

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2018

PRONOUNCED ON : 27.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos. 1481 & 1482 of 2003

V.Subramanian	...	Appellant in both Second appeals
	Vs.	
1. Ravikumar		
2. The Deputy Director, Geology and Mines, Coimbatore – 641 018.		
3. The Executive Officer, Madukkarai Township, Madukkarai, Coimbatore.		
4. The Assistant Engineer, (Distribution) Tamilnadu Electricity Board, Palathurai – 641 105.	...	Respondents 1 to 4 in both Second appeals
5. N.Sundararajan	...	5 th respondent in S.A.No.1482 of 2003

Prayer in 1481 of 2003 :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.03.2003 passed in A.S.No.140 of 1998 on the file of the I Additional District Judge cum Chief Judicial Magistrate Court at Coimbatore, reversing the Judgment and Decree dated 29.06.1998 passed in O.S.No.2290 of 1993 on the file of the III Additional District Munsif Court at Coimbatore.

Prayer in 1482 of 2003 :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.03.2003 passed in A.S.No.61 of 1999 on the file of the I Additional District Judge cum Chief Judicial Magistrate Court at Coimbatore, confirming the Judgment and Decree dated 29.06.1998 passed in O.S.No.2290 of 1993 on the file of the III Additional District Munsif Court at Coimbatore.

For Appellant : Mr.P.Dinesh Kumar
for M/s.Sarvabhman Associates

For Respondent : Mr.R.Babu
No.1 in both S.As.
and No.5 in S.A.
No.1482 of 2003

For Respondent : V.Viswanathan
No.4

For Respondent : No representation/No appearance
Nos.2 & 3 set exparte

COMMON JUDGMENT

Second Appeal Nos.1481 & 1482 of 2003 have been preferred against the Common Judgement and decree dated 31.03.2003 passed in A.S.Nos.140 of 1998 and 61 of 1999 on the file of the I Additional District Judge cum Chief Judicial Magistrate Court at Coimbatore, reversing the Judgment and Decree of the trial Court insofar as the relief of permanent injunction is concerned and confirming the judgement and decree of the trial Court insofar as declining the relief of mandatory injunction is concerned and the consequent dismissal of the suit in O.S.No.2290 of 1993 in entirety on the file of the III Additional District Munsif Court at

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Permanent injunction and Mandatory injunction.

4. The case of the plaintiff, in brief, is that he owns the plaint "A" schedule property consisting of two Wells and the plaintiff is cultivating the same and also residing with his family members in the house situated in the said land and the property described in the plaint "B" schedule belongs to the first defendant and the first defendant is making arrangements to start a stone crushing unit in the plaint "B" schedule property and if he is permitted to carry on stone crushing unit in the said property, the same would create nuisance, dust, sound and pollute air and water all around and hence, the plaintiff requested the first defendant not to start the said unit and despite the same, the first defendant is making arrangements to start the unit and moved the necessary authorities for seeking necessary permission with reference to the same and hence, left with no other alternative, according to the plaintiff, he has been necessitated to lay the suit against the first defendant and the other defendants for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit is not maintainable either in law or on facts and the commencement of the

stone crushing unit started by the first defendant in his property, would create dust, sound and pollute the air and water all around the place is false and the same had been invented by the plaintiff for the purpose of this case and the first defendant has submitted a plan already for the approval of the Panchayat to start the unit and there is no need for the first defendant to seek the permission from the Pollution Control Board for starting the unit and as per the plan submitted to the Panchayat, he had already completed 95% of the work and there is a Pallam running east-west between the property of the plaintiff and the first defendant and the land of the defendant slop towards the Pallam and the lands of the plaintiff are at an elevated level from Pallam and there are several trees in the said Pallam and the said trees will naturally prevent the spreading of dust and the defendant has taken all the necessary precautions for settling the dust and the unit would not cause any damage or nuisance as alleged by the plaintiff and the plaintiff is not the absolute owner of the plaint "A" schedule property as claimed in the plaint and even the plaintiff's brother is running a quarry adjacent to the plaintiff's property and without any objection from the plaintiff, the same is functioning and hence, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

6. The case of the 4th defendant, in brief, is that the plaintiff has to establish the allegations that the starting of the stone crushing unit by

the first defendant would create pollution of air, water and sound as claimed in the plaint. The 4th defendant is liable to provide service connection, if all the conditions are satisfied and with regard to the allegations of the pollution, the 4th defendant is not the authority and the plaintiff has to approach the Pollution Control Board with reference to the same. The second defendant has to issue licence for starting the stone crushing unit and only thereafter, the 4th defendant is liable to effect the service connection and if the formalities required by law are complied with, the 4th defendant would have no other alternative except granting the service connection and the 4th defendant is ready to comply with the orders of the Court and prayed for disposal of the suit accordingly.

