

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.03.2018

PRONOUNCED ON:04.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.803 of 2004

and

C.M.P.6250 of 2004

1.Muniyan

2.Jayaraman

3.Sangunathan Appellants/Defendants

Vs.

Munusamy ... Respondent/Ist Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed by the Principal District Judge, Villupuram in A.S.No.176 of 2001 dated 03.05.2002 reversing the judgment and decree passed by the Principal District Munsif, Ulundurpet in O.S/No.105 of 2000, dated 25.04.2001.

For Appellants : Mr.A.Thiyagarajan, SC
for M/s.S.Balamurugan

For Respondent : Mr.T.Gandhi

J U D G M E N T

This second appeal is directed against the judgment and decree dated 03.05.2002 passed in A.S.No.176 of 2001 on the file the Principal District Court, Villupuram reversing the judgment and decree dated 25.04.2001 passed in O.S/No.105 of 2000 on the file of the Principal District Munsif, Ulundurpet.

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

3. Suit for permanent injunction.

4.The case of the plaintiffs in brief is that the items 1 to 3 of the suit properties were purchased by the first plaintiff by way of the sale deeds dated 27.06.1980 and 13.05.1981 and the items 4 to 6 of the suit properties were purchased by the second plaintiff, by way of the sale deeds dated 20.12.1991 and 02.05.1994 and the first plaintiff dug a well in the year 1985

and put up side bore to a width of 200 feet towards north and has been bailing water and the defendants had dug a well in the property belonging to them situated adjacent to the suit properties belonging to the plaintiffs and while so, the defendants attempted to put up side bore towards the western side for about 20 feet from their property which was prevented by the plaintiffs and if the defendants are allowed to put up the side bore as abovestated, the supply of water to the plaintiffs would be affected and the attempt of the defendants to drill the side bore in items 4 to 6 was also prevented by the plaintiffs and hence according to the plaintiffs, they had been necessitated to prevent the defendants from drilling any side bore in the suit lands and hence the suit.

5. The case of the defendants in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts and it is true that the defendants have got lands adjacent to the suit properties however the defendants have not made any attempts to drill the side bore in the plaintiffs' lands and the first defendant's lands is 163 feet and the second defendant's land is 329 feet away from the lands of the plaintiffs and even if the defendants put up side bore in their lands, the same would not affect the plaintiff's right in any manner and hence the suit laid by the plaintiffs without any cause of action is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A7 were marked. On the side of the defendants, D.W.1 was examined. No documents has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the plaintiffs. The first appellate court, on appeal, reversed the judgment and decree of the trial court and granted the reliefs sought for by the plaintiffs. Aggrieved over 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.

Whether on the facts and in the circumstances of the case, the First Appellate Court was right in holding that by granting injunction the respondents right enshrined under section 7h of the Easement Act 1882 will be infringed is correct in law?

9. From the materials placed on record, it is found that the plaintiffs have dug a side bore through the aid of which they are getting water supply for irrigating their lands. It is further noted that the distance between the lands of the first plaintiff and the well of the first defendant is 163 feet and the distance between the lands, well of the first defendant and the well of the second plaintiff is 329 feet and in such view of the matter, the case of the plaintiffs that if the defendants dug any side bore, the same would extend to their lands and thereby their water supply would be affected as such cannot be accepted. It is the case of the defendants in specific that, they have not made any attempts to put up the side bore in the plaintiffs' properties. In such view of the matter, the case of the plaintiffs that the defendants are attempting to put up the side bore in their lands as such cannot be countenanced, particularly, when there is no material placed on record.

10. The first appellate court on the basis of surmises and conjunctures proceeded to hold that if the defendants are permitted to drill the side bore, the same would extend upto the plaintiffs lands and thereby the same would affect the plaintiffs water supply and when the said determination is found to be based not on the materials placed, but on conjectures and assumptions and further when it is found that the lands of the parties concerned are lying wide apart, it is seen that as rightly argued, the first appellate court without any basis erroneously held that the defendants, in case, they put up the side bore, the same would project into the plaintiffs lands. In this connection, the first appellate court seems to have placed reliance upon section 7h of the Eastments Act, 1882. However, as rightly argued, the application of 7h of Eastments Act, 1882 do not apply to the case at hand.

