

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2018
PRONOUNCED ON : 17.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1841 of 2004

1. R.Munisamy
2. R.Rajappan
3. V.Rajappan
4. B.Mottuveera Nagappan
5. M.Venkatasamy
6. M.Muniraj
7. Marammal
8. Veerangaappan
9. Maruvarappan
10. Marappa
11. Kalingappa
12. Nagappan
13. Munisamy

.... Appellants/Plaintiffs

Vs.

1. The Executive Engineer, P.W.D.
Irrigation scheme, Dharmapuri.
2. The Assistant Executive Engineer,
PWD, Irrigation scheme, Hosur.
3. The Assistant Engineer, PWD,
Irrigation scheme, Shoolagiri.
4. The District Collector,
Dharmapuri.

... Respondents/ Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.03.2004 in A.S.No.6 of 2003 on the file of the Sub Court, Hosur, reversing the decree and judgment dated 30.03.2002 in O.S.No.144/2001 on the file of District Munsif's Court, Hosur.

For Appellants : Mrs. Hema Sampath, Senior Counsel
for M/s. G.M.Anantha kumar

For Respondents : Mrs. A.Madhumathi,
Additional Government Pleader (CS)

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 29.03.2004, passed in A.S.No.6 of 2003, on the file of the Subordinate Court, Hosur, reversing the judgment and decree dated 30.03.2002, passed in O.S.No.144 of 2001, on the file of the District Munsif Court, Hosur.

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

" 1. Whether in law the lower appellate court was not wrong in omitting to see that the appellant's title was admitted to by the respondents and that admitted facts need not be proved?

2. Whether in law the lower appellate court was right in holding that the suit was barred by the provisions of the Tamil Nadu Irrigation Tanks (Improvement) Act 1949 when the Act would apply to only existing irrigation sources?

3. Whether in law the lower appellate Court was right in finding that permission ought to have been sought under Order 1 Rule 8 CPC when the suit was not filed in representative capacity?

4. Whether in law the lower appellate court did not erred grievously when it brushed aside the valid objection of the land owners that land acquisition proceedings were not taken?"

3. The suit has been laid by the plaintiffs for the reliefs of declaration, permanent injunction and mandatory injunction.

4. The relief of declaration had been sought for by the plaintiffs with reference to the plaint A to K schedule properties and the relief of permanent injunction is sought for to restrain the defendants from in any manner interfering with their peaceful possession and enjoyment of their plaint schedule of properties and also the relief of permanent injunction is sought for to restrain the defendants from constructing a bund in the suit L schedule property so as not to cause damage to the plaint schedule properties or to stagnate the water thereon and the relief of mandatory injunction is sought for to make an opening in the tank bund in S.No.659/2A i.e., L schedule of the suit properties so as to discharge the entire water of the tank downwards. The above suit of the plaintiffs has been resisted by the defendants on various grounds and according to the defendants, it is found that the bund had been in existence already and it is their case that as per the scheme formulated by the Government with reference to the erection of the bund, in the bund portion already in existence, only a limited extent of lands are required to be acquired and in this connection, necessary proposals had been submitted for process and it is seen that erection of bund would not in any manner cause stagnation of water as sought to be made out by the plaintiffs and on the other hand, according to the defendants, the erection of bund would benefit more people and the plaintiffs, in particular, would not be put to any loss or hardship by the erection of bund and accordingly, it is contended by the defendants that the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

5. In support of the plaintiffs' case, PW1 has been examined, Exs.A1 to A12 were marked. On the side of the defendants DWs 1 and 2 were examined. Exs.B1 to B7 were marked. As above seen the trial Court decreed the suit, however, the first appellate Court had reversed the same.

6. The plaintiffs claim title to the properties described in the plaint schedule A to K and only with reference to prevent the defendants from causing any interference with their possession and enjoyment of their abovesaid lands, according to the plaintiffs, they had been necessitated to lay the suit against the defendants. It is the case of the plaintiffs that the defendants, by way of putting up a bund in the plaint L schedule property, are attempting to stagnate the water in their lands and accordingly, sought for appropriate reliefs against the defendants.

7. Materials placed on record go to show that the defendants had not initiated any new bund construction as sought to be projected by the plaintiffs and on the other hand, it is found that the bund construction had been proposed to be taken by the defendants only in the area where the bund had already been put up and by way of the same, it is the specific case of the defendants that only a limited extent of lands would be required to be acquired and the raising of the bund would not in any manner cause hardship to the plaintiff and would on the other hand, benefit various persons and hence, according to them, the suit laid by the plaintiff is liable to be rejected. Though, it is found that the plaintiffs seek claim of title to the plaint schedule properties as described in the plaint, with reference to the abovesaid claim, no scrap of paper has been projected by the plaintiffs and in such view of the matter, when the very basis of the plaintiffs' case is that they have title to the plaint schedule properties as described in the plaint and with reference to the same, no proof whatsoever has been placed by them, it is seen that, as rightly determined by the first appellate Court, the plaintiffs having failed to establish their alleged claim of title to the plaint schedule properties as described in the plaint, on the above sole ground, the plaintiffs' suit had been rightly discountenanced by the first appellate Court. No doubt, the plea has been put forth by the plaintiffs' counsel that the defendants have not disputed the claim of the plaintiffs' title to the plaint schedule properties as such and hence, there is no need for the plaintiffs' to project any document of title in support of their case. However, a reading of the defence taken by the defendants in toto, would go to show that they had disputed the plaintiffs' suit in all aspects and accordingly, the plaintiffs should have endeavoured, at the foremost, to establish that they have a valid claim of title to the plaint schedule properties as sought to be projected by them. When that aspect of the case has not been established by the plaintiffs by placing acceptable and reliable materials whatsoever, the relief of declaration sought for by the plaintiffs cannot be granted without there being any basis for the same and in such view of the matter, it is found that the plaintiffs cannot be granted the relief of declaration as prayed for.

