

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 280 of 2020

and

C.M.P.No. 5814 of 2020

M.Subramaniam

..Appellant/
Appellant/ Defendant

Vs.

G.Mandhiriappa Gounder

..Respondents/
Respondent/Plaintiff

Prayer: Second Appeal filed against the judgment and decree dated 30.08.2019 made in A.S.No. 18 of 2018 on the file of the Principal Sub-Court / Appellate Authority, Coimbatore confirming the judgment and decree dated 19.01.2018 made in O.S.No. 941 of 2017 on the file of the District Munsif Court, Sulur (O.S.No.293 of 2010 - DMC, Palladam & O.S.No. 6705 of 2012 - PDM, Coimbatore).

For Appellant : Mr.N.Manoharan

J U D G M E N T

The defendants in O.S.No. 941 of 2017 who had suffered a decree for permanent injunction restraining the defendants from interfering with the plaintiff's right to irrigation through a channel (Vaikkal) forming part of the Parambikulam Aliyar project and from maintaining the said canal to irrigate his lands on his turn namely 2 out of 3 days has come up with this second appeal.

2. The plaintiff sued for injunction contending that he owns agricultural lands measuring an extent of 4.55 acres in Survey No.232 and an extent of 5.70 acres in Survey No.233 of Kalampattu village. Out of the said extent, the Government had acquired 20 cents for the Parambikulam - Aliyar project canal. The defendant also is the owner of about 5.40 acres of land in Survey No.234 of Kalampattu Village. Both the lands are irrigated through the Parambikulam - Aliyar, Kalampattu canal from the 9th right side madai. Claiming that the defendant had obliterated the canal so as to prevent flow of water to his

lands and has diverted the canal to enable third parties take the water for irrigation, the plaintiff had come up with the above suit.

3. The suit was resisted by the defendant contending that the plaintiff had prevented the authorities from laying canal with stone bed or underground pipeline. He would also contend that in the area of Ayacut under the Parambikulam - Aliyar project was increased to 4,30,836 from the original project area of 2,02,152 acres of lands. The quantity of water supplied has substantially reduced. The plaintiff having refused consent for construction of size stone channel or underground pipeline system cannot seek an injunction against the defendant. The entire written statement apart from detailing the extent of Parambikulam - Aliyar project and the area which was covered by the said irrigation system does not anywhere state the exact location of the channel and the right of the defendant to irrigate his lands from the water flowing in the channel. The plaintiff has admitted the right of the defendant to irrigate his lands on turn basis. A vague denial has been made in the written statement to the effect that the channel does not run in the land belonging to the plaintiff. The delay on part of the plaintiff in lodging complaint with the authorities was also projected as a reason to refuse relief to the plaintiff. At Trial, the plaintiff was examined as P.W.1. Exs. A1 to A9 were marked on the side of the plaintiff. The defendant examined himself as D.W.1 and Exs.B1 to B3 were marked. An Advocate Commissioner was appointed to inspect the suit channel and he filed a report and plan which was marked as Ex. C1 and C2.

4. The Trial Court, on a consideration of the evidence on record found that there is no dispute regarding the entitlement of the parties to irrigate their respective lands from the canal in dispute. On the basis of the report of the Commissioner and on the basis of the admission made by the defendant as D.W.1, the Trial Court came to the conclusion that the channel has in fact been damaged by the defendant so as to prevent the plaintiff for irrigating his lands through the said channel. On the said conclusion, the Trial Court granted a decree for permanent injunction. The claim of the defendant that the suit is barred under the provisions of the Tamilnadu Irrigation Works (Construction of Field Bothys Act, 1959) and claim of the defendant that the suit is barred under of the Parambikulam - Aliyar project (Water Regulation)Act, 1993 were rejected by the Trial Court. The report of the Tahsildhar, which was marked as Ex.A7 was also taken into account by the Trial Court to conclude that the defendant has obliterated the suit channel so as to prevent the plaintiff from irrigating his lands. On the said findings, the learned Trial Judge granted a decree for injunction as prayed for. Aggrieved, the defendant preferred an

appeal in A.S.No.18 of 2008 on the file of the Sub-Court, Coimbatore. The learned Sub-Ordinate Judge, upon a re-consideration of the evidence on record agreed with the findings of the Trial Court and dismissed the suit. Aggrieved, the defendant has come up with this second appeal.

5. I have heard Mr.N.Manoharan, learned counsel appearing for the appellant.

6. Mr.N.Manoharan, learned counsel appearing for the appellant would vehemently contend that the Trial Court was not right in concluding that the defendant has accepted the damage to the channel was caused by him. Drawing to my attention to the evidence of D.W.1, Mr.N.Manoharan would contend that the Trial Court's conclusion that there is an admission on part of the defendant regarding the obstruction made by him over the channel is not correct. Even if the admission of D.W.1, that is sought to be disputed is ignored, there is enough material to show that the defendant had in fact obliterated the channel. The Commissioner's report very clearly shows that there has been an obstruction and diversion of the canal at the instance of the defendant. The Tahsildhar who had gone into the complaint of the plaintiff had filed a report under Ex.A7 wherein, it has been very clearly stated that the flow of the channel has been diverted by the defendant at the right Madai. The Commissioner's report as well as Ex.A7 very clearly establish that there has been a diversion of the channel. It is the case of Mr.N.Manoharan, the defendant was not responsible for such diversion. It is not known as to how the defendant is aggrieved as all that has been granted by the Trial Court is that decree for permanent injunction restraining the defendant from interfering that the plaintiff right to irrigate his land and to maintain the channel. If the claim of Mr.N.Manoharan that the defendant has not damaged the channel and he is not disputing the right of the plaintiff to have irrigation through the channel, the defendant cannot be considered as a person aggrieved by the decree granted. The very fact that the defendant has pursued the appeal, as well as the second appeal against the decree would show that the defendant somehow wants to prevent the plaintiff from irrigating his lands through the channel. I do not see any perversity in the concurrent findings recorded by the Courts below, since the findings are based on valid documentary evidence in the form of the Commissioner's report and Ex.A7, Report of the Tahsildhar. It is also pertinent to note that the defendant has not filed any objections to the Commissioner's report or attempted to examine the Commissioner to show that report of the Commissioner was not correct. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this appeal fails and accordingly

dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:-

1. The . Principal Subordinate Judge,
Appellate Authority, Coimbatore.
2. The District Munsif , Sulur (O.S.No.293 of 2010 - DMC,
Palladam & O.S.No. 6705 of 2012 - PDM, Coimbatore).

1 cc to Mr.N. Manokaran, Advocate, Sr. 22322

S.A.No. 280 of 2020
and
C.M.P.No. 5814 of 2020

BS (CO)
kk 16/12



WEB COPY