

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.02.2018

PRONOUNCED ON:14.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. Nos.793 and 794 of 2003

1.C.Ravikumar

2.C.Govindasamy ... Appellants in both appeals/Plaintiff

Vs.

Dhanalakshmi ... Respondent in both appeals/Defendants

Prayer in S.A.793 of 2003:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.07.2000 made in A.S.No.99 of 1999 on the file of the Principal District Judge, Salem, as confirming the judgment and Decree dated 26.03.1999 made in O.S.No.599 of 1992 on the file of the court of the II Additional District Munsif, Salem.

Prayer in S.A.794 of 2003:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.07.2000 made in A.S.No.100 of 1999 on the file of the Principal District Judge of Salem dated 31.07.2000 as confirmed the judgment and decree made in O.S.No.647 of 1992 on the file of the court of the II Additional District Munsif, Salem dated 26.03.1999.

For Appellants : Mr.S.V.Jayaraman, Senior counsel  
for M/s.C.Kalaiselvan

For Respondent : No appearance. Set exparte

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## C O M M O N

## J U D G M E N T

The S.A.Nos.793 of 2003 and 794 of 2003 are directed against the common judgment and decree dated 31.07.2000 passed in A.S.Nos.99 of 1999 and 100 of 1999 on the file of the Principal District Court, Salem, confirming the common judgment and decree dated 26.03.1999 passed in O.S.Nos.599 of 1992 and 647 of 1992 on the file of the Second Additional District Munsif Court, Salem.

2. O.S.No.599 of 1992 has been laid for declaration and permanent injunction. Similarly, O.S.No.647 of 1992 has been laid for declaration and permanent injunction.

3.The case of the appellants in brief is that the suit property belongs to the appellants by way of a registered partition deed dated 09.09.1986 executed amongst the appellants and their paternal uncles, sisters and mother and by way of the said partition deed, the suit property was allotted to them as item number 7 in the "B" schedule property and originally the suit property was purchased by one P.Appavoo, by way of a registered sale deed dated 20.06.1983 executed by one Padakathudayar and others and thereafter the suit property was jointly enjoyed along with other family properties and accordingly, by way of the partition deed above stated, the appellants were allotted the suit property along with other properties and it is only the appellants, who had been in possession and enjoyment of the suit property exercising full ownership over the same and the respondent claims to have purchased the adjacent property in survey number 8/3B1 on the south of the suit property and the respondent instituted the suit against the appellants in O.S.No.599 of 1992 claiming a false right of channel for taking drainage water through the suit property and thereby attempted to lay the channel in the suit property and in this connection, the appellants preferred the complaint with the police and the parties were referred to civil action and the respondent has no right to take the drainage water through the suit property and however, the respondent is attempting to interfere with the appellants' right to the possession and enjoyment of the suit property illegally and hence the appellants are constrained to lay the suit for appropriate reliefs.

4.Per contra, it is the case of the respondent, after denying the case of the appellants as above claimed in toto, alleged that she is the absolute owner of the suit properties and other properties by virtue of a registered sale deed dated 09.03.1992 and in possession and enjoyment of the same and the provision had been given to the respondent to take drainage water from the Sago factory situated in survey number 8/3B1

through the vaikkal existing north-south 3 feet breadth, east-west 500 feet length, at the south of the appellants' lands, east of well and north of survey number 8/3 B1 to reach Kolathukombai Eri porambok situated in survey number 128/1 and accordingly, the respondent is enjoying the said vaikkal and prior to the same, the respondent's vendor was enjoying the same from time immemorial and the appellants attempted to purchase the property belonging to the respondent, but failed and thereby started interfering with her possession and right to enjoy in taking the drainage water through the vaikaal situated in the suit property and hence the respondent had been necessitated to lay the suit for appropriate reliefs against the appellants in O.S.No.599 of 1992 and hence, prayed for the dismissal of the suit laid by the appellants and the decreeing of the suit preferred by her.

5.Inasmuch as, both O.S.Nos.599 of 1992 and 647 of 1992 were in respect of the same subject matter and between the same parties, the above suits were jointly tried and accordingly common evidence was recorded in O.S.No.599 of 1992 for both the suits and accordingly, in support of the respondent's case, P.Ws.1 to 4 were examined and Exs.A1 to A3 were marked and on the side of the appellants, D.Ws.1 to 3 were examined and Exs.B1 to B4 were marked. Exs.C1 and C2 were also marked. 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 suit filed by the appellants in O.S.No.647 of 1992 and decreed the suit as prayed for levelled by the respondent in O.S.No.599 of 1992. Aggrieved over the same, the present second appeals have come to be laid.

6.At the time of admission of the second appeals, the following substantial question of law was formulated for consideration.

"Whether the Courts below are justified in granting decree in favour of the plaintiff on the ground of easementary right in the absence of any pleading or evidence placed before the Court?"

