

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2019

PRONOUNCED ON : 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1246 of 2005

1. Ponnusamy Achari
2. Narasimha Achari
3. Gajendra Achari
4. Janaki @ John
5. Ashok Achari
6. Velu Achari

...Appellants

Vs.

Indira Devi

...Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.57 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court II, Ranipet, Vellore District dated 31.08.2004 reversing the judgment and decree in O.S.No.388 of 1991 dated 20.02.1997 on the file of the District Munsif Court at Sholinghur.

For Appellants : Mr.P.A.Chitramani

For Respondent : Mr.A.Muthukumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.08.2004 passed in A.S.No.57 of 2002, on the file of the Additional District and Sessions Judge / Fast Track Court II, Ranipet, Vellore District, reversing the judgment and decree dated 20.02.1997 passed in O.S.No.388 of 1991 on the file of the District Munsif Court, Sholinghur.

2.The second appeal has been admitted on the following substantial questions of law.

"a) Whether the first appellate court rightly come to a conclusion that the plaintiffs are not entitled to the easementary right which was enjoyed by them and their ancestors for more than 90 years?

b) Whether the first appellate court rightly held that the suit relief is infructuous?

c) Whether the lower appellate court rightly accepted the version of the defendant by laying the pipeline from the 'A' schedule property through the 'B' schedule property?

d) whether the first appellate court rightly come to a conclusion that the defendant had provided a space for the Rain Drain water of the plaintiff's property to go through the defendant's property to the street?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The suit has been laid by the plaintiff for the declaration of easementary right to drain the rain water from the roof of the 'A' schedule property into the 'B' schedule property of the defendant and for the relief of permanent injunction restraining the defendant from putting up any construction on the western side of her property and also prayed for the relief of mandatory injunction to direct the defendant to make provision to collect the rain water and to make suitable provisions to let out through the street.

6. The defendant resisted the plaintiff's entitlement to discharge the rain water from her roof into her property as claimed in the plaint and furthermore, according to the defendant, already there is a provision to drain the rain water of the plaintiff through a pipeline and therefore, according to her, the reliefs sought for by the plaintiff has become infructuous and the plaintiff suppressing the existence of the alternative arrangement made with reference to the discharge of rain water, according to the defendant, has come forward with the frivolous suit and hence the suit is liable to be dismissed.

7. Considering the materials placed on record, both oral and documentary, it is found that a pipeline had already been constructed by the defendant to discharge the rain water from the roof of the plaintiff's property and the same has been

deposed by the witnessess examined in the matter, particularly P.W.3, and in such view of the matter, when the water from the roof of the plaintiff's property is found to be drained through the abovesaid pipeline fixed by the defendant and when the existence of the abovesaid pipeline has not been disputed by the plaintiff in any manner, in such view of the matter, as rightly determined by the first appellate court, when there is a clear provision made and available to drain the rain water of the plaintiff and when the same can also be gathered from the report of the commissioner, the reliefs sought for by the plaintiff are found to have become infructuous and in such view of the matter, the trial court, as determined by the first appellate court, without going into the abovesaid aspects of the matter, is found to have granted the reliefs in favour of the plaintiff as regards the reliefs of declaration and permanent injunction.

8. In the light of the abovesaid factual matrix available in the matter, when the evidence projected discloses that already there is a provision for draining the rain water of the plaintiff, nothing survives in the suit and in such view of the matter, no interference is called for in the determination of the first appellate court that the reliefs sought for by the plaintiff has become infructuous. In such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

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

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

bga

To

1. Additional District and Sessions Judge,
Fast Track Court II, Ranipet, Vellore District

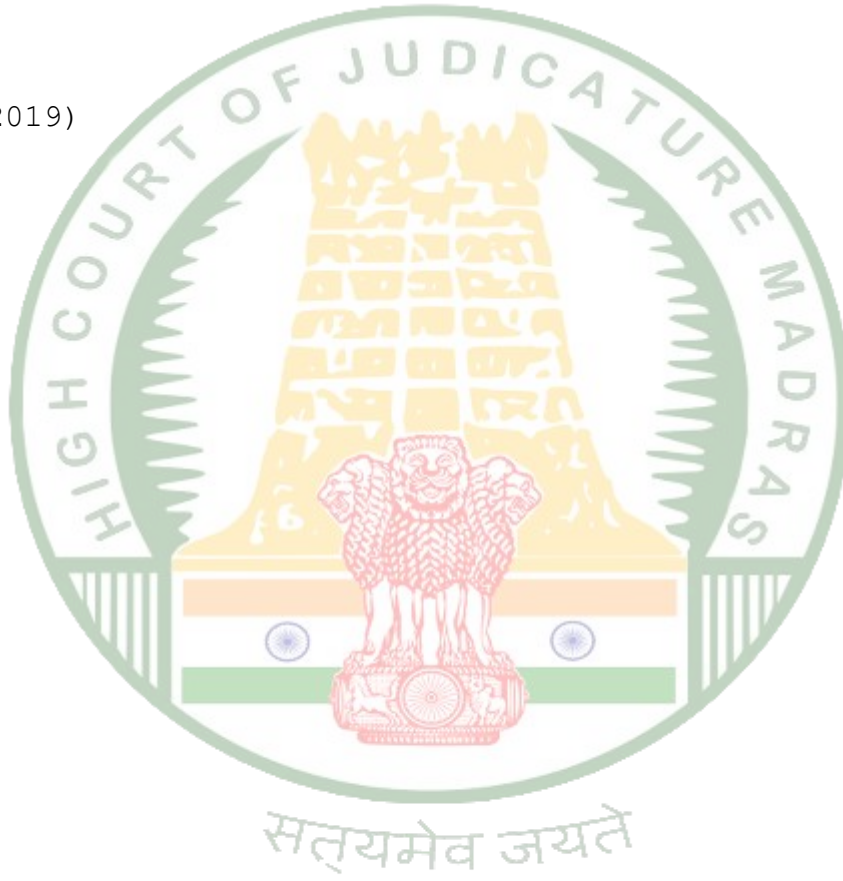
2. The District Munsif Court, Sholinghur.

Copy to

The Section Officer, V.R.Section,
High Court, Madras

S.A.No.1246 of 2005

RK(CO)
SP(21/06/2019)



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