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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30.03.2021

JUDGMENT Delivered ON : 19.07.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1855 of 2004

Muruganandham

...Appellant/Respondent/
Defendant

...Versus...

Shainsha

...Respondent/Appellant/
Plaintiff

PRAYER:

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.156 of 2003 dated 18.03.2004 on the file of the Additional District (Fast Track) Court at Ariyalur, reversing the judgment and decree made in O.S.No.225 of 1996 dated 31.08.1999 on the file of the Principal District Munsif Court at Ariyalur.

For Appellant :: Mrs.Mythili Suresh
For Sarvabhauman Associates

For Respondent :: Mr.T.R.Rajaraman

J U D G M E N T

The defeated defendant is the appellant herein.

2. The respondent herein filed a suit in O.S.No.225/1996 before the Principal District Munsif Court at Ariyalur for mandatory injunction directing the appellant/defendant to remove the P.V.C pipeline in the suit property situated in Ariyalur Taluk, Thirumanur Village, Nanjai S.F.No.41/3B1, 3B2, 3-B3 and further it is contended that after the appellant/defendant purchased an extent of 10 cents in S.F.No.41/3-A2, he had dug up a bore-well to take the water to 22 acres of land belongs to him on the North-Eastern side and he has put up the pipe line



beneath the land of the plaintiff without permission and hence, he filed the suit.

3. The appellant/defendant filed written statement inter-alia contending that the he had purchased a portion in S.F.41/3-A2 and erected a bore-well and from that bore-well, he is attempting to take the water towards the North-East and that he is attempting to lay the pipe line underneath the plaintiff's lands.

4. Before the trial Court, an Advocate Commissioner was appointed and sketch was marked as Ex.C2. Relevant sale deeds in favour of the respondent were marked as Exs.A2, A3 and A4 and patta was marked as Exs.A5 and A6. The kist receipts were marked as Exs.A7 and A8. The Advocate Commissioner's report and sketch are separately marked as Exs.C1 and C2. On behalf of the plaintiff, she examined herself as P.W.1. On behalf of the defendant, sale deed dated 22.03.1994 for purchase of 10 cents of land, as stated supra was marked as Ex.B1 and D.Ws.1 to 5 were examined.

5. The trial Court has dismissed the suit and appeal filed by the plaintiff in A.S.No.156/2003, was allowed and hence the Second Appeal is preferred by the defendant.

6. The above Second Appeal was admitted on 10.09.2005 on the following Substantial Questions of Law:-

a) Whether the respondent is entitled to decree for mandatory injunction for removal of the pipe line especially when he had not established the alleged cause of action on 3.6.1996 by any evidence?

b) When the admission of the opposite party is the best evidence, whether the Lower Appellate Court is correct in law in eschewing the admission of the respondent examined as P.W.1 to the effect that the sale in favour of the appellant was brought about by his father and uncle, who had permitted the appellant to lay pipe line, which would clearly prove the right of the appellant?

c) Whether the Lower Appellate Court is correct in law in reversing the judgment of the Trial Court without adverting to and setting aside the findings rendered by the trial Court?



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d) When it is axiomatic that the plaintiff has to succeed on the strength of his case and not on the weakness of his adversary whether the Lower Appellate Court is correct in law in decreeing the suit filed by the respondent by picking holes in the defence raised by the appellant?

e) Whether the Lower Appellate Court is justified in law in disbelieving the evidence of the independent witnesses examined as D.Ws.2 to 5?

f) When the suit is bad for non-issuance of notice, whether the Lower Appellate Court is correct in law in granting decree as prayed for?

g) Whether the respondent who does not even have a power of attorney executed by his brothers, is entitled to maintain the suit on behalf of his brothers?

7. Heard the learned counsel for the appellant and the learned counsel for the respondent.

8. The subject matter of the suit property is P.V.C pipe line laid to the distance of 330 feet at S.F.No.41/3, 3-B1, 3-B2, 3-B3 in Thirumanoor Village at Ariyalur Taluk. He has sought for the relief of mandatory injunction.

9. The case of the plaintiff as could be seen from the pleadings and P.W.1 is that the lands in S.Nos.41/3-B1, 3-B2, 3-B3, 3 Part are purchased by the father, plaintiff and her brothers and she has been managing the entire property.

10. It is a further case of the respondent/plaintiff that lands in S.No.41/3-A3,3-A2 measuring 10 cents, were purchased by the appellant/defendant. He dug up the bore well and in order to draw the water from the Well, he had put up in the newly purchased land, he laid the P.V.C pipe beneath the land of the plaintiff in the above said S.No. to take the water to the defendant's land, which is situated on the Northern side of the plaintiff's property as could be seen from Exs.C1 and C2.

