

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**Second Appeal No.1377 of 2011**

**JUDGMENT:**

Challenge in the present Second Appeal is to the reversal judgment passed by the learned Special Judge for Trial of Cases under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act-cum-Additional District Judge, Vizianagaram, in regular Appeal Suit No.67 of 2005 on 7.7.2011.

2. The plaintiff is the appellant in the present Second Appeal. He succeeded in getting the relief of perpetual injunction restraining the respondents/defendants from letting of excess and waste water of their land situated to the West of the plaintiff schedule bund into the lands of the plaintiff situated to the East of the plaintiff schedule bund by cutting the said bund and for costs of the suit in O.S. No.97 of 1997, dated 18.3.2005. When the 1<sup>st</sup> defendant preferred the Appeal in A.S. No.67 of 2005, the learned Appellate Judge, by his judgment, dated 7.7.2011, set aside the judgment and decree passed by the learned trial Court and allowed the Appeal. The consequence is that the suit stood dismissed. Aggrieved over the same, he preferred the present Second Appeal under Section 100 of the Civil Procedure Code, 1908 (for short, 'C.P.C.')

3. Heard Sri M. Jagannatha Sarma, learned counsel for the appellants. Though, chances were afforded to the respondents, somehow, the respondents could not get the arguments tendered,

however, posted for disposal on merits. Of course, today the advocates are abstaining from attending the Courts.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Suit.

5. The plaint map would give the real situation of lands and sluice which is called 'Vuta Kaluva' constituting the subject-matter. The plaintiff owns land towards East of the defendants' land and also towards West stretching to the extent of half portion of the defendants and further East abutting his own land. To further North, Kandi Kaluva runs, whereas to the extreme South shown in the plaint map, Pallapu Kaluva runs. There is no dispute with regard to the factual aspects that the lands of the plaintiff and the defendants are situated in low lying area, compared to the lands of others situated towards West and South. That has been the reason, from the fields of each land owner, sluices are open into Vuta Kaluva from Northern side and Western side and the extra water flows into Vuta Kaluva situated on all four sides of the defendants' lands and then excess water flows into Kandi Kaluva through the lands of one Lagudu Ramu Naidu on the North-west of the defendants' lands and then towards North-east of the plaintiff's land. Thus, the excess water runs through the defendants' lands as well as the plaintiff's lands, then flows into Vuta Kaluva or through the lands of the plaintiff and the defendants, and then joins into Kandi Kaluva. The plaint schedule portion is situated, which is a sluice admeasuring one yard in width and 100 yards in

length is shown opening into plaintiff's lands from the defendants' lands on the extreme North-eastern portion and running across the lands of the plaintiffs towards North-east in the Western portion.

6. The dispute can be better understood if the plaintiff allegations and written statement averments are projected in nutshell. According to the plaintiff, he owns ancestral land in Sy.452/4 in an extent of Ac.3-11 cents and to the South of plaintiff's lands the defendants' land is situated. The 1<sup>st</sup> defendant purchased the land from Karkarlapudi Narayana Gajapathi Raju under a Registered Sale Deed, dated 16.6.1973. The lands of the plaintiffs and the defendants are under Ayacut of Appalaraju tank. A channel called 'Pallpu kaluva' brings water from sluice of the tank, and from the said sluice the plaintiff and the defendants are drawing water to their fields. Water from Pallapu Kaluva flows from North and excess water flows to further North to Kandi Channel. Water from plaintiff's lands flows to the North to Kandi Channel. Like-wise, surplus water of the defendants' lands also flows towards North into the said channel. Neither the defendants nor their predecessors have any right to let out surplus land into the land of the plaintiff. If the defendants let out excess water from their land into plaintiff's land, the plaintiff sustain loss and the defendants have right to draw water from Pallapu Kaluva through such channel situated to the West of the land of Chalumuri Simhachalam, but the defendants highhandedly making attempts to let out water from their land by cutting plaintiff schedule bund and

proclaiming that they would let out excess water from their lands to the plaintiff's land. Therefore, he filed the suit for the aforesaid relief.

