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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------|------------|
| Reserved on   | 17.09.2021 |
| Pronounced on | 07.10.2021 |

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.926 of 2009  
and M.P.No.1 of 2009

1.Kuttachi Ammal

2.Kasthuri

3.Unnamalai

4.Muniyammal

5.Anjalai

...Appellants/Plaintiffs 1,2,4-6

Vs.

1.Thanji Ammal

2.Thangaraj

...Respondents/Defendants

3.Indira Gandhi

...Respondent/3<sup>rd</sup> Plaintiff

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree dated 26.02.2009 in A.S.No.21 of 2006 on the file of the District Judge, Tiruvannamalai, reversing the judgement and decree dated 20.10.2003 in O.S.No.459 of 1998 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.N.Krishnakumar [R1 & R2]  
for M/s Sarvabhauman Associates  
No appearance [R3]



## JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred challenging the judgement and decree dated 26.02.2009 passed in A.S.No.21 of 2006 by the District Judge, Tiruvannamalai.

2. The plaintiffs 1, 2, and 4 to 6 are the appellants herein.

3. The averments made by the parties in brief:-

The first plaintiff is the widow of the deceased Arumugam and the plaintiffs 2 to 6 are the daughters of the first plaintiff; the first defendant is the mother of the second defendant; the suit properties and other properties originally belonged to one Arunagiri who had three sons namely Arumugam, Ramachandran and Govindan; Arunagiri died intestate and his three sons inherited his properties including the suit properties; the said Arumugam, Ramachandran and Govindan orally divided the properties and in which the 'A' schedule properties fell to the share of Arumugam and other properties fell to the share of Ramachandran and Govindan; from the date of partition, the plaintiffs are in enjoyment of their share described in 'A' schedule by paying kist; the three brothers jointly dug a well under Jeevandhara Scheme in S.No.5/10 and a Service Connection was also obtained for installing 5 H.P Pump sets in the year 1995; while obtaining Service Connection, the deceased Arumugam had mistakenly mentioned the Survey Number as S.No.5/11, despite the new well was dug in S.No.5/10; since the joint patta was issued in the names of three brothers, the well in S.No.5/10 is a common well; though the Service Connection was granted in the year 1996 itself, the motor was purchased by Arumugam only on 16.09.1997.

3.1 One of the brothers by name Govindan paid his share for the cost of motor pump sets; but Ramachandran or his legal heirs did not pay their share for erecting the motor pump sets in S.No.5/10; since the property in S.No.5/11 is higher than S.No.5/10, Arumugam requested the defendants to permit him to lay the pipeline in the 'B' schedule property and to irrigate 'A' schedule property from the well in S.No.5/10; the defendants and Ramachandran permitted Arumugam to lay the pipeline and accordingly, he laid a pipeline by embedding it 3 ft below the ground level in the 'B' schedule properties; one of the joint owner Ramachandran was working in the army, and he was not added as a party; since the defendants and Ramachandran did not pay



their share of cost towards the Service Connection, they are not entitled to use it; so the plaintiffs obstructed the defendants from using the pump set in SC.No.202; in view of that, the defendants are attempting to demolish the pipeline laid by Arumugam; hence, the legal heirs of Arumugam, who are the plaintiffs herein, have filed this suit for permanent injunction against the defendants.

3.2 In the statement filed by the first defendant and adopted by the second defendant, the following averments were made; it is true that 'A' schedule property was allotted to the share of Arumugam; it is false to state that the brothers have jointly dug a well and for which, Arumugam had obtained a Service Connection. It is also false to state that while applying the Service Connection, he has wrongly mentioned the Survey Number as 5/11 instead of 5/10. It is also not true to state that the defendants have given permission to lay pipelines through 'B' schedule properties. The defendants have purchased 50 cents in S.Nos.5/9 & 5/13 from Govindan on 12.03.1987. There is a well in S.No.5/9 but it exclusively belongs to the defendants. The plaintiffs have forged the signature of Arumugam and played fraud. During the absence of the defendants, the plaintiffs have managed to lay the pipeline without their knowledge. In this connection, a police complaint has also been lodged. There is no cause of action for this suit and the suit has to be dismissed.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. Whether the suit well is situate in S.No.5/11 as alleged in the plaint is true?
2. Whether the plaintiff laid pipe line 'B' schedule on the basis of the permission given by the defendants?
3. Whether the plaintiffs are entitled to the relief of permanent injunction?
4. To what relief?

5. During the course of the trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 & P.W.2 and one document was marked as Ex.A1. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and two documents were marked as Exs.B1 & B2. Commissioner's report and plan were marked as Exs.C1 & C2.

6. After concluding the trial and hearing the parties, the learned trial Judge has granted the relief of Permanent Injunction as prayed for. Hence, the defendants challenged the



judgement of the trial Court by way of preferring an appeal before the District Judge, Tiruvannamalai in A.S.No.21 of 2006 and the said appeal was allowed. Aggrieved over that, the plaintiffs 1, 2, 4 to 6 have filed this Second Appeal and the Second Appeal has been admitted and the substantial questions of law as reframed on 17.09.2021 are as under:-

(i) Whether the findings of the First Appellate Court that the defendants or Ramachandran would not have granted the permission to lay pipeline is perverse to the pleadings made and evidence available on record?

