

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2019

PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1549 of 2005

V.Dayalan

... Appellant/Appellant/Plaintiff

Vs.

1.S.Ramachandran

2.G.D.Damodara Naidu

... Respondents/Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.27 of 2000 dated 16.11.2004 on the file of the Additional District Judge, Fast Track Court No.I, Chengalpat confirming the judgment and decree passed in O.S.No.476 of 1994 dated 27.01.1999 on the file of the Additional District Munsif Court, Kanchipuram.

For Appellant : Mr.A.Thyagarajan, SC
for M/s.S.Ramesh Kumar

For RR1 : No Representation / No appearance

For RR2 : No Appearance

Set exparte vide order
dated 09.04.2019

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 16.11.2004 passed in A.S.No.27 of 2000 on the file of the Additional District Judge, Fast Track Court No.I, Chengalpat, confirming the judgment and decree dated 27.01.1999 passed in O.S.No.476 of 1994 on the file of the Additional District Munsif Court, Kanchipuram.

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

1. Whether on the facts and in the circumstances of the case, the Courts below were right in holding that the appellant is not entitled for any easementary right for irrigating the land situated in the B schedule property by underground pipeline through the respondents land is correct in law?

2. Whether on the facts and in the circumstances of the case, the Courts below was right in holding that the respondents have rebutted evidence adduced by the appellants is correct in law?

3. Whether on the facts and in the circumstances of the case, the Courts below were right in holding that the 1st respondent is not the owner of the property is correct in law when in issue No.1, the parties have admitted that portion of the C schedule property belonged to the first respondent?

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. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiff against the defendants for mandatory injunction and damages.

6. According to the plaintiff, he has laid the pipeline underneath the property belonging to the defendants and others for the purpose of irrigating the lands belonging to the plaintiff described in the plaint B schedule and according to the plaintiff, he had been taking the water from the borewell erected in the plaint A schedule property to the plaint B schedule property through the pipeline laid underneath the lands belonging to the defendants and others and it is further stated that the license had been granted during the year 1988 and further pleaded that, on account of enmity, the first defendant had destroyed the pipeline at points 'C' and 'D' and accordingly contended that the crops thereby had been damaged and accordingly seeking to restore the pipeline which had been

destroyed and claiming damages, the suit has been laid by the plaintiff against the defendants.

7.Originally the suit has come to be laid by the plaintiff only against the first defendant and subsequently the second defendant had been added and both the defendants disputed the case of the plaintiff that he had been granted the license to lay the pipeline in the properties belonging to them for the purpose of irrigating the lands described in the plaint B schedule from the borewell erected in the lands described in the plaint A schedule. According to the defendants, no such permission had been granted to the plaintiff at any point of time and further according to the defendants, the plaintiff has laid the suit falsely against the defendants on account of enmity and therefore the suit is liable to be dismissed.

8.Based on the oral and documentary evidence placed by the respective parties and the appreciation of the same, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

9.According to the plaintiff, he had been granted the license to lay the pipeline underneath the lands belonging to the defendants. It is further stated that such a license had been granted during 1988. However the defendants had disputed the abovesaid case of the plaintiff and contended that no such license had been granted to the plaintiff. In such view of the matter, it is for the plaintiff to establish that on the basis of the license said to have been granted by the defendants, he had laid the pipeline beneath the lands belonging to the defendants and others. No doubt, from the Commissioner's report and plan marked in the proceeding, some pipelines are found to be laid underneath the lands belonging to the defendants and the lands belonging to the temple. However when the defendants in particular, have challenged the case of the plaintiff and contended that no such license had been granted by them, it is for the plaintiff to establish that he had obtained a valid license to lay the pipeline beneath the lands belonging to the defendants and others. Though the plaintiff would claim that the license had been granted during 1988, however the plaintiff has not come forward clearly on what terms such license had been granted, whether the said license is a permanent license or temporary license, if temporary, upto what time the said license had been granted and with reference to the abovesaid factors absolutely, there is no plea projected on the part of the plaintiff. In this connection, the plaintiff would also plead that he had executed the sale deed in favour of the first defendant in respect of an extent 2 cents of land belonging to him. As rightly found by the Courts below, on a perusal of the materials available on record, it is seen that the abovesaid

sale transaction does not contain any recitals that the same had been executed by the plaintiff in favour of the first defendant or the defendants as the case may be, in recognition of the license said to have been granted by the defendants and in continuation of the same, the pipeline had been laid by the plaintiff underneath the lands belonging to the defendants. On the other hand, the sale deed recites, as if the same had been executed by the plaintiff on receipt of the consideration recited therein. Therefore, the case projected by the plaintiff that he had conveyed an extent of two cents of land towards the license granted by the first defendant or the defendants, as such, cannot be believed and rightly rejected by the Courts below. Quite inconsistent to the abovesaid case projected by the plaintiff, he would also state that the abovesaid sale deed is executed as a sham and nominal document. It is thus found that the sale deed said to have been executed by the plaintiff in favour of the first defendant or the defendants as the case may be, is not in recognition of the license said to have been granted by the defendants to the plaintiff as putforth by the plaintiff.

