

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.1288 OF 2019

AND

CMP.NO.27889 OF 2019

Dharmalingam

.. Appellant/Plaintiff

Versus

1. Krishna Mooper

2. Thoplan

.. Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 03.08.2019 made in A.S.No.60 of 2015 on the file of Sub Court, Kallakurichi reversing judgment and decree dated 12.06.2015 made in O.S.No.360 of 2008 on the file of the First Additional District Munsif, Kallakurichi.

For Appellant : S.Sounthar

For Respondents : Mr.Ali Hasan Khan

for M/s.B.Mohan

Caveator for 1st Respondent

JUDGMENT

The plaintiff in the suit in O.S.No.360 of 2008 filed for declaration and consequential permanent injunction is the appellant herein.

2. It is the case of the plaintiff that his wife Chellammal became the absolute owner of the suit property by virtue of the registered sale deed dated 24.01.1981. After she passed away, the property was devolved upon him as her legal heir. As such, he is in possession and enjoyment of the same. While so, on 02.05.2008, the defendants attempted to interfere with the possession and enjoyment. Hence, the suit.

3. In the written statement filed by the first defendant, the entire averments and allegations made in the plaint were denied and disputed. It is further stated that there is a 2 feet width water channel in the land of the plaintiff, through which the first defendant is taking water to his land and it also further goes to the land of the plaintiff's brother Thoplan,

which is described as ABCD in the rough plan filed by the defendant. The first defendant has further stated that his father Krishna Mooper purchased 1.70 cents of agricultural land in Survey No.86/4 through a registered sale dated 13.12.1949 from one Ramasamy for a sale consideration of Rs.400/-, as per which, he is entitled to 1/4th share in the common Well situated in 85/8A and by another sale deed dated 24.07.1961 his father Krishna Mooper purchased the right of taking water through the land of the defendant from the same vendor Ramasamy. When the first defendant and his predecessors have been enjoying the right for more than 60 years, the plaintiff obliterated the water channel on 01.06.2008. Even though the water channel was restored again, it was obliterated and hence he prayed for dismissal of the suit.

4. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiff, PW1 was examined and Exs.A1 to A6 were marked. The first defendant examined himself as DW1 and also examined two other witnesses DW2 and DW3 and produced Exs.B1 to B4. After analysing both the oral and documentary evidence, the Trial Court decreed the suit. On the appeal preferred by the first defendant, the Sub Court, Kallakurichi in A.S.No.60 of 2015, set aside the judgment of the Trial Court and dismissed the suit. Aggrieved over the same, the present appeal has been filed.

5. It is relevant to note that the first defendant in O.S.No.360 of 2008, filed a suit in O.S.No.426 of 2008 to declare his right over the disputed water channel. In that case, the Trial Court dismissed the suit and the right of the first respondent was declared by the Appellate Court in A.S.No.32 of 2013. Today, this Court in Second Appeal No.1285 of 2019 confirmed the judgment decree passed in A.S.No.32 of 2013. It is appropriate to note that a claim is made by the respondent only in respect of the water channel and insofar as other area of the suit property, the right of the appellant is not disputed.

6. In view of the findings recorded in S.A.No.1285 of 2019, this Court is of the opinion that no further discussion is required in this case. Therefore, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

pvs

To

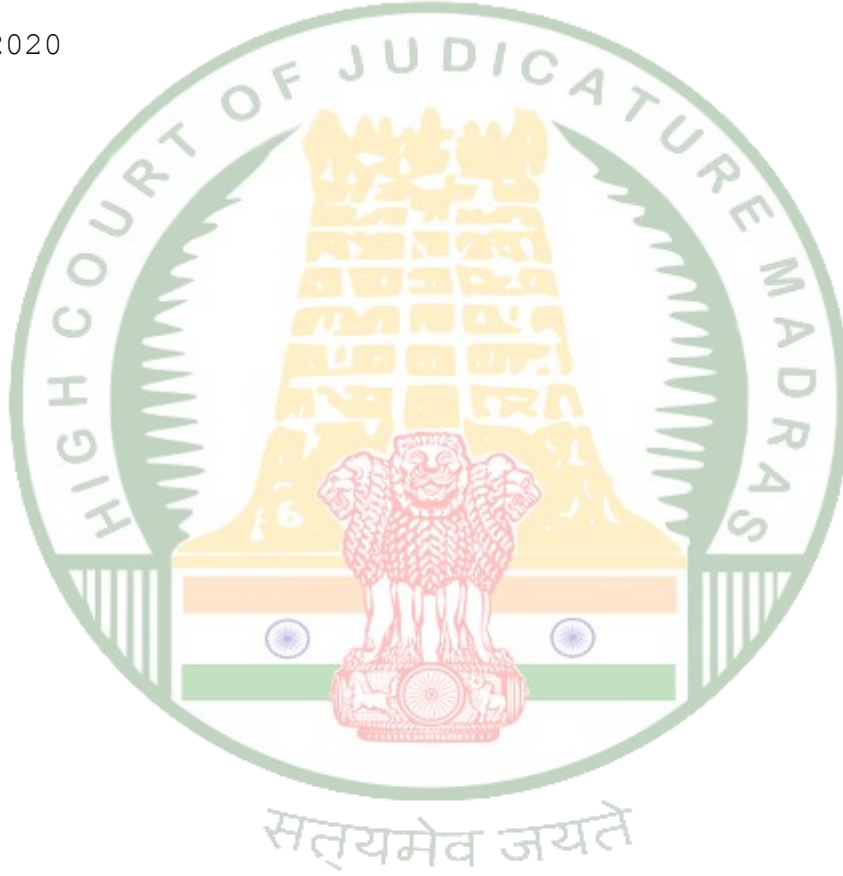
1. The Subordinate Judge,
The Sub Court, Kallakurichi
2. The I Additional District Munsif,
Kallakurichi.

+1cc to S.Sounthar, Advocate, S.R.No.1395

+1cc to M/s.B.Mohan, Advocate, S.R.No.2011

S.A.No.1288 of 2019

NRJK (CO)
CS/11/12/2020



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