11. Admittedly, from the suit property described in the schedule of the plaint, absolutely belonged to the plaintiff's family, as could be seen from Exs.A2 to A5 (sale deeds). The plaintiff is in possession of the property in view of the patta and kist marked under Exs.A6 to A8.



12. The case of the respondent/plaintiff is that, without the knowledge or permission, taking advantage of the absence of the plaintiff he had dug up the Well in his land and thereafter he had also laid the P.V.C pipe line beneath the lands of the plaintiff to an extent of more than 330 feet long cutting across the land of the plaintiff and hence he sought for Mandatory Injunction to remove the above said P.V.C pipes lines.

13. The claim of the plaintiff was resisted by the defendant on the ground that the father and maternal uncle of the plaintiff alone have assisted in purchasing the 10 cents of land in the above said S.No.41/3 and 41/3-A2 and they are given oral permission to lay the P.V.C and further contended that it is a usual practice in the village to take water through P.V.C through the other lands. In support of their case, the defendant had marked Ex.B1 and examined as D.W.1 to D.W.4.

14. After going through Exs.A2 to A8, the learned Appellate Judge had rightly held that the suit is maintainable, since he is managing the property on behalf of the entire family. The crux of the issue is that whether there is an oral permission by the father of the plaintiff or uncle of the plaintiff at the time of the purchase of the land by the defendant.

15. Though the defendant as D.W.1 deposed that oral permission was accorded to him by the father and maternal uncle of the plaintiff, on a perusal of Ex.B1 sale deed, there is no such endorsement either by way of recital in the document or as an attester of the document.

16. Neither the said persons, namely the father of the plaintiff or the uncle of the plaintiff, are not attestors of the sale deed. Even the scribe of the document was not examined on behalf of the defendant to substantiate the said plea which assumes significance.

17. In order to substantiate the said plea of oral permission granted by the said two persons in favour of the defendant, he had examined D.W.2 to D.W.5. Except D.W.5, all the other persons are not neighbours of the suit property and hence, the Lower Appellate Court has rightly rejected the evidence of D.W.2, D.W.3 and D.W.4, since they are not neighbouring land owners and a practice alleged to have been carried out in the village, cannot be applicable to the individual rights. In respect of the oral evidence of D.W.5, in the cross-examination, he had stated that he is not aware of the fact as to whether the father or maternal uncle of the plaintiff had granted oral permission to the plaintiff. He could only say that he came to know from the defendant himself. Accordingly, the Lower



Appellate Court has rightly termed the evidence of the D.W.5 in connection with suit property as 'hearsay evidence' and accordingly, rejected the same. The said finding rendered by the lower Appellate Court does not suffer from any irregularity or illegality warranting interference by this Court.

18. It remains to be stated that the title of the suit property in which the relief of Mandatory Injunction is sought for, is absolutely with plaintiff. In the absence of any permission, either oral or written, the defendant cannot enter upon the property and lay the P.V.C pipe lines to the distance of 330 feet at the depth of 8 feet from the ground.

19. From the evidence of Exs.C1 and C2 Advocate Commissioner's Report, the First Appellate Court has rightly concluded that the alleged attempt made by the defendant in lying the road is a fresh, as could be seen from Exs.C1 and C2 Advocate Commissioner's Report and hence, the lower Appellate Court has rightly rendered the finding that the defendant is taking advantage of the absence of the plaintiff in the village and is trying to encroach upon the property of the plaintiff which is hereby affirmed.

20. It remains to be stated that Ex.B1 sale deed is dated 22.03.1994 and an attempt to encroach was made on 10.06.1996. The learned Advocate Commissioner inspected the property on 21.03.1996 and found the attempt of laying the P.V.C pipe line. The respondent/plaintiff's land is a fresh one and hence, the cause of action as alleged by the respondent/plaintiff appears to be correct.

21. The oral permission alleged to have been granted by the father of the plaintiff when the appellant/defendant purchased the property is not proved in the manner known to law and they have not attested Ex.B1 Sale Deed in favour of the defendant. None of the persons in connection Ex.B1 were examined to support the plea with regard to the time of the purchase of 10 cents in the said S.No. The parent or maternal uncle of the plaintiff gave oral consent and permission to lay the P.V.C pipe line and hence, I find that all the Substantial Questions of Law a, b, c, d, e, f and g are answered in negation against the appellant/defendant and findings rendered by the Lower Appellate Court are just and proper and it does not warrant any interference by this Court.

22. In the result,

(i) The Second Appeal is dismissed. No costs.

(ii) The judgment and decree of the First Appellate in



A.S.No.156 of 2003 dated 18.03.2004 is confirmed and the decree is granted as prayed for in O.S.No.225 of 1996.

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Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District (Fast Track) Court at Ariyalur
2. The Principal District Munsif Court at Ariyalur.

+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.34142

S.A.No.1855 of 2004

PMK (CO)
BE (10/08/2021)