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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.408 of 2000

Govindaraj

...Appellant/Plaintiff

Vs.

1. Sivaraj Thevar

2. Ganesan

... Respondents/Defendants

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 07.10.1999 passed in A.S. No.5 of 1999, on the file of the Principal District Court, Nagapattinam, upholding the decree and judgment dated 22.10.1998 passed in O.S. No.6 of 1997, on the file of the District Munsif Court, Thiruthuraipoondi.

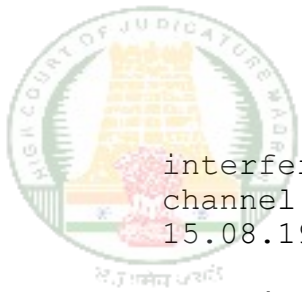
For Appellant	: Mr. T. Girish for Mr.Srinath Sridevan
R1	: Died
R2	: Name printed. No apperance.

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The plaintiff filed a suit in O.S.No.6 of 1997 before the District Munsif, Thiruthuraipoondi, seeking for a declaration that he has easementary right over the channel described as 'B' schedule property in the plaint schedule and for a consequential relief of mandatory injunction directing the defendants to restore the channel in its original form at their own costs or in the alternative pass a decree of permanent injunction restraining the defendants from in any manner



interfering with the plaintiff's right to draw water from the channel by laying a pipeline as per the agreement dated 15.08.1996 and for costs.

4. The case of the plaintiff in nutshell is as follows:

The 'A' schedule property measuring 0.44 cents in Survey Number 97/1 of Veppancherry Village, Thirthuraipoondi Taluk, absolutely belongs to the plaintiff and the 'B' schedule property which is a water channel measuring 100' X 2' X 1' situate in Survey Number 97/2 Veppancherry Village, Thirthuraipoondi Taluk, and the property on the western side of the said channel belong to the defendants. Both the properties were originally owned by common ancestors of plaintiff and the defendants.. The plaintiff who is cultivating his land ('A' schedule property) has no other source of supply of water for irrigating his land and he has been drawing water only from 'B' schedule water channel. While so, the first defendant constructed a house on the eastern side of the 'B' schedule property and the second defendant destroyed the channel on 06.08.1996 & 07.08.1996 and filled the same with sand. All his complaints before the police and the revenue officials went in vain. However, in the presence of some mediators in the village, the plaintiff and the defendants entered into an agreement on 15.08.1996 (Ex.A1) wherein the defendants agreed to allow the plaintiff to draw water from the channel by laying a pipeline through the land of the defendants. Subsequently, the defendants prevented the plaintiff from drawing water from the suit channel. Hence, the suit was filed by the plaintiff for the reliefs as stated above.

5. The suit was resisted by the defendants on the following grounds:

- (1) No agreement was entered into between the plaintiff and the defendants on 15.08.1996 as alleged by the plaintiff and whatever was obtained was under coercion in the police station.
- (2) 45 cents out of 91 cents in 'B' schedule property was gifted to the second defendant by the first defendant even during the year 1992 who in turn constructed his house in the year 1993.
- (3) Thirthuraipoondi - Pudukottai Road lies on the western side of the 'B' schedule property and on further west there is a drainage channel which is called as 'pandi vaikkal' and the said channel is much lower in level compared to the properties of the plaintiff and the defendants. The plaintiff's contention that the water from the said drainage channel flow into 'B' schedule water channel and that the plaintiff was irrigating his land from the same is therefore, an imaginary one.



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- (4) No documentary evidence was adduced by the plaintiff to show the existence of the channel.
 - (5) There is a common water channel on the eastern side of the plaintiff's and the defendants' lands and both of them were cultivating their respective properties by drawing water from the said channel.
 - (6) The defendants never destroyed the 'B' schedule channel as alleged by the plaintiff.
- Therefore, they prayed for dismissal of the suit.

6. The trial court, after framing necessary issues and after full contest, dismissed the suit filed by the plaintiff holding that

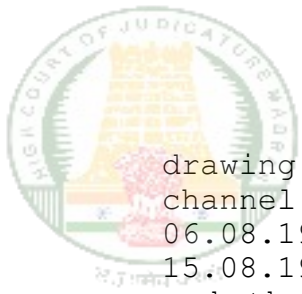
- (1) The plaintiff has not established the existence of 'B' schedule channel.
- (2) The plaintiff has not established his easementary right over the said channel.

7. Aggrieved over the same, the plaintiff filed an appeal in A.S. No.5 of 1999 before the Principal District Judge, Nagapattinam. The learned Principal District Judge, Nagapattinam, after analysing the evidence on record, upheld the findings of the trial court and dismissed the suit filed by the plaintiff.