7. The case of the 5th defendant, in brief, is that the description of the plaint "A" schedule property is incorrect and the first defendant's property is located at a lower level and the plaintiff's property is located at a higher level and there is a Pallam situated in between the properties and several trees are available in the Pallam and the allegations of the plaintiff that the stone crushing unit would create a lot of dust, sound and will pollute air and water all around the area is a figment of imagination and the 5th defendant has taken a portion of the property described in the plaint as "B" schedule property from the first defendant on lease and applied to the parties concerned for starting the stone crushing unit and by an order dated 13.01.1994, the panchayat had granted licence and

after complying with the conditions imposed by the local body, the 5th defendant had started the stone crushing unit registered as tiny unit by the Directorate of Industries after issuing the necessary provisional registration certificate and since then, the 5th defendant has been running the unit by installing the necessary machineries and all measures had been taken to prevent spraying of the dust and the distance between the unit and the plaintiff's land and his house is more than 400 metres and the crushing unit would not cause any nuisance or pollution or hindrance to the plaintiff's agricultural operations in his property, hence, the suit is liable to be dismissed.

8. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A9 were marked. On the side of the defendants', DW1 was examined and Exs.B1 to 23 were marked. Exs.C1 to C4 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit laid by the plaintiff in part granting only the relief of permanent injunction and with reference to the grant of mandatory injunction and the other reliefs sought for by the plaintiff dismissed the plaintiff's suit. Aggrieved over the same, the defendants 1 and 5 had preferred the first appeal in A.S.No.140 of 1998 and the plaintiff preferred the first appeal in A.S.No.61 of 1999 and during the

course of the first appeal proceedings, at the instance of the defendants 1 and 5, additional documents have come to be marked in support of their case as Exs.B24 to 29 and the first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the grant of the relief of permanent injunction and by allowing the appeal preferred by the defendants in A.S.No.140 of 1998 and dismissing the appeal preferred by the plaintiff in A.S.No.61 of 1999, thereby dismissed the suit laid by the plaintiff in entirety and impugning the same, the present second appeals have been preferred.

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

“(i) Whether the judgment of the lower appellate Court disposing of the appeal merely on the basis of the consent given by the Pollution Control Board without appreciating the true significance of the matter regarding the need to arrest the unabated pollution, which is a health hazard and environmental enemy is sustainable in law?

(ii) Without an objective consideration of the matter whether the

lower appellate court is correct in law in dismissing the suit in toto only on the ground that permission of the pollution Control Board had been obtained?"

11. According to the plaintiff, he owns the plaint "A" schedule property. It is not in dispute that the plaint "B" schedule property belongs to the first defendant. Alleging that the defendants 1 & 5 had proposed to start a stone crushing unit in the plaint "B" schedule property and inasmuch as the plaint "A" schedule property is situated adjacent to the plaint "B" schedule property and therefore, if the defendants 1 & 5 are allowed to start the stone crushing unit in the plaint "B" schedule property, the same would create noise and dust and thereby, pollute the area and water in and around the place and therefore, with a view to restrain them from starting the stone crushing unit and prevent the authorities concerned from granting necessary permission to them to start the above said crushing unit in the plaint "B" schedule property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

12. Per contra, the defendants 1 & 5 have pleaded that the allegations put forth by the plaintiff that the starting of the stone crushing unit in the plaint "B" schedule property would cause air and water pollution by creating sound and dust are all false and liable to be rejected

at the threshold and according to them, the lie of the lands i.e. the plaintiff A & B schedule properties are such that the plaintiff "B" schedule property is lying at a lower level and the plaintiff's property is lying at an elevated level and there is a Pallam in between the properties consisting of several trees and therefore, according to the defendants 1 & 5, the crushing unit intended to be planned by them in the plaintiff "B" schedule property would not in any manner cause air and water pollution by creating noise and dust and further, according to them, they had already obtained necessary permission from the necessary authorities concerned and started the unit and no such hindrance or pollution had been created thereby and hence, according to them, the suit laid by the plaintiff is liable to be dismissed.

