

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2019

PRONOUNCED ON : 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.854 of 2019

P.Thangavel

...

Appellant/ Appellant/ 7th defendant
Vs.

1.P.Chinnasamy

..1st Respondent/1st Respondent/Plaintiff

2.State of Tamil Nadu

Represented by its District Collector,
Erode District.

3.The Tahsildar,

Taluk Office,
Erode Taluk,
Erode.

4.The Firka Surveyor

Taluk Office,
Erode Taluk,
Erode.

5.The Village Administrative Officer,

83, Punjai Kolanalli Village,
Santhaimedu,
Nadupalayam,
Vellottamparappu Post,
Erode Taluk and District.

6.The Executive Engineer,

Public Works Department,
Ayyagoundenpalayam,
Elumathur Post,
Erode Taluk and District.

7.The Revenue Divisional Officer,

Erode Taluk and District.

...

2 to 7

Respondents/2 to 7 Respondents
Defendants 1 to 6

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.01.2019 passed in A.S.No.16 of 2018 on the file of the Principal District Court, Erode, confirming the Judgment and Decree dated

23.11.2017 passed in O.S.No.412 of 2011 on the file of the 1st Additional Subordinate Court, Erode.

For Appellant : Mr.J.Prithivi

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.01.2019 passed in A.S.No.16 of 2018 on the file of the Principal District Court, Erode, confirming the Judgment and Decree dated 23.11.2017 passed in O.S.No.412 of 2011 on the file of the 1st Additional Subordinate Court, Erode.

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

3.The point that arises for consideration in this matter is whether the plaintiff had committed any encroachment into the field Bothies thereby preventing the flow of LBP channel.

4.As could be seen from the materials placed on record, particularly, the sale deed dated 04.06.1981, the copy of which has been marked as Ex.A1 and the approved plan dated 03.05.2000 which has been marked as Ex.A2, it is found that the plaintiff's father had acquired the suit property and based on the plan Ex.A2, the construction had been put up therein and the plaintiff is in the possession and enjoyment of the same. Complaining that the defendants, without any authority, attempted to interfere with his possession and enjoyment of the suit property, the suit has come to be laid by the plaintiff for the relief of permanent injunction.

5.Considering the commissioner's report and plan marked as Exs.C1 & C2, it is found that the commissioner had inspected the property and filed his report along with the surveyor sketch and on a perusal of Exs.C1 & C2, it is seen that the LBP water flows from the South to North at the first instance, then West to East and further, it is seen that the channel passes through West to East on the Northern side of the survey No.284/4 i.e. the suit property and accordingly, it is found that the channel flows on the Northern side of the compound wall of the plaintiff's house and not through the compound wall and it is thus evident that the compound wall put up by the plaintiff is not an encroachment as alleged by the defendants, particularly, the 7th defendant. Accordingly, from Exs.C1 & C2 as well as the copy of the commissioner's report marked as Ex.A20 in O.S.No.72 of 2011, it could be gathered that the LBP channel only flows on the Northern side of the compound wall of the plaintiff and accordingly, based on Exs.A1 & A2 and Exs.C1 & C2 and Ex.A20, the Courts below are found to be wholly justified in coming to the conclusion that the plaintiff had put up his house construction as per the approved plan Ex.A2 within the limits of his property and

without obstructing the LBP channel, which only goes on the Northern side of the compound wall put up by the plaintiff.

6.Considering the materials available on record, it is found that the controversy between the parties had been put in motion by the 7th defendant and it is found that the 7th defendant had filed a writ petition in W.P.No.21342/2011 against the District Collector, Erode, The Executive Engineer, Erode, Bhavani Division, The Thasildar Erode and the plaintiff. This Court had, in the abovesaid writ petition, directed the Thasildar, Erode to look into the matter and take a decision for the removal of encroachment, if any, made into the LBP channel after giving notice to all the encroachers. It is found that the Thasildar, Erode has been directed to remove the encroachment, if any, made by the plaintiff and others over the LBP channel. It is found that complaining that the Thasildar, Erode has not taken any follow up action following the order passed in the writ petition, the 7th defendant had levied the contempt petition No.257 of 2012 against him and in the contempt petition, the order has been passed by this Court marked as Ex.B9, wherein, it has been ordered that the authority concerned should proceed against the plaintiff as per the provisions of the Act and at that point of time, as already the present civil action had been levied by the plaintiff, accordingly, this Court had also held that the authority, while proceeding in the matter, should also bear in mind the order that may be passed by the Civil Court, and accordingly, it is found that in toto the authority concerned had been directed to remove any encroachment if committed by the plaintiff into the LBP Channel.

7.Considering the materials available on record, it is found that as determined by the Courts below, no valid notice had been issued to the plaintiff for the removal of alleged encroachment said to have been committed by him. In this connection, the defendants 1 to 6 had failed to entertain into the witness box and explain as to what are the measurements taken by them to determine and remove the encroachment as sought to be put forth by the 7th defendant. On the other hand, as rightly determined by the Courts below in a mechanical manner, a formal notice seems to have been issued by the defendants 1 to 6 for the removal of the Northern side compound wall of the plaintiff without measuring the extent of the property acquired by the plaintiff's father under Ex.A1 sale deed as well as the approved plan Ex.A2 and when considering the evidence of the 7th defendant examined as DW1, when he is unable to state nothing about Exs.A1 & A2 and would only plead ignorance about the same and also not explain as to whether any encroachment had been indeed made by the plaintiff into the LBP channel and also failed to establish that he is a authorised representative of the other irrigational formers of the village concerned, in all, it is found that the 7th defendant, in particular, who is contesting the plaintiff's case and who is the present appellant, had failed to establish

that there is any encroachment committed by the plaintiff over the LBP channel as alleged by him and in such view of the matter, merely because, a notice had been issued by the defendants 1 to 6 for the removal of the plaintiff's compound wall, it cannot be held that the plaintiff had committed encroachment into the LBP channel.

8.The counsel for the 7th defendant contended that the plaintiff has admitted during the course of his evidence as regards the encroachment committed by him in the LBP channel. However, considering the evidence adduced by the plaintiff in toto as well as the other materials available on record and particularly, the evidence of the 7th defendant examined as DW1, in all, it is found that the plaintiff has been enjoying the property without committing any encroachment into the LBP channel and in such view of the matter, the Courts below are found to be justified in granting the relief of permanent injunction as prayed for by the plaintiff.

9.The reasonings and conclusions of the Courts below for granting the relief of permanent injunction being based on the proper appreciation of the materials placed on record and not suffering from any infirmity or perversity, in such view of the matter, I do not find any valid reason to interfere with the same.

For the reasons aforesaid, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Principal District Court, Erode.
- 2.The 1st Additional Subordinate Court, Erode.

Copy to

The Section Officer, V.R.Section, High Court, Madras.
+lcc to Mr.S.Kaithaimalai kumaran , Advocate SR.No. 75854
in S.A.No.854 of 2019

A.SK(05/02/2020)