

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1232 of 2014
and MP No.1 of 2014

1. The Road Inspector,
Highways Department,
Polur.
2. The Assistant Divisional Engineer,
Tamil Nadu Highways Department, Polur.
3. The Divisional Engineer,
Tamil Nadu Highways Department,
Tiruvannamalai.
4. The Collector,
Collectorate Tiruvannamalai,
Tiruvannamalai District. ..Appellants/Defendants

Vs.

Amsa Ammal ..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 06.03.2014 passed by the Subordinate Judge, Arni, Tiruvannamalai District in AS No.05/2013 confirming the judgment and decree dated 15.12.2012 passed by the learned the District Munsif Court, Polur in O.S.No.297/2005.

For Appellants : Mr. Y.T.Aravind Gosh
Government Advocate

For Respondent : Mr.P.Satheesh Kumar

J U D G M E N T

The defendants in OS No.297 of 2005, who suffered a decree for declaration, permanent injunction and mandatory injunction directing them to close the drainage channel that was dug in the plaintiff's property viz. Survey No.120/4B measuring about 1 acre 4 cents have come up with this Second Appeal.

2. The suit was laid by the plaintiff on the contention that she is the owner of land measuring about 1 acre 4 cents in Survey No.120/4B of Alli Nagar Village, Polur Taluk, Thiruvannamalai District. The said property was allotted to her husband in the family partition that took place on 25.07.1986. The plaintiff would contend that the defendants had dug up a drainage channel in her property of a width of 6 feet, for a length of 5.6 metres.

3. According to the plaintiff, she being the owner of the property, the defendants have no right to dig up a drainage channel across her property. Claiming that there was an urgency in seeking a relief of injunction, the plaintiff had also sought for dispensing with notice under Section 80 and the same was granted by the Trial Court.

4. The suit was resisted by the defendants contending that they are not digging a new drainage channel in the plaintiff's property. According to the defendants, the channel which is being dug is on the boundary of Survey Nos.120/3 and 120/4 which is a natural channel meant for draining surplus water from the Tank, situate in Survey No.116 which is on the south of the plaintiff's property into the Lake that is situate in Survey No.148 on the north of the plaintiff's property.

5. According to the defendants, a culvert was put up across the road in Survey No.119 and all that they are doing is to connect the culvert with the existing drainage channel on the boundary between Survey Nos.120/3 and 120/4, so that excess water from the tank can flow into the Lake, situate on the northern side. It was also contended that the suit is bad for non issuance of notice under Section 80 of the Code of Civil Procedure.

6. At trial, the plaintiff examined herself as P.W.1 and Exhibits A1 to A5 were marked on the side of the plaintiff. One Ayyadurai was examined as D.W.1 and Exhibits B1 and B2 were marked. A Commissioner was appointed by the Trial Court and his Report and Plan were marked as Exhibits C1 and C2.

7. Both the Courts below, upon an appreciation of the evidence found that the proposed channel runs through the plaintiff's land and not on the boundary as claimed by the defendants. It was also concluded that the defendants have no right to dig up a new channel over the plaintiff's land in order to drain the excess water from the Tank on the south into the Lake on the north in Survey No.148. On the said conclusion, the Courts below decreed the suit as prayed for. Aggrieved the defendants have come with this Second Appeal.

8. I have heard Mr.Y.T.Aravind Gosh, learned Government Advocate appearing for the appellants. Mr.P.Satheesh Kumar, learned counsel appearing for the respondents.

9. The following questions of law were framed at the time of admission.

1. Whether the Civil Court is the Competent Court to try the suit?
2. Whether the plaintiff is the Competent person to file the suit?
3. Whether the suit is maintainable without issuing 80 CPC notice?
4. Whether the suit is maintainable without seeking declaration?

10. Mr.Y.T.Aravind Gosh, learned Government Advocate appearing for the appellants would vehemently contend that the claim of the plaintiff that a new drainage channel is being dug up across her property is incorrect. He would submit that there was a pre-existing drainage channel in the boundary of Survey Nos.120/3 and 120/4 and what was being done was only to connect the culvert put up across the road in Survey No.119 with the pre-existing natural drainage channel, in order to enable excess water from the Tank to drain into the Lake situate on the north.

He would also submit that the plaintiff is not entitled to maintain the suit, since she is not absolute owner of the property. He would further contend that the suit is bad for want of notice under Section 80 of the Code of Civil Procedure.

11. Contending contra Mr.P.Satheesh Kumar learned counsel appearing for the respondents would submit that as regards the requirement of Section 80 notice, an application to dispense with issuance of notice under Section 80 was filed before the Trial Court and the same was allowed. Therefore, the suit cannot be said to be bad for want of Section 80 notice. As regards the contention of the learned Government Advocate that the culvert only connects the Tank on the south with the existing drainage channel running on the boundary of Survey Nos.120/3 and 120/4, Mr.P.Satheesh Kumar, would rely upon the Commissioner's Report and Plan, which have not been objected to by the appellants, to show that a new drainage channel is being dug in the middle of Survey No.120/4, whereas, the boundary between survey Nos.120/3 and 120/4 is situate on further west of the new channel that is being dug up. As already pointed out no objections have been filed to the Commissioner's Report and Plan. The Commissioner has also pointed out that the work of

construction of the culvert was going on at the time when inspected the suit property on 24.09.2005, 27.09.2005 and 09.10.2005.

12. No doubt the culvert is being constructed across the road which admittedly belongs to the Government, but the draining point in the culvert is into the plaintiff's land, situate on the north of the road. The Commissioner's Report shows that a new drainage channel has been dug right in the middle of the plaintiff's property to drain water through the same into the Lake on the north. Admittedly, the plaintiff land has not been acquired for the said purpose.