(ii) Can the alleged license or permission issued by the defendants or Ramachandran be revoked as per Section 60 of the Easement Act with or without any condition?

7. Heard Mr.V.Raghavachari, learned counsel for the appellants and Mr.N.Krishnakumar, learned counsel for the respondents 1 & 2.

8. The learned counsel for the appellant submitted that the three brothers have got equal rights and they have an easementary right to take water through the other sharers' land. The learned First Appellate Judge overlooked the said position of law and decided the appeal on the presumption that the permission to lay pipeline would not have been granted by the other sharers. As per Section 60 of the Indian Easement Act, any license or permission granted by the grantor cannot be revoked under normal circumstances. Hence, the Second Appeal has to be allowed.

8.1 It is further submitted by the learned counsel for the appellants that the alleged well itself was constructed only subsequent to partition and it is not a common well and hence, the plaintiffs are not entitled to any right in the well and much less any easementary right over 'B' schedule properties to take water through pipeline; hence, the Court has to uphold the judgement and decree passed by the First Appellate Court; it is further submitted by the learned counsel that the Lower Appellate Court overlooked the fact that the appellants have got the right to draw water through the lands belonging to the defendants, as they got the property through a family partition between the brothers. The existence of the channel mentioned in the Commissioner's report would show that the usage of the pipeline was there for a long time. The continuous usage of the pipeline itself would show that the appellants have got the



permission of the defendants to lay the same on their lands. Supporting his contention, the learned counsel has relied on the following judgements:-

| S.No | Dated                         | Name of the parties                                                      | Citations           |
|------|-------------------------------|--------------------------------------------------------------------------|---------------------|
| 1.   | 08.03.1987                    | Ram Sarup Gupta (dead) by Lrs Vs. Bishun Narain Inter College and others | 1987 2 SCC 555      |
| 2.   | 04.02.1913<br>&<br>07.02.1913 | P.Venkiah Vs.<br>S.Krishnamoorthy                                        | ILR 1915 38 Mad 141 |
| 3.   | 31.05.1929<br>&<br>21.12.1931 | Mohammad Abdul Jamil Vs. Manzoor Ahmad & others                          | AIR 1932 AII 572    |
| 4.   | 08.12.2010                    | Ganesan Vs. Sivaperumal @ Arjunan & others                               | 2011 1 LW 278       |

9. It is not in dispute between the parties that the properties were divided between three sons of their common ancestor Arunagiri. After the demise of Arunagiri, his three sons namely Arumugam, Ramachandran and Govindan partitioned the properties between themselves by way of oral partition. The 'A' schedule properties were allotted to the share of Arumugam and the said fact was also admitted by the defendants themselves. The property in 'B' schedule was allotted to the share of one of the brothers by name Ramachandran. The defendants are the wife and sons of Ramachandran and the plaintiffs were the legal heirs of the deceased Arumugam to whom 'A' schedule property was allotted.

10. There is a well in S.No.5/10. According to the appellants, the well was dug subsequent to the partition by the brothers jointly under Jeevandhara Scheme. The respondents submitted that they had no idea about the digging of the well in the property and both the well and the pipeline were constructed by the Appellant during their absence. Since the husband of the first defendant Ramachandran was working in military, his family used to settle at those places wherever Ramachandran was posted to attend his duty. Though the said Ramachandran was not impleaded as a party to the proceedings, he was examined as a witness on the side of the defendants as D.W.3. However, he has stated that he used to come to his village four times in a year and no cultivation was done in his lands for nearly 15 years.



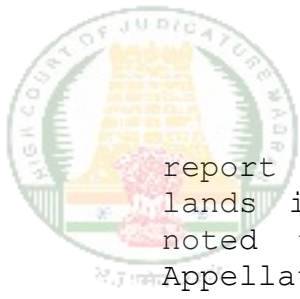
11. In the Commissioner's report, it was stated that there was an old channel in the suit property. It is seen from the judgement of the learned trial Judge that she got convinced with the fact that the appellants/plaintiffs were taking water during the channel for a few years as alleged by them. Ramachandran - D.W.3 has stated that he was in a habit of coming to his place four times in a year. So, it is quite possible for him to take note of the well, pipelines etc.

12. It is alleged by the defendants that after they came to know about the pipelines erected by the appellants/plaintiffs, they had given a police complaint. The testimony of D.W.3 in his cross examination is quite contrary to what he has stated in his chief examination. In his chief examination he has stated that immediately after he gave a complaint, the appellants/plaintiffs have filed this civil case. But during his cross examination he has stated that after filing this case and only after receiving the summons from the Court, he came to know about the existence of the well. He has neither produced a copy of the alleged complaint nor filed any petition to send for the complaint file from the concerned in order to substantiate that the pipes were laid down by the appellants/plaintiffs without their knowledge and permission.