13. From the materials placed, it is found that the stone crushing unit in the plaintiff "B" schedule property had been put in operation already by the defendants 1 & 5, after obtaining necessary licence from the Panchayat concerned and accordingly, it is seen that already the crushing unit had started and been functioning in the plaintiff "B" schedule property. As rightly determined by the first appellate Court, on a perusal of the lie of the properties involved in the matter i.e. the plaintiff "A" schedule property and the plaintiff "B" schedule property, as seen from the commissioner's report and plan, marked as Exs.C1 to 4 intoto, it is found that the plaintiff's house is situated 1000 feet away from the stone crushing unit located in the plaintiff "B" schedule property and it is further

seen that in between the properties, there is a Pallam with several trees and accordingly, it is seen that there is no scope for any noise or dust formation, so as to cause any health hazard to the plaintiff and his family members by the stone crushing unit erected in the plaint "B" schedule property. Accordingly, it is seen that the defendants 1 & 5 have obtained necessary permission from the Panchayat union as well as the local body, after complying with all the necessary formalities legally required to be done and it is found that for several years, the stone crushing unit had been functioning in the area and accordingly, as no dust or noise pollution had been created by way of the same, it is found that the plaintiff is unable to place any acceptable and reliable material pointing to the same or point that the defendants 1 & 5 had caused any violations as such with reference to the starting of the unit in the plaint "B" schedule property.

14. In addition to that, it is found that in the meanwhile, the defendants 1 & 5 have moved the Pollution Control Board for necessary permission to run the unit in the plaint "B" schedule property and from the additional documents marked as Exs.B24 to 29 intoto, particularly, Exs.B26 & 27, it is found that, as rightly determined by the first appellate Court, the Pollution Control Board had granted the necessary permission as per Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 in favour of the defendants 1 & 5 for running the stone crushing unit in the plaint "B" schedule property and accordingly, when it is found

that the concerned competent authority had itself accorded necessary permission to them to run the stone crushing unit and further, as the lie of the property, as noted by the commissioner, would ensure that there would be no dust or sound pollution and no harm caused to the property of the plaintiff as such and when the grievance of the plaintiff is that the defendants 1 & 5 are attempting to run the unit without the necessary permission from the authorities concerned and on the other hand, when it is made clear and also established that they had obtained the due permission from the authorities concerned, particularly, the Pollution Control Board by complying with all the legal formalities, as rightly determined by the first appellate Court, the plaintiff is found to have no cause of action to lay the suit against the defendants. Accordingly, the first appellate Court, on an appreciation of the materials placed on record, rightly set aside the grant of the relief of permanent injunction in favour of the plaintiff by trial Court and thereby, dismissed the suit laid by the plaintiff in entirety.

15. In the light of the above discussions, when the plaintiff has not established by placing any material, worth acceptance that the running of the stone crushing unit in the plaint "B" schedule property would create any dust/sound pollution, which is likely to constitute a health hazard and would pollute the area nearby, it is found that the first appellate Court has rightly appreciated the issues involved in the matter on the materials

placed in the correct perspective and rightly finding that the authorities concerned, in particular, the Pollution Control Board had also accorded necessary sanction to the defendants 1 & 5 to run the stone crushing unit in the plaint "B" schedule property and accordingly, determined that the running of the stone crushing unit would not cause any health hazard to the plaintiff or the nearby residents in the area as alleged in the plaint, dismissed the suit laid by the plaintiff in entirety. It is found that the above determination of the first appellate Court, on the materials placed on record, is found to be not warranting any interference at this stage of the matter. The substantial questions of law formulated in the second appeals are accordingly answered against the plaintiff.

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

Index : Yes / No
Internet : Yes / No
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To

1. The Deputy Director,
Geology and Mines,
Coimbatore – 641 018.
2. The Executive Officer,
Madukkarai Township,
Madukkarai, Coimbatore.

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3. The Assistant Engineer,
(Distribution)
Tamilnadu Electricity Board,
Palathurai – 641 105
4. The I Additional District Judge cum
Chief Judicial Magistrate Court at Coimbatore.
5. The III Additional District Munsif Court at Coimbatore.
6. The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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