

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2020

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.870 of 2001

Pachamuthu

...Appellant/2nd Plaintiff

Vs.

1.Viswanathan
2.Gopalakrishnan
3.Ranganathan
4.Seethalakshmi
5.Venkatakrishnan
6.Ramasamy
7.Sankar
8.Manickammal
9.Ramayee
10.Unnamalai Ammal

...Respondents/Defendants 1 to 5,
Plaintiffs 3 to 5 & 6th Defendants

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 29-10-1998 made in A.S.No.40 of 1997 on the file of the Sub Court, Attur reversing the Judgment and Decree dated 23-8-1994 made in O.S.No.140 of 1985 on the file of the District Munsif Court, Attur.

For Appellant : Mrs.V.Srimathi

For Respondents : No appearance for R1, R2, R4 to R9
R3 & R10 - Dismissed as abated
Vide Court Order dt.27.01.2020
R10-died(T/E)

JUDGMENT

The plaintiffs laid a suit for declaration to have right of way through a certain channel in Sy.No.376/3 and for restraining the defendants from demolishing the said channel, and also for mandatory injunction to restore a certain ridge demolished by them. The suit came to be decreed by the trial Court, but, the said decree was reversed by the first Appellate Court. The parties would be referred to by their rank before the trial Court.

2.The dispute falls within a narrow compass, but the facts as pleaded do not enable a clarity in understanding the dispute. Therefore, the pleadings along with the evidence on record are read in order to make a brief statement on the rival contentions.

3.1. There is a pathway or cart track running from north to south and this is situated in Sy.No.376/1. On to its immediate west is Sy.No.365. Sy.No.365/11 is about the southern extremity of Sy.No.365. To the East of the cart track in Sy.No.376/1 lies Sy.No.376/2 on the north, then Sy.No.376/3 to its immediate south, and Sy.No.376/4 to the south of Sy.No.376/3 and to East of Sy.No.376/2 and 3. The water channel which is referred to in the plaintiff as Raja Vaikal runs to the south of Sy.No.365/11. This Survey number has a total extent of 9 cents, of which plaintiff claims right over the southern 4.5. cents while the 6th defendant claims right over the northern 4.5 cents.

3.2. So far as the properties to the east of the cart track is concerned, the first defendant is the admitted owner of Sy.No.376/2 on the extreme north, and also the southern 1/2 of Sy.No.376/3. Sy.No.376/3 has a total extent of 19 cents and the first defendant is entitled to the southern 9.5 cents whereas, the plaintiffs are entitled to northern 9.5 cents. In other words, plaintiffs' 9.5 cents in Sy.No.376/3 is sandwiched between Sy.No.376/2 on the north and the southern half of Sy.No.376/3, both of which, as indicated earlier, belong to the first defendant. The dispute is about irrigating plaintiffs' northern half property in Sy.No.376/3. The case of the plaintiffs is that there is a tank situated in the far west in Sy.No.365, from which the aforesaid Raja Vaikal runs and it crosses or cuts across the cart-track in Sy.No.376/1 enters Sy.No.376/4 then, takes a turn towards north, enters the southern half of Sy.No.376/3.

3.3. The case of the plaintiffs is that the plaintiffs' northern half does not have irrigation facilities and it has all along been irrigated by the aforesaid channel and that the defendants who are the owner of the southern 9.5 cents in Sy.No.376/3 have obliterated the said water entering into the plaintiffs property. Their second grievance is that there was a demarcating ridge that separated Sy.No.376/2 which belong to the first defendant and northern half of Sy.No.376/3 belonging to the plaintiffs. The mandatory injunction is directed as concerning the restoration of the ridge that separated the aforesaid land. To support his contentions, the plaintiffs would plead that Sy.No.376/3 originally belonged to his paternal grandmother Pachaiaammal and she is said to have obtained the same under a settlement deed/Ext.A.1, dated 06.12.1930. So far as defendants case is concerned, they have purchased the southern 9.5 cents under Ext.A.9 and Ext.A.10 sale deeds from a certain owner.

4.1 When the matter went to trial, in order to support their right of irrigation, the plaintiffs pleaded implied grant, and alternatively easement of necessity. For the defendants, only the fifth defendant has deposed as D.W.1, but, he has produced no documentary evidence. The trial Court had held the plaintiffs are entitled to a right of easement of necessity and decreed the suit.

4.2 When the matter reached the first Appellate Court, the first Appellate Court reversed it on the ground that the plaintiffs have not established easement of necessity by any documentary evidence.

5. This appeal is admitted to consider the following substantial questions of law:

1. Whether the findings of the Court below unsupported by oral and documentary evidence on misreading the established facts on the basis of conjectures and assumptions and arriving at a perverse finding that the channel is not existing and therefore the appellants are not entitled to any easementary right of drawing water from the channel is sustainable in law?

2. Whether the riparian right of the appellant being a vested right inherent to him for having a land in the proximity to the lake and such a right could be defeated by the bald allegation of the defendants that there had no been any grant of such right expressed or implied.?"

6. The learned counsel for the appellants argued that D.W.1 in his cross-examination has categorically admitted that plaintiffs grand father one Muthusamy Naicker was the original owner of 19 cents in Sy.No.376/3, that he had 2 sons, namely, Pacha Naiker and Naga Naiker, that Pacha Naiker had settled his 9.5 cents in Sy.No.376/3 in favour of his wife Pachaiammal, from whom the plaintiffs have obtained title. D.W.1 also admits that the share of Naga Naiker was successively sold by the latter to two persons from who the property was finally purchased by the defendants. This would imply that the entire 19 cents in Sy.No.376/3 was under a single title, and when it was disintegrated as between the two sons of Muthusamy Naicker, it gave raise to right of easement of necessity in terms of Section 13 of the Easement Act. Besides, D.W.1 also admits that the water course from the south of Sy.No.365/11 cuts across the cart track in Sy.No.376/1, goes further east in Sy.No.376/4 and takes a turn in the north towards Sy.No.376/3. If this water course has been irrigating Sy.No.376/3, then it is inconceivable that

it should stop irrigating the southern half without any possibility for irrigating the northern half.

7. There is no representation for the respondents. This Court carefully weighed the submissions of the learned counsel for the appellant alongside the documentary evidence made available.

8. This Court finds little material on record to hold that what is submitted by the learned counsel was contrary to the material available on record. In fact, there is no need for an elaborate reasoning, for, the only reason required to prove an easement of necessity is disintegration of unity of title, and this has been conceded by D.W.1. The learned First Appellate Court however, appeared to have laboured only to short circuit the process of appreciation of evidence under statutory setting as provided in Section 13 of the Easement Act. This Court does not find any adequate reason for the first Appellate Court to ignore the testimony of D.W.1 and to hold that the plaintiffs have not proved the easement of necessity in terms of Section 13 of the Easement Act. In conclusion, this Court finds every reason to interfere with the finding of the first Appellate court. All the substantial questions of law are held in favour of the appellant.

9. The second appeal is allowed and the Judgment and Decree dated 29.10.1998, made in A.S.No.40 of 1997 on the file of the Sub Court, Attur reversing the Judgment and Decree dated 23.8.1994, made in O.S.No.140 of 1985 on the file of the District Munsif Court, Attur is set aside. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

tsg

To:

1. The Sub Judge,
Attur.

2. The District Munsif,
Attur.

3. The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.23508

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PA (CO)
CB(19/04/2021)



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