7.The respondent claims title to the property described and also the subject matter of the suit involved in O.S.No.599 of 1992 by way of the sale deed dated 09.03.1992 marked as Ex.A1. The appellants claim title to the property described in O.S.No.647 of 1992 by way of the partition deed dated 09.09.1986 and the sale deed dated 20.06.1986 marked as Exs.B1 and B2. The description of the property described in O.S.No.647 of 1992 would go to show that the appellants seek title to the property situated in survey number 8/3A measuring acres 2.22 UDR patta

number 53, dry hectares 0.90.0 with a well with 3HP electric motor pump set with service connection number 77. A perusal of the documents marked as Exs.B1 and B2 in toto and cumulatively would go to show that the appellants have acquired title to the above said property and it is further seen that the respondent as such is not disputing the title of the appellants as regards the above said property is concerned. The issue between the parties is only as regards the entitlement of the respondent in taking the drainage water through the vaikkal existing south of the appellants' lands and according to the respondent, she had been granted the said right, by way of the sale deed dated 09.03.1992 marked as Ex.A1 and the said right had been exercised from the days of her predecessors in title from time immemorial and the said vaikkal is the only source available for draining the drainage water from the Sago factory situated in her property in survey number 8/3B1.

8. Accordingly, it is found that as rightly determined by the Courts below, on a perusal of the recitals found in Ex.A1 sale deed would go to show that the respondent had been conferred the right to take the drainage water from the Sago factory situated in survey number 8/3B1 through the vaikkal for letting in the said water at Kolathukombai Eri Poramboke in survey number 128/1. Accordingly, it is seen that as rightly determined by Courts below, particularly, the first appellate court, the respondent is only seeking the right of easement to drain the drainage water from the Sago Unit and does not claim any proprietary right with reference to the same and it is further seen that the drainage water from the Sago factory passes through the 3 feet width channel running east-west 50 feet lying at the west of the well and the said right had been exercised by the respondent from the days of her predecessors in interest for more than 50 years. It is therefore seen that only by way of easementary right the respondent is seeking the reliefs sought for in her suit. Accordingly, even the appellants as well as the witnesses examined on their behalf, had admitted that the channel runs for several years and the channel originally belonged to Velayutham and the same is the only channel which runs from the Sago Unit to the Kuttai Poramboke. Therefore, it is further seen that the Courts below had also based on the evidence adduced by the respondent through her witnesses namely, D.Ws.2 and 3 found that the respondent had been taking the water through the said channel to drain the water of the Sago Unit over a long period of time. The above position is also buttressed by the report and plan of the Advocate Commissioner marked as Exs.C1 and C2 and considering the fact that the above said easementary right is attached to the property acquired by the respondent by way of her sale deed, accordingly, the respondent is entitled to drain the drainage water to the Kuttai through the said channel and therefore the

first appellate court correctly determined that the respondent has got easementary right over the subject matter of O.S.No.599 of 1992 i.e., the channel and in such view of the matter, the above determination of the issues involved between the parties centering on factual aspects, at the stage of second appeal, the same do not warrant any interference, since the determination of the issues revolving around the same has been correctly arrived at by the Courts below in the proper perceptive of the materials placed on record.

9.However, it is contended by the counsel for the appellants that in so far as the suit property involved in O.S.No.647 of 1992 laid by the appellants, inasmuch as the respondent has not thrown any the challenge to the entitlement of the same by the appellants, it is contended that the Courts below had erred in not granting the relief of declaration sought for by the appellants with reference to the same. The above contention seems acceptable. So far as the property involved in O.S.No.647 of 1992 is concerned, the respondent has not impugned the title of the appellants with reference to the same. Accordingly, it is seen that the Courts below should have granted the relief of declaration in favour of the appellants as for as the said property is concerned. To that extent, it is found that the Courts below had failed in not granting the appropriate relief in favour of the appellants. In other aspects, as above seen the Courts below had properly appreciated the materials on record and granted the appropriate reliefs in favour of the respondent.

10.In the light of the above discussions made above, the Courts below are justified in granting the decree as prayed for, in favour of the respondent on the ground of easementary right, particularly, when the pleadings and materials placed on record, point to the entitlement of the said right in favour of the respondent. The Courts below had erred in not granting the relief of declaration sought for by the appellants, in so far as the suit property comprised in O.S.No.647 of 1992 is concerned and accordingly, it is determined that the appellants are entitled to obtain the relief of declaration as regards the said property. The substantial questions of law formulated in the second appeal are accordingly answered.

11.In conclusion, (a) the judgment and decree dated 31.07.2000 passed in A.S.No.99 of 1999 on the file of the Principal District Court, Salem confirming the judgment and decree dated 26.03.1999 passed in O.S.No.599 of 1992 on the file of the II Additional District Munsif Court, Salem are confirmed and resultantly, the S.A.No.793 of 2003 is dismissed.

(b) the Judgment and decree dated 31.07.2000 passed in A.S.No.100 of 1999 on the file of the Principal District Court, Salem confirming the judgment and decree dated 26.03.1999 passed in O.S.No.647 of 1992 are partially set aside and the appellants are granted the relief of declaration as prayed for in O.S.No.647 of 1992 and in other aspects, the judgment and decree of the Courts below above stated are confirmed. Accordingly, the S.A.No.794 of 2003 is partly allowed.

12. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Salem.
2. The II Additional District Munsif, Salem.

Copy to

The Section Officer, V.R. Section,  
High Court, Madras. (2 copies)

+2cc to Mr.C.KALICHELVAN, Advocate, S.R.No. 11087

judgment made in  
S.A.Nos.793 and 794 of 2003

MP(CO)  
TR(15/05/2018)

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