.M.Muthappan, Advocate SR.No.41135

S.A.No.1511 of 2004

GMR (CO)
GN (13/07/2018)



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