8. Now, the second appeal is filed by the plaintiff and my learned predecessor framed the following substantial questions of law.

- (1) Whether Ex.A1 which recognises the right of the plaintiff to irrigation through the kanni (channel), can be disregarded by the courts when the same is not proved to be vitiated by fraud, coercion or undue influence?
- (2) Whether the failure to consider the V.A.O's evidence which categorically speaks of the kanni is not erroneous?
- (3) Whether the courts ought not to have declared the easement of absolute necessity when its existence is clearly shown in the commissioner's report?
- (4) Whether the courts below ought not to have granted the alternate relief of injunction on the basis of Ex.A1?

9. The plaintiff claims easementary right by way of necessity over the 'B' schedule water channel measuring 100' x 2' x 1'. Admittedly, the 'B' schedule property belongs to the defendants. The plaintiff's contention is that he has been



drawing water for irrigating his lands through the 'B' schedule channel and that the defendants destroyed the said channel on 06.08.1996 and 07.08.1996. His further contention is that on 15.08.1996, an agreement was entered into between the plaintiff and the defendants wherein the defendants agreed to allow the plaintiff to draw water from the suit channel by laying a pipeline from the channel to his land through the defendants' lands. Though the defendants denied of having entered into such an agreement, it was also contended by them that Ex.A1 was signed by them in the police station as the police threatened them to sign on that. However, since the suit is filed by the plaintiff seeking for a declaration that he is entitled to draw water from the 'B' schedule channel as he has right over the same by way of easement of necessity, the plaintiff has to establish his case by adducing acceptable evidence. It is to be pointed out that the plaintiff wants to lay a pipeline in the land of the defendants to draw water from the 'B' schedule channel. Both the courts below had concurrently held that the plaintiff had not adduced any evidence to show the existence of the suit channel. An Advocate Commissioner was appointed by the trial court, who filed his report and plan (Ex.C1 and Ex.C2). In the report, he has stated that there were traces of 40 feet long water channel in the land of the defendants. But the plaintiff has described the 'B' schedule property as 100' x 2' x 1'. Though the plaintiff had contended that the properties of the plaintiff and the defendants were originally owned by common ancestors, no evidence was adduced by him to establish the same. It is also pertinent to mention that both the courts below had rightly and concurrently held that Ex.A2 to Ex.A6 adduced on the side of the plaintiff is least useful to the plaintiff to prove the existence of the suit channel. It is also held that the approved plan dated 28.03.1992 for construction of a house by the defendants does not show the existence of a water channel in the land of the defendants. In fact, the trial court has observed that when a house is constructed over an agricultural land, there should be a mention about the existence of a water channel, if any, in the approved plan and that since there is no mention about the same in Ex.B1, it has to be held that the plaintiff did not prove that the suit channel existed as claimed by him.

10. An easement of necessity is an easement without which the property cannot be used at all and not one merely necessary to the reasonable enjoyment of the property. It is in evidence that there is a water channel on the eastern side of the plaintiff's and the defendants' properties and that both the plaintiff and the defendants were drawing water from the said channel for irrigating their respective lands. In the instant case, as observed earlier, the plaintiff has not proved the existence of water channel in the land of the defendants and



that he has easementary right by way of necessity over the same. When the second defendant constructed his house in the year 1993, the plaintiff did not raise any objection immediately. On the other hand, he had filed the suit only in the year 1997. Now the plaintiff wants to lay a pipeline in the land of the defendants from the alleged water channel (B schedule property) upto his land as per Ex.A1. Both the courts below had analysed the evidence on record in a threadbare manner and contended that the prayer sought for by the plaintiff cannot be granted and this Court does not see any reason to interfere with the same. In fact, cogent reasons have been assigned by both the courts below for dismissing the suit filed by the plaintiff. Hence I do not want to repeat the justification given by both the courts below in the present second appeal. Suffice to say that all the observations made by both the courts below are based on a well laid principles of law and therefore, the second appeal deserves to be dismissed.

11. In the result,
 - i. the appeal is dismissed. No costs.
 - ii. the decree and judgment dated 07.10.1999 passed by the learned Principal District Judge, Nagapattinam, in A.S. No.5 of 1999, upholding the decree and judgment dated 22.10.1998 passed by the learned District Munsif, Thiruthuraipoondi, in O.S. No.6 of 1997, are upheld.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

bga
To

1. The Principal District Judge,
Nagapattinam.
2. The District Munsif,
Thiruthuraipoondi.
3. The Section Officer,
VR Section, High Court, Madras.

S.A.No .408 of 2000

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