

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2018

PRONOUNCED ON : 29.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1809 of 2004

1. Sakkarai
2. Kumar
3. Rathnam

...
Vs.

Appellants

Rajendiran

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 24.03.2004 passed in A.S.No.14 of 2003 on the file of the Principal Subordinate Court, Tiruvannamalai, Partly reversing the Judgment and Decree dated 22.01.2003 passed in O.S.No.1283 of 1995 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Appellants : Ms.M.Abbirami
for M/s.Sarvabhauman Associates

Respondent : No representation/No appearance
set exparte vide
order dated 13.06.2018

JUDGMENT

Challenge, in this second appeal, is made to the Judgement and Decree dated 24.03.2004 passed in A.S.No.14 of 2003 on the file of the Principal Subordinate Court, Tiruvannamalai, Partly reversing the Judgment and Decree dated 22.01.2003 passed in O.S.No.1283 of 1995 on the file of the Principal District Munsif Court, Tiruvannamalai.

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

" (a). whether the Appellate court is right in law in allowing the appeal in part by totally eschewing from consideration the ample evidence to prove the existence of pipe lines as shown in the plan filed along with the plaint and enjoyment of the same for two decades and over?

(b). Whether the judgment of the lower appellate court which is contrary to evidence on record is sustainable in law?"

3. The parties are referred to as per their rankings in the trial Court.

4. The suit has been laid by the plaintiffs for declaration and permanent injunction.

5. The plaintiffs as well as the defendant are brothers and their father is one Ramagounder. It is found that by way of a partition deed dated 27.11.1984, the suit property as well as the other properties had come to be divided between the plaintiffs, the defendant and their father and under the said partition, the B schedule properties detailed therein had been allotted to the defendant and the C schedule properties detailed

therein had been allotted to the plaintiffs. Thus, it is found that in the well located in survey No.10/1, the defendant had been allotted 1/4th share including the electric motor and pump set fitted therein and the plaintiffs had been allotted 3/4th share in the abovesaid well and the accessories fitted to the same. Now, it is the case of the plaintiffs that the defendant had alienated the share in the electric motor & pump set in favour of the plaintiffs on 05.01.1986 and in this connection, it is stated that the receipt had been passed on in favour of the plaintiffs by the defendant. According to the plaintiffs, they own the lands in survey Nos.10/1 and 10/5B as per the shares allotted to them in the partition. Further, according to the plaintiffs, the land in survey No.10/5A had been allotted to the defendant and it is also admitted by the plaintiffs that the defendant had purchased the land in survey No.10/6 and inasmuch as survey No.10/6 does not fall under the Ayakattu of the Well located in survey No.10/1 and as the defendant attempted to take water to the land in survey No.10/6 from the Well in survey No.10/1 without any authority, according to the plaintiffs, they had been necessitated to lay the suit against the defendant for necessary reliefs as regards the same. As regards the above case of the plaintiffs, it is found that the Courts below had accepted their case and accordingly, granted the reliefs in their favour.

6. It is the further case of the plaintiffs that they had been irrigating their land in survey No.10/5B by drawing water from the Well located in survey No.10/1 through the cement pipeline laid underneath the lands in survey Nos.10/1, 10/6, 10/5A and 10/5B and inasmuch as the defendant, after the purchase of the land in survey No.10/6, attempted to remove the cement pipe line laid underneath the survey Nos.10/6 and 10/5A by force, accordingly, they had been necessitated to seek the reliefs with reference to the same.

7. The defendant had denied the entitlement of the plaintiffs to take water from the Well in survey No.10/1 to the land in survey No.10/5B by way of the underground cement pipeline alleged to be located in survey Nos.10/6 and 10/5A. According to the defendant, no such pipeline had been in existence at any point of time and therefore, the reliefs sought for by the plaintiffs with reference to the same cannot be sustained and liable to be rejected.

8. The trial Court, on an appreciation of the materials placed on record, is found to have decreed the suit as prayed for in entirety. On appeal, the first appellate Court, as above seen, partly confirming the judgement and decree of the trial Court as regards the declaration and permanent injunction sought for by the plaintiffs that the defendant is not entitled to take water from the Well in survey No.10/1 to the land

purchased by him in survey No.10/6, however, set aside the judgement and decree of the trial Court granting the reliefs to the plaintiffs in respect of their entitlement to take water from the Well located in survey No.10/1 to their land in survey No.10/5B through the cement pipeline laid underneath the survey Nos.10/1, 10/6, 10/5A and 10/5B as projected in the plaint. Impugning the same, the present second appeal has been laid.

