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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1238 of 2008

1.Iyyasamy
2.Panneerselvam
3.Kumar
4.Murugusamy
5.Elumalai

...Appellants/Defendants 1 to 5

Vs.

Patchai

... Respondent/Plaintiff

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 22.08.2007 passed in A.S.No.58 of 2005 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 30.11.2004 passed in O.S.No.594 of 2001 on the file the First Additional District Munsif Court, Kallakurichi.

For Appellants : Mr.K.Suryanarayanan

Respondent : No appearance/set exparte

JUDGMENT

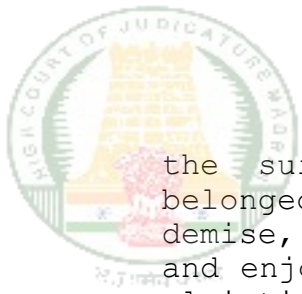
Challenge in this second appeal is made to the Judgment and decree dated 22.08.2007 passed in A.S.No.58 of 2005 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 30.11.2004 passed in O.S.No.594 of 2001 on the file the First Additional District Munsif Court, Kallakurichi.

2.The second appeal has been laid by the defendants in O.S.No.594 of 2001.

3.Suit for Permanent Injunction.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Shorn of unnecessary details, according to the plaintiff,



the suit properties, as described in the plaint schedule, belonged to the plaintiff's husband Govindanaickar and after his demise, it is only the plaintiff, who has been in the possession and enjoyment of the suit properties along with her sons and the plaintiff had executed a gift deed on 16.11.1995 in respect of the suit properties in favour of her sons and as the manager of the family, she is still continuing to enjoy the suit properties, as her eldest son Sankar is at abroad and the other sons are minors. The defendants are the adjoining land owners of the plaintiff. In survey No.165/4E described in the plaint schedule, there is a Well and 5 H.P. Electricity Service Connection and the same belongs to the plaintiff and the water from the said Well is drawn through the channel in survey No.165/4G for the purpose of irrigating the plaintiff's land located in survey No.165/4H and the channel has been in existence for the past 30 years and continuously, the plaintiff's family has been irrigating their lands located in survey No.165/4H only through the abovesaid channel located in the defendants' land in survey No.165/4G. Till the defendants dug out a Well in their lands, even for the defendants' land, the source of irrigation is only the plaintiff's Well situated in survey No.165/4E and the defendants without any authority or right attempted to interfere with the plaintiff's enjoyment in drawing water from the Well located in survey No.165/4E to irrigate the land located in survey No.165/4H through the channel running in the defendants' land located in survey No.165/4G and hence, according to the plaintiff, she has been necessitated to lay the suit for Permanent Injunction.

6.The defendants resisted the plaintiff's case contending that the Well located in survey No.165/4E is not the source of irrigation for the plaintiff's land located in survey No.165/4H and according to the defendants, the plaintiff has no right of channel in the defendants' land and attempted to utilise the channel right by trespassing into the defendants' land for the past one year and the defendants have a share in the Well in survey No.165/4E and the dispute arose between the plaintiff and the defendants over the enjoyment of their respective shares in the Well located in survey No.165/4E and following the same, a panchayat was convened and as per the decision of the panchayatars, the defendants have to dig a Well in their land and the plaintiff should not use the channel running through the defendants' land and further, the defendants should also not claim any right thereafter in the Well situated in survey No.165/4E. The defendants had been enjoying their share in the Well in survey No.165/4E by installing oil engine for irrigating their lands. The defendants had acquired their land by way of a sale deed dated 08.07.1986 and there is no channel in the defendants' land as alleged in the plaint and the plaintiff is not entitled to seek the relief with reference to the right in



executed the settlement deed in respect of the suit properties in favour of her sons by way of a gift deed dated 16.11.1995, which has been exhibited as Ex.A2. According to the plaintiff, her eldest son viz., Sankar is at abroad and the other sons are minors and in such circumstances, it is she, who has been enjoying the suit properties on behalf of her sons as the manager of the family and accordingly, inasmuch as the defendants, without any authority or right, attempted to interfere with the plaintiff's right and enjoyment of the suit properties, particularly in drawing water from the Well situated in survey No.165/4E through the channel situated in the defendants' land in survey No.165/4G for irrigating the lands in survey No.165/4H, she has been necessitated to lay the suit against the defendants for the relief of permanent injunction.

12.As abovenoted, the execution of the gift deed by the plaintiff in favour of her sons under Ex.A2 has not been seriously controverted by the defendants. Thus, it is seen that though the plaintiff has executed the gift deed in favour of her sons qua the suit properties, she is still continuing the enjoyment of the suit properties on behalf of her sons for the reasons mentioned in the plaint and in such view of the matter, it is found that as rightly held by the first appellate Court, the plaintiff is entitled to maintain the suit for the relief of permanent injunction on behalf of her sons against the defendants. In view of the abovesaid position, the contention put forth by the defendants that the plaintiff's suit is not maintainable without obtaining the prior permission as provided under Order 1 Rule 8 CPC, as such, cannot be sustained.

13.Considering the relationship of the plaintiff and her sons, it is seen that it is only the plaintiff, who has been in the possession and enjoyment of the suit properties on behalf of her sons. When the abovesaid facts are not controverted, in particular, the suit laid by the plaintiff for permanent injunction without obtaining the necessary permission under Order 1 Rule 8 C.P.C is held to be maintainable.

