

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL No.1763 of 2004

1.Palani Gounder

2.Royappan

.. Appellants/Defendants 2 & 3

/versus/

1.S.K.Hanumantha Gounder

... 1st Respondent/Plaintiff

2.Natarajan

... 2nd Respondent/1st Defendant

3.Velusamy

4.Subramaniam

5.Ramasamy @ Chinnaramasamy

6.Sarojini

... 3 to 6 Respondents/Defendants 4 to 7

(Respondents 3 to 6 already set
exparte in the lower Court. Hence,
they are given up in the Second Appeal)

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.06.2004 made in A.S.No.5 of 2002 on the file of the Principal Subordinate Judge, Gobichettipalayam reversing the judgment and decree dated 28.11.2001 made in O.S.No.244 of 1997 on the file of the District Munsif Court, Sathyamangalam.

For Appellants :Mr.T.Doraisamy

For Respondents :Mr.M.V.Venkateshan for R1

R2-No apperance

R3 to R8 given up

J U D G M E N T

Heard the learned counsel appearing for the appellants, who are defendants 2 and 3 in the suit and the learned counsel appearing for the first respondent.

2. In the year 1989, a partition was effected between Anumantha Gounder, his son Natarajan and his daughter Sarojini in respect of the properties more fully described in the schedule of the partition deed, which was marked as Ex.A7. The

dispute is regarding usage of pipeline laid in the Government land and the other properties not owned by the parties herein to carry water from the well situated in S.No.425/3B for the purpose of irrigating the land in S.Nos.214 and 215 of the same village. The plaintiff has contended that he obtained license from the Government to lay the pipeline to specifically irrigate in S.Nos.214 and 215 which are also owned by him, for drawing the water in the well situated in S.No.425/3B. After partition, the parties cannot alienate the right of carrying the water through the said pipeline. While so, the first defendant has sold away the properties given to him to including the right of carrying the water through the pipeline laid in the Government land for irrigating S.Nos.214 and 215.

3. The specific contention of the plaintiff is that the right to carry water through the pipeline is restricted to irrigate S.Nos.214 and 215 alone and the right and permission granted to him is inalienable and absolute to him alone. Hence, he sought for declaration to that effect and also mandatory injunction to remove the pipeline laid by the defendants to carry water beyond S.Nos.214 and 215 to the other lands purchased by them from the first defendant. The trial Court dismissed the suit in toto. Whereas, the lower appellate Court allowed the appeal and granted the relief sought for. Against which, the second appeal is filed by defendants 2 and 3.

4. At the time of admission, this Court has formulated the following Substantial Question of Law:-

Whether any Court can grant a decree declaring that the licence already granted is permanent and absolute when under the provisions of the Indian Easements Act, such licence is terminable?

5. The learned counsel appearing for the appellants forcibly submitted that in the recital of the proceedings dated 17.09.1987 issued by DRO granting permission to Anumantha Gounder/the plaintiff, the right to use the water was not restricted to S.Nos.214 and 215 alone. Similarly, when the partition was effected between the family members of Anumantha Gounder, the right to draw water from the well situated in S.No.425/3B has been reserved to all the parties not only to the properties which were part of the partition deed, but also to other properties which they are likely to acquire.

6. Therefore, on a harmonious reading of the proceedings of DRO and the partition deed, it is a crystal clear that the parties to the partition deed are entitled to alienate the right of carry water through the pipeline not only to irrigate

S.Nos.214 and 215, but also any other property owned by them. The appellants herein, who are purchased the property from the son of Anumantha Gounder, have derived the said right mentioned in the partition deed. Further, while their vendor Natarajan has specifically mentioned that they can draw water by extending the pipeline already in existence for irrigating S.Nos.214 and 215, the plaintiff cannot restrict the right of drawing water.

7. It is also contended by the learned counsel appearing for the appellants that the right of declaration that the license granted to Anumantha Gounder is absolute right and inalienable is to be declared. The plaintiff/first respondent herein, pending suit, has alienated all his rights including the right derived under the proceedings of the DRO dated 17.09.1987 through a sale deed dated 14.12.2009 executed in favour of one R.Subramanian, S/o Ramasamy Gounder.