8. The materials placed on record go to show that the defendants had only endeavoured to effect repairs in the already existing bund and with reference to the abovesaid initiative taken by the defendants, the acquisition proceedings had been proposed and wherefrom, it could be seen that only a lesser extent of lands are needed and that apart, it is also found that the putting up of the bund in the place where the bund had already existed, accordingly, based on the materials projected,

it is seen that the same would not in any manner cause stagnation of water in the lands of the plaintiffs, as projected by the plaintiffs and on the other hand, the erection of the bund would only benefit more people and in such view of the matter, it is found that the plaintiffs cannot be allowed to sustain the case against the defendants on mere assumptions and presumptions that the erection of bund proposed by the defendants would cause interference in the enjoyment of their lands as described in the plaint schedule. As rightly found by the first appellate Court, the proposal had been made only to repair the existing bund, so as to discharge the water properly and when the intention of the Government by way of repairing the existing bund had not shown to be in any manner causing interference to the plaintiffs' enjoyment of their lands, it is seen that the plaintiff, as rightly determined by the first appellate Court, has no cause of action to sustain the suit.

9. Though the first appellate Court has faulted the plaintiffs for not laying the suit in a representative capacity, as put forth by the plaintiffs' counsel, when the plaintiffs have independently laid the suit for seeking the reliefs sought for, it is seen that there is no need for the plaintiffs to lay the suit in a representative capacity and therefore, the dismissal of the plaintiffs' suit on the abovesaid ground by the first appellate Court as such cannot be accepted.

10. As rightly determined by the first appellate Court, the proposed bund construction has been taken by the Government only for benefiting the people at large and when the defendants have no personal motive against the plaintiffs in the erection of the bund and when according to the defendants, the proposed bund construction would only require acquisition of smaller extent of lands and by way of the same, more people would be benefited and the bund construction is only proposed to regulate the supply of water so as to benefit the people at large, it is seen that the endeavour of the plaintiffs by way of the abovesaid suit to restrain the abovesaid welfare scheme of the Government cannot be countenanced and found to have been rightly rejected by the first appellate Court.

11. In the light of the abovesaid discussions, the plaintiffs having failed to establish their claim of title to the plaint schedule properties described in the plaint and when the other reliefs sought for by the plaintiffs are only consequential reliefs as such and the plaintiffs having not placed any material that the proposed bund construction would cause interference to their enjoyment of the patta lands as such and on the other hand, when the materials placed go to show that the proposed bund construction would only benefit the people at large and accordingly, the plaintiffs have no cause of action

against the defendants. The substantial questions of law 1 and 4 are accordingly answered against the plaintiffs and in favour of the defendants.

12. As above seen, when the plaintiffs have laid the suit in their individual capacity, there is no need for the plaintiffs to file the suit under Order 1 Rule 8 of the Civil Procedure Code and therefore, the rejection of the plaintiffs' suit on that ground is not warranted and the third substantial question of law is accordingly answered.

13. The first appellate Court had also held that the suit laid by the plaintiffs is barred under the provisions of Tamil Nadu Irrigation Tanks (Improvement) Act 1949 and when it is found that the proposed bund construction is only to regulate the irrigation facility of the neighbouring land owners by discharging the tank water in a particular fashion so as to benefit the people at large, it is found that the determination of the first appellate Court that the suit is also barred under the provisions of the abovesaid Act, as such, do not call for any interference and the substantial question of law no.2 is accordingly answered.

14. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Subordinate Judge, Hosur.
2. The District Munsif Court, Hosur.
3. The Section Officer,
V.R.Section,
High Court, Madras.(2copies)
4. The Executive Engineer, P.W.D.
Irrigation scheme, Dharmapuri.
5. The Assistant Executive Engineer,
PWD, Irrigation scheme, Hosur.

6. The Assistant Engineer, PWD,
Irrigation scheme, Shoolagiri.

7. The District Collector,
Dharmapuri.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.47245

+1cc to Mr.G.M.Anantha Kumar, Advocate, S.R.No.47970

+1cc to the Government Pleader, S.R.No.47310

S. A.No.1841 of 2004

KK(CO)
GSP(13/08/2018)



WEB COPY