7. The second defendant filed written statement and it was adopted by other defendants. According to the plaintiff, there are no outlets from the defendants' lands and they are enjoying right to let out waste water from their land situated to the South-east corner and North-east corner of the Eastern bund since 25 years and the rights are vested upon them from their predecessor and the plaintiffs let out waste water into the lands of the defendants from the land called 'Burloo maku' and the surrounding ryots also let out their waste water from their lands by getting their Eastern bund into the lands of defendants and the plaintiff has no right to obstruct to let out excess water to the Eastern bund of the plaintiff. Northern side lands and the defendants' lands are at higher plane. If the water is not let out into plaintiff's land, the defendants will sustain loss of crops, paddy and blackgram. Hence, they sought to dismiss the suit.

8. The trial Court settled the following issues:

- (i) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (ii) To what relief?

9. Before the trial Court, P.Ws.1 to 3 were examined and Exs.A1 and A2 were marked on behalf of the plaintiff, whereas D.Ws. 1 to 5 were examined on behalf of the defendants and no documents were marked on behalf of the defendants.

10. The learned trial Court, having heard arguments, observing that the Sale Deed of the defendant does not contain a recital as to the right of letting out excess water into the plaintiff's lands, held that the plaintiff could prove his case and thereby granted injunction decreeing the suit. The trial Court made an observation in paragraph-10 accepting the plea of the plaintiff that the defendants tried to dig sluices from their lands into the plaintiff's land by cutting the bund. Thus, the suit was decreed, of course referring to the evidence of the Commissioner even.

11. When the 1<sup>st</sup> defendant preferred the aforesaid appeal, the learned lower Appellate Judge formulated the points for determination, thus:

- (1) Whether the plaintiff is entitled to get permanent injunction as prayed for?
- (2) Whether the Judgment rendered by the trial Court is not sustainable and is liable to be set aside?
- (3) To what relief?

12. The learned lower Appellate Judge having made elaborate discussion on appraisal of evidence of P.Ws.1 to 3 and basing on the entries in Ex.A1-Sale Deed touching the recital to the effect that the 1<sup>st</sup> defendant was given right to allow the excess water from his land to flow into the land on the Southern and Northern sides, observed that there was no possibility of letting water towards South and North as the land on Northern side is higher in level, and

the land on Southern side is also higher in level, its owners are letting out excess water to flow into the land of defendants. Referring to the Commissioner's plan and report, found that the land owners on Southern side as well as Northern side are allowing excess water to flow into the defendants' land and that the defendants are allowing excess water to flow through the outlets, which are in North-East corner and South-East corner shown in Red colour in the plan. Then, the lower Appellate Court pointed out that the plan appended to the plaint would show the subject-matter as one yard in East-West and 100 yards North-South roughly. But, according to the learned lower Appellate Court, the dispute was with regard to the bund, but, as seen from the prayer made in the plaint, injunction was sought to restrain the defendants from letting out excess and waste water into the land of the plaintiff and also observing that for the reasons best known to the plaintiff he did not show his land into which the defendants are allowing excess and waste water to flow as the suit schedule property. The learned lower Appellate Court found that the relief claimed by the defendants is in regard to one property, whereas the schedule given in the plaint is for a different property, and held that the plaintiffs failed to prove that the defendant is allowing excess and waste water into their land by cutting the Western bund, and, therefore, the plaintiff is not entitled to get the relief and thereby allowed the Appeal setting aside the judgment and decree passed by the trial Court.

13. The learned Counsel, Sri M. Jagannatha Sarma, would point out the very fact that the defendant No.1 has not filed any Sale Deed and the appellate Court has erred in setting aside the judgment and decree passed by the trial Court, according to him, gives rise to substantial questions of law as perverse findings are recorded by the lower Appellate Court.

14. It is now to be seen, whether there are substantial questions of law to deliberate in the present Appeal.

15. In the grounds, the appellant-plaintiff in paragraph-5 formulated the following substantial questions of law:

“(a) Whether the first appellate court was justified in not going by the recital of Ex.A1 Registered Sale Deed, dated 16.6.1973 in favour of the first defendant wherein the customary way of letting out excess/waste water from Ex.A1 land has been mentioned to be towards North and South of the land?

(b) Whether the first appellate Court was right in concluding that it is not practical to let out excess water from D1's land towards North and South in view of its finding that D1's land is surrounded by a canal of 1½ feet width (called Vuta Kaluva) which joins a bigger canal on the Northern side as per the sketch of the Advocate Commissioner?