8. Per contra, the learned counsel appearing for the first respondent would draw the attention of this Court that in other suit in O.S.No.62 of 2004 initiated by the very same plaintiff Anumantha Gounder against few other purchasers of the property from his son, a similar issue was drawn up. This Court in the second appeal in S.A.No.893 of 2011 has categorically held that the license granted to the plaintiff Anumantha Gounder to draw water from the well situated in S.No.425/3B to irrigate the land in S.Nos.214 and 215 can be alienated. Provided right in S.Nos.214 and 215 is also alienated, but if the right in S.Nos.214 and 215 is not alienated, the permission granted by the Government to irrigate the land in those two survey numbers cannot be extended further. Since the interpretation of the proceedings of the DRO has rightly been settled by this Court in the earlier proceedings in S.A.No.893 of 2011, this Court is of the opinion that no further deliberation is required in this second appeal. Therefore, this Second Appeal is dismissed. The judgment and decree of the lower appellate Court in A.S.No.5 of 2002 dated 22.06.2004 are confirmed. No order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Gobichettipalayam.

2.The District Munsif,
Sathyamangalam.

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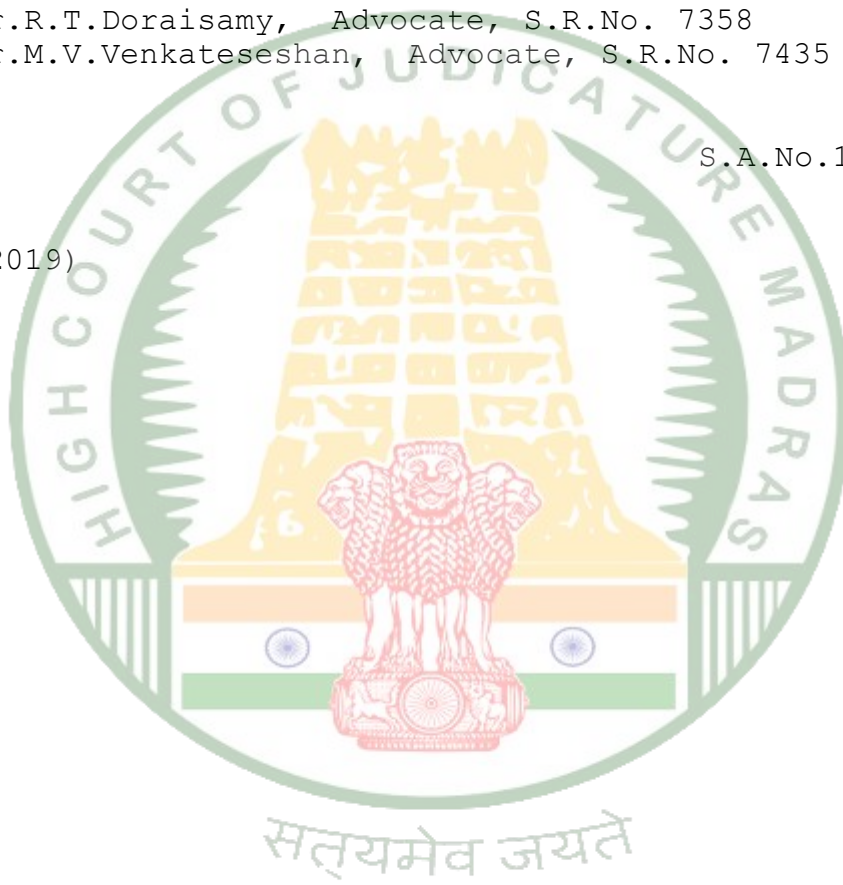
The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.R.T.Doraisamy, Advocate, S.R.No. 7358

+2cc to Mr.M.V.Venkateseshan, Advocate, S.R.No. 7435

S.A.No.1763 of 2004

CNR (CO)
GN (28/03/2019)



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