

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :03.04.2018

PRONOUNCED ON:09.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.686 of 2004

Ramaswami ... Appellant/Plaintiff

Vs.

1.Mayilathal

2.Gopalakrishnan Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Court of the Subordinate Judge, Dharapuram, made in A.S.No.15 of 2003 dated 26.08.2003, confirming the Decree and Judgment of the Court of the District Munsif, Dharapuram made in O.S.No.14 of 2001 dated 20.12.2002.

For Appellant : Mr.R.Narayanan
for M/s.M.V.Krishnan

For Respondents : M/s.V.Meenakshi Sundaram

J U D G M E N T

This second appeal is directed against the judgment and decree dated 26.08.2003 passed in A.S.No.15 of 2003 on the file of the Subordinate Court, Dharapuram, confirming the Decree and Judgment dated 20.12.2002 passed in O.S.No.14 of 2001 on the file of the District Munsif Court, Dharapuram

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that the "AB" portion shown in the plaint plan is the common pathway belonging to the plaintiff and the defendants and the defendants have right to bail water from the well situated in survey No.278 B and the defendants have no right to lay any pipeline underneath the common pathway for taking water to their lands. However,

the defendants attempted to put up the pipe line underneath the common pathway and if the defendants are allowed to do so, the common pathway could not be made use for taking cart etc., and despite the representation made by the plaintiff with reference to the abovesaid acts of the defendants with the Panchayathars, as the defendants continued to take steps to put up the pipeline underneath the common pathway, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff has dug a new well in the property belonging to him and further, the plaintiff is also preventing the defendants from utilizing the common well by erecting an oil engine for drawing water and further the plaintiff has also removed the pipeline laid underneath his lands and thereby prevented the defendants from irrigating their lands, the defendants for the purpose of agricultural operations as well as home needs and for maintaining the sheep, cattle etc., are necessitated to lay the pipeline underneath the common pathway and by way of laying the pipeline underneath the common pathway, no loss or hardship would be caused to the plaintiff and the plaintiff is not entitled to injunct the defendants from laying the pipeline and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A3 were marked. On the side of the defendants, D.W.1 was examined. Exs.B1 was marked. Exs.C1 and C2 were also marked.

7. 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 plaintiff's suit. Impugning the same, the present second appeal has been laid.

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

- (i)Whether a Commissioner has no right to lay pipe lines beneath the common pathway without consent of the other co-owners?
- (ii)Whether when damage to the common pathway is made out by the defendants' undertaking to make the repairs in case of damage the defendants cannot lay underground pipes under the pathway?
- (iii)Whether the judgment reported in (1972) T.L.N.J Page 143 regarding the rights in a

common channel cannot be applied to the instant case dealing with a common pathway?

9.The plaintiff has laid the suit seeking relief of permanent injunction restraining the defendants from laying the pipeline underneath the common pathway. The plaintiff has filed the plan along with the plaint and in the said plan, the common pathway has been shown as "AB". It is not in dispute that the "AB" portion shown in the plaint plan is the common pathway belonging to the parties concerned. It is also found that the defendants had initiated the steps to lay the pipeline underneath the common pathway for the purpose of drawing water from their well located in survey No.278 B for various purposes. It is the case of the defendants that the common well is not in use and further the plaintiff had also prevented the defendants from using the common well and it is also the further case of the defendants that the pipeline laid by them for taking water from their well through the plaintiff's land had been prevented, on account of the removal of the pipeline laid underneath the plaintiff's lands and hence left with no other alternative, according to the defendants, for the purpose of drawing water to serve/satisfy their needs, they had taken steps to lay the pipeline underneath the common pathway and according to them, by way of laying the pipeline underneath the common pathway, no loss or hardship would be caused to the plaintiff in any manner and therefore the suit laid by the plaintiff is liable to to be dismissed.

10.In this matter, the Commissioner has inspected the properties concerned and from the report and plan of the Advocate Commissioner it is found that, the pipeline already laid for drawing water from the well to the defendants' property through the plaintiff's land has become impossible on account of the removal of the pipeline by the plaintiff. Accordingly, it is noted by the Advocate Commissioner that the pipeline is missing in the plaintiff's property and it is thus the pipeline which had been used by the defendants for drawing water had been rendered impossible on account of the removal of the pipeline by the plaintiff which had been imbedded underneath the property. It is thus found that the defendants for drawing water from their well located in survey No.278 B had taken steps to lay the pipeline underneath the common pathway.

11.The main argument put forth by the plaintiff's counsel is that without the consent of the plaintiff, he being the co-owner, the defendants are not entitled to lay the pipeline underneath the common pathway. On the other hand, according to the defendants, inasmuch as they also have equal right in respect of the common pathway, without causing any disturbance

to the plaintiff's use and enjoyment of the common pathway, the defendants are entitled to make use of the common pathway to the possible extent and the same could not be interfered by the plaintiff and therefore it is contended that the plaintiff is not entitled to obtain the relief sought for. Further according to the defendants, if any damage is caused to the pathway, they are ready to rectify the same and it is further stated that with reference to the same, they had also filed a memo before the Courts below and hence the plaintiff is not entitled to injunct them from laying the pipeline underneath the common pathway.