(c) Whether the judgment of the first Appellate Court is sustainable in view of the sketch of Advocate Commissioner according to which the defendants can let out their excess waste water from the small canal (vuta kaluva) surrounding their land and leading to the bigger canal (kandi kaluva) on the Northern side without necessarily letting out their excess water through the plaintiff's land?”

16. The relief claimed in the plaint is to restrain the defendants from cutting the bund of the plaintiff and getting excess water through his land situated to the North-east corner of the defendants' land, which joins the plaintiff's land at that place and the Kaluva is also shown in Red ink. But, the report of the Commissioner would clearly show that inside the defendant's land there is one Vuta Kaluva situated on all sides to a width of 1½ feet. Towards Western side, the surrounding lands situated are owned by one Bandaru Bangru Naidu s/o. Patrudu, Chalumuri Simhachalam, and their lands are higher in level than the defendant's land. There is one inlet from Chalumuri Simhachalam's land to the defendant's land, which is shown in Green colour. On the Northern side of the defendant's land, surrounding land belongs to one Lagudu Ramu Naidu's land, plaintiff's' land and another bit of the plaintiff's land are situated. He found that there is an inlet from the land of one Bandaru Bangaru Naidu to Lagudu Ramu Naidu's land, and there is another inlet from the land of one Ramu Naidu to the defendant's land. The said inlets are shown in Green colour and the said lands towards Northern side of the defendant's land are at higher level. Towards South of the defendant's land, the surrounding lands are situated and owned by Chalamuri Ramu, Chalamuri Simhachalam, Barla Sanni Babu and the inlets from the said lands open into the defendant's land, which are also shown in Green colour; towards Eastern side of the defendant's land there is one big plot of the plaintiff, shown as 'plaintiff's land' in

the rough sketch; inside the said land there is one 'Vuta Kaluva' and there is one outlet from the defendant's land to the plaintiff land towards North-eastern corner shown in Red colour and there is one 'Vuta Kaluva' towards South-North from the disputed land of the defendant to the main channel through the plaintiff's land, which is at a higher level.

17. From the observations made by the learned lower Appellate Court, it is clear that towards West and towards South the lands situated around the defendant's lands are located on a higher plane and invariably waste water or excess water has to flow from others' lands into the defendant's land and from there to the plaintiff's land, which is shown in Red colour in the map running across the plaintiff's land.

18. Though, it is the case of the plaintiff that the defendant attempted to cut the bund and run the channel to drain out waste or excess water, but the plaintiff shows the subject-matter as 1 yard in width and 100 yards in length and unless channel has been in existence at least for a considerable period, which according to the defendant for the past 25 years it has been in existence, there is no need for the plaintiff to show the subject-matter as such describing it as one yard in width and 100 yards in length, and, therefore, it appears that the very frame of the suit is incorrect and not maintainable for the relief, which he sought, in case such channel is already existed as

shown in Red colour in the plaint map which is cutting across the plaintiff's land.

19. The relief of perpetual injunction is not the proper relief sought to be claimed and can be granted and the relief ought to have been for mandatory injunction, but not for perpetual injunction. Thus, the frame of the suit appears to be incorrect. Besides, the fact that there is no escape for the excess or waste water that run into Kandi Kaluva from the fields situated on the Western side and Southern side of the defendant's land on all four sides and then fall into 'Kandi Kaluva' through 'Vuta Kaluva', when it comes to the North-eastern corner where the land of the plaintiff is situated towards North as well as East, Vuta Kaluva runs into Kandi Kaluva, which is shown on higher plane appears to be improbable as the water running from Vuta kaluva towards Eastern side of the defendant's land, which is to the West of the plaintiff's land and then runs towards North, it cannot go towards West and then take a turn to North and then join 'Kandi Kaluva' when geographical location is seen Western as well as Southern side lands are at higher plane, compared to Eastern and Northern sides.

20. Therefore, not only the plaint map appears to be incorrect but also the relief sought for by the plaintiff is also not correct.

21. There is no merit in the present Appeal and the Appeal is, therefore, dismissed. It is always open to the plaintiff to seek

appropriate relief, in case if he so chooses. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

---

**A. SHANKAR NARAYANA,J**

Dt.02.03.2018

gbs