11. When it is noted that the plaintiffs have come forward with the suit to restrain the defendants from putting up side bore in their lands and when the defendant have not endeavored or shown to have endeavored to put up the side bore in the plaintiffs' lands and further when it is found that the lands of the defendants are situated quite a distance away from the plaintiffs lands, it is found that even if the defendants drill a side bore in their lands, the same would not extend to the plaintiffs' lands and in such view of the matter, the reasoning of the first appellate court by holding, on guess work, without any foundation, that in case, the defendants put up side bore, the same would extend to the plaintiffs lands and thereby the plaintiffs water supply would be affected are all seen to be findings sans any material but only on suppositions and assumptions and in such view of the matter, it is found that the first appellate court has erred in reversing the well considered judgment and decree of the trial court in dismissing the plaintiffs' lis.

12.A reading of the judgment and decree of the first appellate court would go to show that the first appellate court proceeded to uphold the plaintiffs case based on ifs and buts without there being any material to hold that the defendants are actually or attempting to up any side bore in their lands and further without any material to hold that even in case, the defendants put up the side bore in their lands, the same would extend upto the plaintiffs lands. In such view of the matter, when further it is noted that there is no application of 7h of the Eastments Act, 1888 to the case at hand, it is found that the first appellate court is not right in holding that in case, the defendants put up side bore within their limits, the same would affect the plaintiffs right sans any materials pointing to the same particularly when the distance between the lands of the respective parties are situated quite apart from each other and in such view of the matter, it is found that the judgment and decree of the first appellate court cannot be allowed to sustain any further. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiffs and in support of the defendants.

13.In conclusion, the judgment and decree dated 03.05.2002 passed in A.S.No.176 of 2001 on the file the Principal District Court, Villupuram are set aside and the judgment and decree dated 25.04.2001 passed in O.S/No.105 of 2000 on the file of the Principal District Munsif, Ulundurpet are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mfa
To

1. The Principal District Judge,
Principal District Court,
Villupuram.

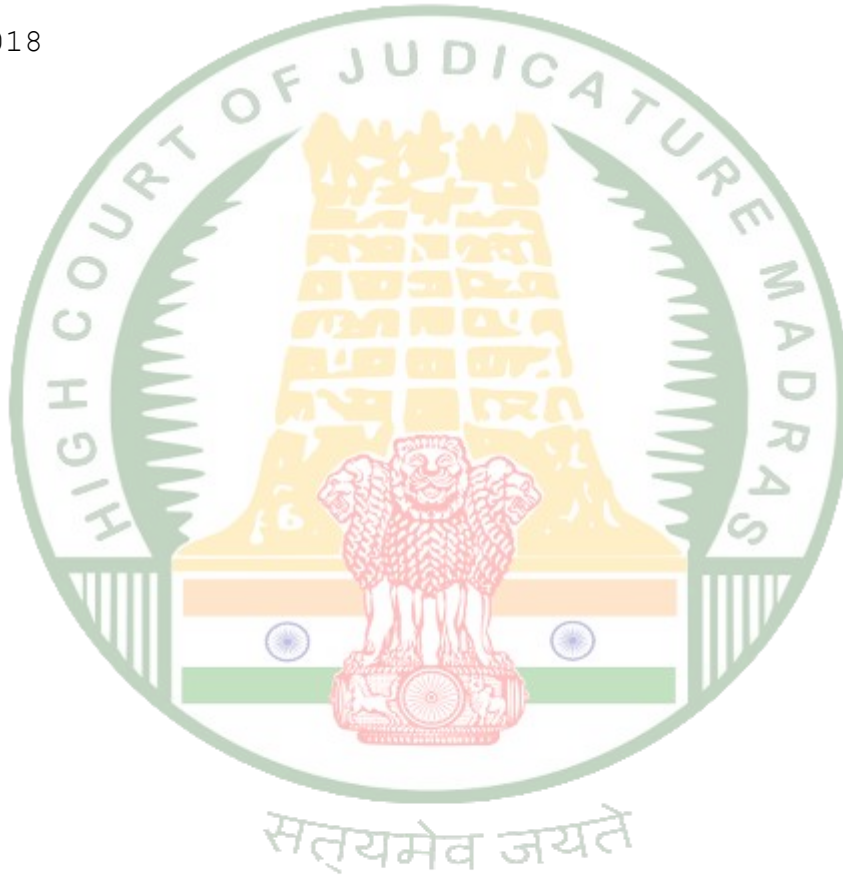
2.The Principal District Munsif,
Principal District Munsif Court,
Ulundurpet.

3.The Section Officer,
VR Section,
High Court.

+1 cc to Mr.T.Ganthi Advocate sr 24773
+1 cc to Mr.A.Thiyagarajan Advocate sr 24723

S.A.No.803 of 2004

rj(co)
aa03/05/2018



WEB COPY