12. In support of their case, the defendants' counsel placed reliance upon the decision reported in 1998 (3) Law Weekly 197 [Basha Reddiar (died) and 4 others Vs Janarthanam and 5 others]. On a perusal of the abovesaid decision, it is found that a co-owner is entitled to use the common pathway to the maximum benefit without causing interference/disturbance to the enjoyment of the other co-owners in respect of the common property and the position of law as regards the above point has been explained in the said decision in the following manner:

"The finding of the Courts below that the plaintiff is not entitled to have the underground drainage over the common pathway cannot be accepted. As a Co-owner, he is entitled to make use of the land to the maximum benefit, subject to only one condition i.e. his enjoyment should not affect the right of others. To take an underground drainage connection is a right of enjoyment by a co-owner and the other co-owners cannot injunct the plaintiff on the ground that he interferes with their co-ownership rights. If such a relief is granted, it will amount to negating the right of the co-owner to enjoy his co-ownership right. By laying the underground pipeline, there is no interference of the passage or their access to their buildings of their property, except for some minor inconvenience during the time of laying the pipeline. The defendants will not be put to laying the pipeline. The defendants will not be put to any hardship or injury to their co-ownership rights."

13. In the light of the abovesaid decision, it is found that

the defendants being the co-owners of the common pathway are entitled to make use of the same to the maximum benefit without affecting the rights of the other co-owners including the plaintiff and accordingly, it is found that, by way of laying the pipeline underneath the common pathway, the plaintiff would not in any manner be affected and it is thus seen that no inconvenience would be caused to the plaintiff in the use of the common pathway by way of laying the pipeline underneath the same by the defendants and in such view of the matter, in the light of the abovesaid authority, it is found that the Courts below are justified in negating the relief sought for by the plaintiff for injunction the defendants from laying the pipeline underneath the common pathway. That apart, as rightly put forth by the defendants, it is found that the defendants have filed a memo before the Courts below that if any damage is caused to the pathway while laying the pipeline, they would take all the steps to rectify the same and the same has also been adverted to by the Courts below in their judgments and in such view of the matter, it is found that the plaintiff, as such, has no cause of action to institute the suit.

14. In addition to that, as rightly determined by the Courts below, the plaintiff has not established that the defendants are entitled to draw water from their well located in survey No.278 B other than by way laying the pipeline underneath the common pathway. In such view of the matter, as rightly determined by the Courts below, it is seen that left with no other alternative, the defendants, in need of water, for serving their various purposes, had accordingly taken due steps to lay pipeline underneath the common pathway. The same being found to be not causing any inconvenience to the enjoyment of the common pathway by the other co-owners, the action of the defendants cannot be injunctioned by the plaintiff.

15. In the light of the above reasons, the consent of the other co-owners is not required to be obtained by the defendants for laying the pipeline underneath the common pathway and the plaintiff has not made out any case that any damage would be caused to the pathway by the action of the defendants in laying underneath pipeline in the common pathway and further when it is seen that the defendants have undertaken to rectify the damage, if any, caused to the pathway while laying the underneath pipeline, it is thus found that the Courts below are justified in rejecting the plaintiff's case and accordingly, the substantial questions of law formulated in the second appeal are answered against the plaintiff and in favour of the defendants.

16.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mfa

To

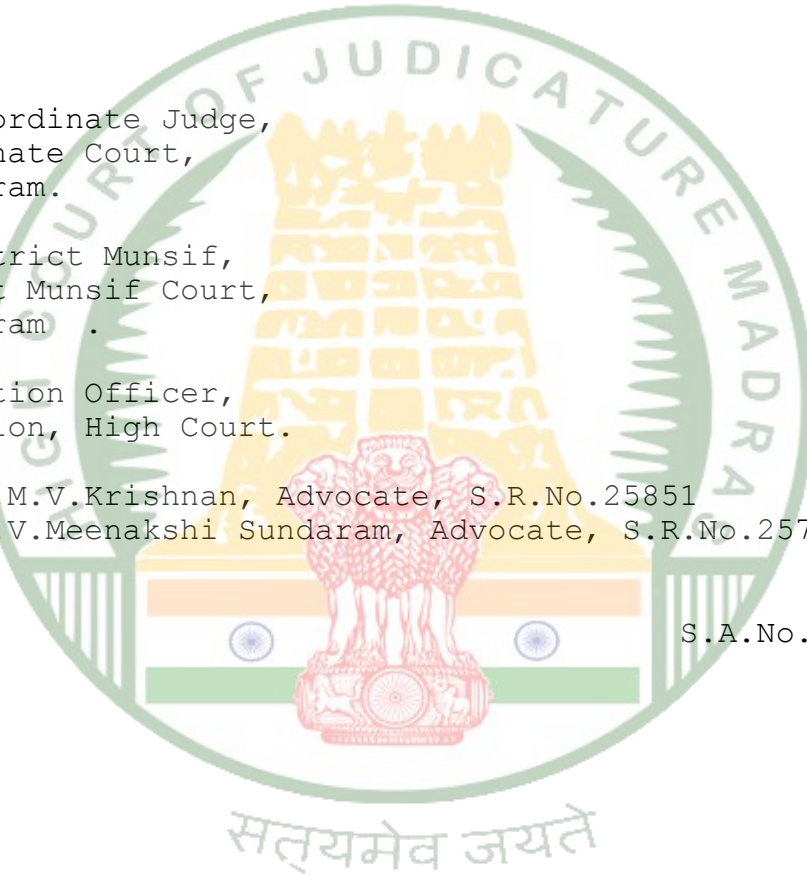
1. The Subordinate Judge,
Subordinate Court,
Dharapuram.
2. The District Munsif,
District Munsif Court,
Dharapuram .
3. The Section Officer,
VR Section, High Court.

+1cc to M/s.M.V.Krishnan, Advocate, S.R.No.25851

+1cc to M/s.V.Meenakshi Sundaram, Advocate, S.R.No.25792

S.A.No.686 of 2004

VGI (CO)
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