10. The plaintiff has not entered into the witness box. Only his son had tendered evidence as P.W.1. P.W.1 during the course of his evidence has completely pleaded ignorance about the license said to have been granted by the defendants in favour of the plaintiff. According to P.W.1, only his father had obtained the license from the defendants. However, the plaintiff has not come forward to enter into the witness box to establish on what terms and in what circumstances the so called license had been granted in his favour by the defendants. Similarly, P.W.2 has also tendered evidence that he had put up the pipeline in the lands belonging to the defendants. He has not spoken anything about having direct knowledge about the so called license said to have been granted in favour of the plaintiff by the defendants. Furthermore, the plaintiff has not come forward with any acceptable and reliable materials to show that pursuant to the license granted in his favour during 1988, he had purchased the pipes etc., for laying the same beneath the lands of the defendants. On the other hand, the receipts projected by the plaintiff for the purchase of the pipelines are found to be of the years 1987 and 1991 and therefore as rightly determined by the Courts below, the abovesaid documents would be of no use to sustain the plaintiff's case. It is thus found that there is no proof placed on the part of the plaintiff that he had incurred any expenses in connection with the laying of the pipeline beneath the lands of the defendants based on the so called license said to have been granted in his favour by the defendants. In such view of the matter, as rightly determined by the Courts below, the plaintiff has miserably failed to establish that he had been duly granted the license by the

defendants and others to lay the pipeline underneath their lands for the purpose of irrigating the plaint B schedule property from the borewell erected in the plaint A schedule property.

11. According to the plaintiff, the first defendant had destroyed the pipeline at points 'C' and 'D' and thereby prevented him from irrigating the plaint B schedule property. As found by the Courts below, from the Commissioner's report and plan, it is found that the points 'C' and 'D' where the pipeline is said to have been destroyed or removed, the lands in which the abovesaid portion run through, are found to be belonging to the second defendant and the temple. In such view of the matter, when the portions at which the pipeline is said to have been destroyed or closed, do not run in the lands belonging to the first defendant, it is thus seen that the case of the plaintiff that the first defendant had destroyed the pipeline at the points 'C' and 'D' lying in the portions of the lands belonging to the second defendant and the temple cannot be believed and also found to be highly improbable and thereby rightly rejected by the Courts below.

12. From the materials placed on record and the Commissioner's report and plan in toto, it is found that the defendants on their own had also imbedded the pipeline underneath their lands for serving their own purpose. In such view of the matter, to say that the defendants had granted the license to the plaintiff to lay the pipeline underneath their lands without there being any material to sustain the same particularly, in the light of the denial of the same on the part of the defendants, in such view of the matter, the Courts below are found to be fully justified in non- suiting the plaintiff.

13. The plaintiff has also failed to establish that he has sustained any damages on account of the destruction of the pipeline at points 'C' and 'D' on the part of the first defendant. When the plaintiff has miserably failed to establish qua the so called license said to have been granted by the defendants to lay the pipeline, his further case ie., the first defendant had destroyed the same due to enmity also cannot be believed and accepted and as rightly found by the Courts below, the so called license said to have been granted by the defendants has not been established by the plaintiff and furthermore the plaintiff has also failed to establish that the license said to have been granted by the defendants and the temple is based on any contract and coupled with grant of an interest in the properties belonging to the defendants and others and thereby, so called license said to have been granted by the defendants is an irrevocable one, as determined by the Courts below, when the defendants are entitled to revoke the license said to have been granted by them, assuming the same to

be true, at any point of time and when the arrangement between the parties for the purpose of laying the pipeline based on the license is not shown to be an eternal one as abovenoted, in such view of the matter, it is found that the suit laid by the plaintiff is misconceived and rightly rejected by the Courts below. No interference is called for to disturb the well considered judgment and decree of the Courts below.

14..In the light of the abovesaid discussions, the judgment and decree relied upon by the plaintiff's counsel dated 13.04.2018 passed in S.A.Nos.2285 and 2286 of 2003 has no application to the facts and circumstances of the present case.

15.In view of the abvoesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, in view of the reasons aforestated, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No.I,
Chengalpat.

2.The Additional District Munsif,
Kanchipuram.

Copy to
The Section Officer,
VR Section,
High Court, Chennai.

+1cc to M/s.S.Ramesh Kumar, Advocate Sr.44519

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srg 10/02/2021