14.Considering the issues involved between the parties and the materials placed on record, it is found that the parties are at issue only with reference to the enjoyment of channel located in survey No.165/4G, which admittedly belongs to the defendants. Now, according to the plaintiff, for irrigating her lands located in survey No.165/4H, she has been drawing water from the Well located in survey No.165/4E through the channel located in survey No.165/4G and further, according to the plaintiff, the abovesaid channel has been in existence for more than 30 years and inasmuch as the defendants attempted to interfere with her right and enjoyment of the abovesaid channel, she had been necessitated to



institute the suit against the defendants for appropriate relief.

15. From the evidence adduced by DW1 examined on behalf of the defendants, it is noted that the defendants have admitted that the plaintiff has a share in the Well located in survey No.165/4E. Further according to the defendants, they also claim similar right/share over the said Well in survey No.165/4E. Moreso, according to DW1, all the sharers of the Well in survey No.165/4E are entitled to draw water from the Well through the Well channel for irrigating their respective lands and DW1 has clearly admitted that he had interfered with the enjoyment of the plaintiff over the channel and according to DW1, inasmuch as the plaintiff objected to his enjoyment of the share in the Well, he had interfered with the plaintiff's right of enjoyment over the channel in dispute. Though the defendants would contend that no channel is in existence in their land in survey No.165/4G, however, as rightly determined by the first appellate, particularly, considering the evidence of DW1 and the recitals contained in the sale deed of the defendants marked as Ex.B2, it is found that the channel has been in existence in survey No.165/4G and only through the abovesaid channel, all the sharers of the Well in survey No.165/4E have been drawing water for the purpose of irrigating their respective lands. Therefore, the position being above, as rightly determined by the first appellate Court, the defendants are not entitled to interfere with the plaintiff's right of enjoyment over the channel in question.

16. According to the defendants, as the dispute arose between the parties over the share in the Well located in survey No.165/4E, a panchayat was convened and in the said Panchayat, it had been decided that the defendants should not claim any right over the Well in survey No.165/4E and further, the plaintiff also should not use the channel in question and it was also decided that the defendants should dig a Well in his own land and according to the defendants, both the parties had agreed to the determination of the panchayat and therefore, according to the defendants, the plaintiff, following the determination of the panchayat, is not entitled to get any channel right in the property belonging to the defendants. However, with reference to the abovesaid case of the defendants, as held by the first appellate Court, rightly the defendants have failed to establish the convening of the panchayat and the decision taken in the panchayat with regard to the right of the respective parties over the channel in question. No panchayatar has been examined on the side of the defendants to prove the abovesaid facts and no document has also been projected with regard to the determination of the panchayatars and the acceptance of the same by the parties concerned. Therefore, the



case of the defendants with reference to the so-called panchayat, as such, cannot be readily countenanced.

17. In this matter, the Commissioner had been appointed and he had, after inspecting the properties, filed his report and plan marked as Exs.C1 & C2. Considering the Commissioner's report and plan, as held by the first appellate Court, it is noted that the defendants, while digging a Well in their land, had put the sediments of the Well on the existing suit channel and considering the abovesaid facts in toto, as rightly held by the first appellate Court, only recently the defendants, while digging the new Well, had put the sediments of the new Well over the existing channel and thereby, attempted to interfere with the right of the plaintiff in drawing water through the channel and thus, it is noted that the plaintiff has been necessitated to lay the suit for permanent injunction.

18. It is also seen that with regard to the disputes involved between the parties, the suit in O.S.No.483 of 1989 has been filed by the defendants on the file of the Principal District Munsif Court, Kallakurichi. No doubt, the defendants had sought for permanent injunction against the plaintiff in the abovesaid suit from destroying the pipeline or interfering in the flow of water in the pipeline running through the survey Nos.165 to 166 along with its sub-division. The document projected by the defendants pointing to the same viz., Ex.B1, as held by the first appellate Court, only supports the plaintiff's case that the channel in question has been in existence on ground, for enabling the parties having common share in the Well in survey No.165/4E, for irrigating their respective lands through the said channel and therefore, as rightly held by the first appellate Court, the documents marked on the side of the defendants viz., Exs.B1 & B2 and the Commissioner's report and plan Exs.C1 & C2 coupled with the admission of DW1 and based on the evidence of PWs1 & 2, it is seen that the plaintiff has clearly established that the defendants attempted to interfere with her right in the usage of channel running through survey No.165/4G and hence, the plaintiff had been necessitated to lay the suit for the relief of permanent injunction.

19. In the light of the abovesaid factors, the contention put forth by the defendants that the suit for bare injunction sans the relief of declaration is not maintainable, as such, would not be applicable to the facts and circumstances of the present case as the existence of channel in question has not been seriously controverted by the defendants and furthermore, the right over the channel has been established by the plaintiff through the materials placed on record both on the side of the plaintiff as well as on the side of the defendants and the



plaintiff has also established her case by adducing acceptable and reliable evidence as well as pointing to the admission of her case on the part of the defendants through the materials projected by the defendants and in such view of the matter, the arguments put forth by the defendants that the first appellate Court had erroneously cast the burden of proof of the existence of the channel on the defendants, as such, cannot be accepted in any manner.

20. Considering the abovesaid discussions, in my considered view, no substantial questions of law is involved in the second appeal as such. Be that as it may, the substantial questions of law formulated in the second appeal are, accordingly, as above discussed answered in favour of the plaintiff and against the defendants.

In conclusion, the judgment and decree dated 22.08.2007 passed in A.S.No.58 of 2005 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 30.11.2004 passed in O.S.No.594 of 2001 on the file the First Additional District Munsif Court, Kallakurichi are confirmed and resultantly, the second appeal is dismissed. Considering the facts and circumstance of the case, there is no order as to cost. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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Copy to

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

S.A.No.1238 of 2008

VD(CO)
GMY(01/09/2021)