9. As seen from the case projected by the respective parties, admittedly, the land situated in survey No.10/6 is not the subject matter of the partition deed dated 27.11.1984. It is also found that the land in survey No.10/6 had been acquired by the defendant by way of a sale deed dated 06.04.1993, the copy of which has been marked as Ex.B1. Thus, it is found that the defendant had purchased the abovesaid land from Chinnathambi Gounder Vagaira under the said sale deed and therefore, it is found that if at all the plaintiffs had been drawing water from the well located in survey No.10/1 to their land in survey No.10/5B, through the alleged cement pipeline laid underneath the survey Nos.10/6 and 10/5A, they should have obtained the necessary permission from the erstwhile owners, particularly, Chinnathambi Gounder Vagaira as regards the land located in survey No.10/6. As rightly found by the first appellate Court, there is no reference about the entitlement of the parties to take water from the Well in survey No.10/1 to their allotted lands through the

cement pipeline laid underneath the lands as claimed by the plaintiffs. On the other hand, the partition deed marked as Ex.A1 only shows the channel rights granted to the respective parties and there is no mention about the right with reference to the entitlement to draw water through the underground cement pipeline as projected by the plaintiffs.

10. Thus, it is found that if at all the plaintiffs seek any entitlement to draw water from the well located in survey No.10/1 through the alleged cement pipeline underneath the survey Nos.10/6 and 10/5A for taking water to their lands in survey No.10/5B, they should show their legal entitlement to the same. In this connection, the first plaintiff examined as PW1 during the course of cross examination has admitted that the defendant had purchased the land in survey No.10/6 from Chinnathambi Gounder Vagaira and when he had been questioned as to whether he had obtained any right from Chinnathambi Gounder Vagaira as regards the laying of the cement pipeline underneath the land in survey No.10/6, he would only answer that only his father knew about the same. Thus, it is found that PW1 is not aware as to how they had acquired the right to lay the underground cement pipeline in the third parties' land located in survey No.10/6 and according to him, only his father knew about the same. His father Rama Gounder has been examined as PW2 and during the course of cross examination, PW2 would state that only on the permission/license granted by Chinnathambi

Gounder Vagaira, they had been taking water from the Well in survey No.10/1 to their land in survey No.10/5B through the underground cement pipeline laid underneath the survey Nos.10/6 and 10/5A. As above referred to, the land survey No.10/5A had been allotted to the share of the defendant under the partition deed dated 27.11.1984. Further, as above referred to, in the abovesaid partition deed there is no reference about the entitlement of the sharers to take water to their respective lands through the alleged cement pipelines laid underneath their shares i.e. their allotted shares as well as the land located in survey No.10/6 belonging Chinnathambi Gounder vagaira. Thus, it is found that based on the evidence of PW2, only on the permission/licence granted by Chinnathambi Gounder Vagaira, the cement pipelines had come to be laid in Survey No.10/6 and through which mode, it is the case of the plaintiffs that they had been taking water to survey No.10/5B from the Well in survey No.10/1. However, with reference to the abovesaid alleged permission/licence, there is no valid material projected by the plaintiffs. In this connection, the plaintiffs have examined the daughter-in-law of Chinnathambi Gounder as PW3 and PW3 in her evidence has admitted that there is a civil dispute between her and the defendant and according to her, she had come to know about the existence of the underground cement pipeline only after her marriage in the family of Chinnathambi Gounder. Thus, it is found that PW3 is not having any direct knowledge about the alleged permission/licence granted by Chinnathambi Gounder

Vagaira in favour of PW2 Ramagounder for laying the underground cement pipeline in survey No.10/6. Thus, when it is noted that PW3 is inimically disposed of towards the defendant and has no direct knowledge about the permission/licence as deposed by PW2 her evidence would not in any manner be useful to sustain the plaintiffs' case. None associated with the alleged permission/licence granted by Chinnathambi Gounder Vagaira to PW2 for laying the underground cement pipe line has been examined by the plaintiffs other than PW3 and therefore, it is found that there is no valid proof /material as such placed by the plaintiffs to uphold their claim of permission/licence alleged to have been granted in their favour by Chinnathambi Gounder Vagaira.