13. The Courts below have taken into account, the Commissioner's Report and Plan which have not been objected to and concluded that the defendants have no right to dig a new channel in the plaintiff's property. On such finding, the Courts below have granted a decree for mandatory injunction as well as permanent injunction. Therefore, according to Mr.P.Satheesh Kumar, the questions of law raised in the appeal should be answered against the appellants.

14. I have considered the rival submissions of the learned counsels appearing on either side.

15. As already pointed out the question of requirement for issuance of notice under Section 80, does not survive, since it is shown that an application has been filed to dispense with notice and the same has been allowed by the Trial Court. Hence the third question of law has to be necessarily answered against the appellants.

16. The first question of law relates the competence of the Civil Court entertain the suit of this nature. It is common knowledge it is only the Civil Court that can grant a decree for permanent or mandatory injunction and there is no statutory bar for initiation of such suit. Section 9 of the Code of Civil Procedure enables the Civil Court to entertain all suits of civil nature. Unless it is shown such suit is barred by any law, the maintainability of the suit before a Civil Court cannot be questioned. The learned Government Advocate is unable to point out any statutory bar preventing the Civil Court from exercising jurisdiction in matters of like nature. Therefore, the first question of law is answered against the appellants.

17. The second question of law relates to competence of the plaintiff to file the suit. Admittedly the suit property was allotted to the plaintiff's husband in a partition that took place in the family in 1986. The status of the plaintiff as the wife of Adhikesavan is not disputed. Therefore, the plaintiff

is the co-owner of the property. As a co-owner of the property the plaintiff is entitled to maintain a suit to protect her right. Hence, I do not see any difficulty in answering the second question of law also against the plaintiff.

18. The fourth question of law relates to a relief of declaration. The defendants have not denied the title of the plaintiff to the suit property, viz. Survey No.120/4. All that they would contend is they are not digging up the plaintiff's land, but they are taking the water through a pre-existing natural water course. It is this case of the defendants which has been found against by the Courts below, on the basis of an un-impeachable evidence in the form of the Commissioner's Report, which shows that what is actually being done is digging up of the plaintiff's land to take the water from the Tank on the south to the lake on the north.

19. In Anathula Sudhakar v. P.Buchi Reddy (Dead) by Lrs & Ors. reported in 2008 (6) CTC 237, the Hon'ble Supreme Court has pointed out that unless there is a very serious dispute of title which would cast a cloud on the title of the plaintiff, the plaintiff can maintain a suit for injunction. Hence, the fourth question of law is also answered against the appellants.

20. In view of the answers to the questions of law as above and in view of the factual findings of the Courts below which are based on evidence have not been shown to be perverse, I do not see any scope or interference with the judgment and decree of the Courts below. The Appeal therefore fails and it is accordingly dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

jv
To

1. The Subordinate Judge,
Arni, Tiruvannamalai District.
2. The District Munsif,
Polur.

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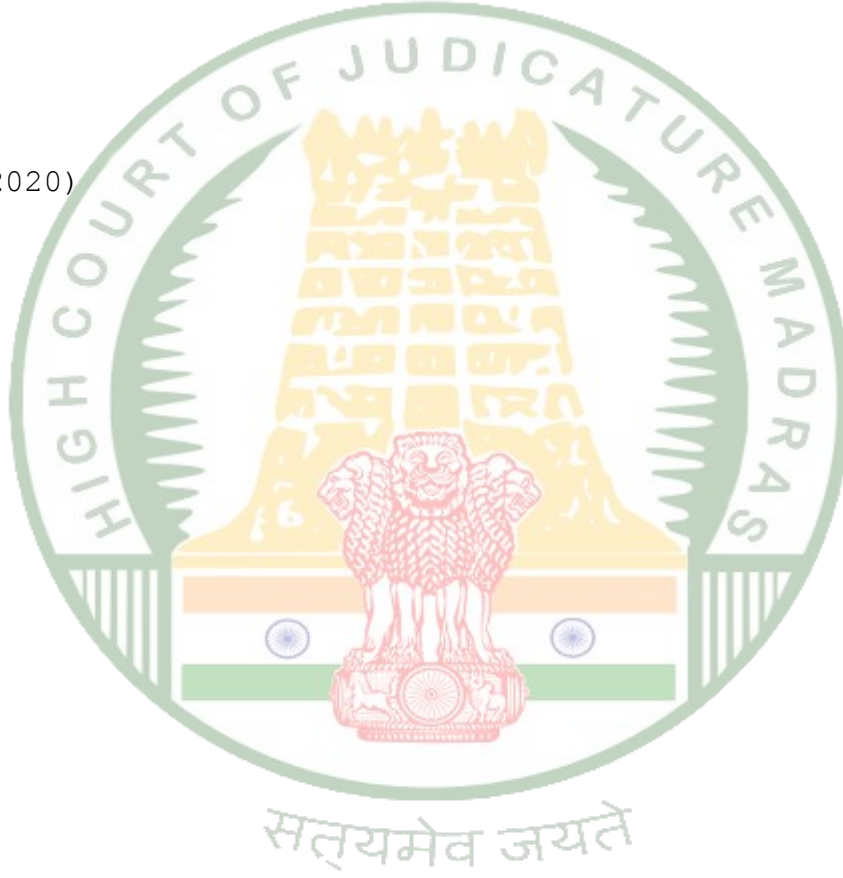
3. The Section Officer,
V.R.Section,
Madras High Court.

+1 CC to The Special Government Pleader(OS) sr 21289.

+1 CC to Mr.P.Satheesh Kumar, Advocate sr 20803.

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SV(CO)
SP(05/11/2020)



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