11. Moreover, the defendant has examined the wife of Chinnathambi Gounder as DW2 and DW2, in her evidence, has stated that at no point of time, there had been any cement pipeline underneath the land in survey No.10/6, which had come to be alienated to the defendant under Ex.B1 sale deed. Thus, it is found that there is no pipeline as such in the land located in survey No.10/6 and if at all the pipeline had been in existence as projected by the plaintiffs, Chinnathambi Gounder Vagaira while alienating the land in favour of the defendant under Ex.B1, would have incorporated the necessary recitals to that effect in that sale transaction. However, as above referred to, there is no reference about the same in Ex.B1 directing the defendant to

continue the arrangement already entered into in respect of the alleged usage of the underground cement pipeline in survey No.10/6. Inasmuch as no such arrangement had been in existence with reference to the same, it is found that no recital to that effect had been made in Ex.B1 sale transaction.

12. The trial Court seems to have placed reliance upon the commissioner's report and plan for upholding the plaintiffs' case as regards the existence of the underground pipeline in S.No.10/6. However, the mere existence of the underground cement pipeline in the lands concerned as noted by the advocate commissioner would be of no use to the plaintiffs to sustain their entitlement to the same as per law.

13. As above seen, by way of Ex.B1 sale deed, the defendant had acquired the right in the land in survey No.10/6. Ex.B1 does not contain any recital about the existence of the underground cement pipeline in the said land for enabling the plaintiffs to take water through the same to their land located in survey No.10/5B. Be that as it may, even assuming for the sake of arguments that any such permission/licence had been granted in favour of PW2 by Chinnathambi Gounder Vagaira as deposed by him, as could be seen from the provisions contained in the Easements Act, in the light of Section 60 of the Easement Act, it is found that the revocation of licence may be express or implied and as per the illustration

(b) appended be objected to Section 60, it is found that when the owner of a field grants a licence to another to stack hay on the field and the owner of the said field thereafter sells the field to the third parties, the licence is revoked. Accordingly, it is found that even assuming that the plaintiffs' case is true that Chinnathambi Gounder Vagaira had granted the licence in their favour for taking water through the underground cement pipeline in survey No.10/6, however, Chinnathambi Gounder Vagaira on alienating the said land in favour of the defendant under Ex.B1, it is found that the said licence gets revoked and in such view of the matter, it is found that the plaintiffs cannot seek any legal entitlement as such to take water through the lands belonging to the defendant located in survey Nos.10/6 and 10/5A. As above seen, as rightly determined by the first appellate Court, there is no material placed by the plaintiffs worth acceptance to show that they had a valid and legal entitlement to take water from the Well in survey No.10/1 to their land in survey No.10/5B through the alleged cement pipeline in survey Nos.10/6 and 10/5A. Merely, from the existence of the cement pipelines as could be seen from the commissioner's report and plan that by itself would not confer any right in favour of the plaintiffs and when the said right had not been expressly detailed and granted to the sharers under the partition deed marked as Ex.A1 and when such right had not been mentioned in Ex.B1 sale transaction and further, after Ex.B1 sale transaction, the licence /permission, even if at all had been granted by Chinnathambi

Gounder Vagaira, gets revoked as per law, thus, it could be seen that the first appellate Court is justified in not granting the relief sought for by the plaintiffs to take water from the Well located in Survey No.10/1 to the land located in survey No.10/5B through the alleged cement pipeline running through survey Nos.10/6 and 10/5A and in such view of the matter, the declinment of the abovesaid reliefs by the first appellate Court as discussed above, are found to be based on the proper appreciation of the materials placed, both factually as well as legally and in such view of the matter, the judgement and decree of the first appellate Court do not call for any interference and the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs.

In conclusion, the Judgement and Decree dated 24.03.2004 passed in A.S.No.14 of 2003 on the file of the Principal Subordinate Court, Tiruvannamalai, are confirmed and resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

29.06.2018

To

1. The Principal Subordinate Court, Tiruvannamalai.
2. The Principal District Munsif Court, Tiruvannamalai.
3. The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No.1809 of 2004**

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