13. Though the trial Judge has taken into consideration of all these facts and recorded a finding that the well was the joint effort of the brothers and the appellants were taking water by laying the pipelines only on the permission given by the defendants, the learned First Appellate Judge overlooked these facts.

14. It is submitted by the learned counsel for the appellant that the permission given by the co-owner for the convenient and joint enjoyment of the property allotted to the respective shares of the brother is a kind of a right given to them along with partition and even in that case where it was not explicit, it has to be implied from the nature, enjoyment and the physical features of the properties fell to the share of the respective sharers. As the lands in S.No.5/11 is higher than S.No.5/10 and the properties fell to the respective share of the brothers through a family partition, the Courts can presume a quasi-easement for the purpose of irrigating the 'A' schedule lands allotted to Arumugam.

15. Though D.W.3 has asserted that the lands are situated at the same level, the Advocate Commissioner has stated in his



report that the level of lands in S.No.5/10 is higher than the lands in S.No.5/11. Though these features can very well be noted without the help of a surveyor, the learned First Appellate Judge has recorded that the Commissioner cannot state about the levels of the fields without the help of the surveyor. Such a finding of the learned First Appellate Judge is perverse and contrary to the common standards of observations.

16. The learned First Appellate Judge has observed that even if the license has been granted by Ramachandran and the defendants, the permission is revocable as per Section 60 of the Indian Easements Act, 1882. For a better understanding, the provision of Section 60 of the Indian Easements Act, 1882 is extracted as below:-

60. License when revocable - A license may be revoked by the grantor, unless -

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

17. The appellants themselves have admitted that the well was dug subsequent to the partition and so it did not find place in the partition deed. It seems that even after partition, the brothers had dug a well for the purpose of irrigation under the Government Scheme. Since Arumugam was locally available, Service connection for the motor pumpset was obtained in his name. Though it is claimed by the appellants that they have a larger share in the well, it was not substantiated. The existence of the well and pipelines cannot be denied though it is claimed by the respondents as recently laid. But the physical features as noted and stated in the report of the Commissioner would show that the pipelines were in use for a few years before the filing of the suit. The uneven level of the fields of the respective parties would also pre-suppose a quasi-easement in the absence of any exclusive well in the property allotted to the share of Arumugam.

18. It is already observed that the relationship between the parties and the origin of their title to the properties is not in dispute. The present physical features of the lands and the absence of well in the share allotted to Arumugam justifies the need for an easementary right. The erection of the motor pump set and laying of pipelines are the works of permanent nature by incurring expenses. Admittedly, there is no written permission granted to Arumugam. In fact the defendants did not



admit that even an oral permission was granted for digging the well and laying the pipelines. So in the absence of any written permission, the existence of permission to use the property of the defendants for the convenient enjoyment of the plaintiff's 'A' schedule properties can only be presumed from the conduct of the parties and the physical features of 'A' and 'B' schedule properties.

19. Ramachandran, brother of Arumugam, has not been impleaded as a party to the proceedings. Despite the said Ramachandran himself has been examined as one of the witnesses from the side of the defendants, he did not evince any interest to implead himself as a party to the proceedings. According to the evidence of Ramachandran (D.W.3), he was in the habit of visiting his village four times in a year. As the digging of a well is not an one day business, it would have surely come to the knowledge of Ramachandran. So it is false to allege that the digging of the well was done without the knowledge of Ramachandran. Thus, the substantial question of law No.1 is answered in favour of the appellants.

20. By erecting motor pumpset and laying pipelines, it is claimed by the appellants that they have made something permanent by incurring expenses and hence, the implied permission to use the well by taking water through the pipelines laid under 'B' Schedule property should be considered as an irrevocable permission classified under Section 60(2) of the Indian Easements Act. It is to be noted that the well and motor pumpset are not the exclusive investment done by Arumugam. It is alleged by the appellants that it is a joint venture by the brothers. But these features have been brought subsequent to partition and on the alleged agreement between the parties. Hence, the share and type of each of the sharers' right towards the well and its enjoyment need to be proved before claiming any permanent and irrevocable nature of easementary right. Further, such right cannot be claimed in a suit for bare injunction without adding all the sharers as parties. The nature of enjoyment and usage of each one's lands and the terms of sharing the expenditure towards the investment etc., would change the rights of parties and even the character of the easement. Hence, the substantial question of law No.2 is answered against the appellants.

21. However, the enjoyment of the suit well by the appellants by laying pipelines over 'B' schedule property is proved as on the date of the suit. So the Appellants are entitled to a decree of permanent injunction subject to the



modification of the said right at any future point of time by the parties in accordance with their share of right and nature of usage of their respective lands.

WEB COPY In the result, this Second Appeal is allowed and the judgement and decree dated 26.02.2009 of the District Judge, Tiruvannamalai is set aside and the suit in O.S.No.459 of 1998 is decreed subject to the above observations made in paragraphs 20 and 21. No costs. Connected miscellaneous petition is closed.

s/d-  
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

Sni

To

1.The District Judge,  
Tiruvannamalai.

2.The Principal District Munsif Judge,  
Tiruvannamalai.

Copy to

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

+1 CC to Mr.V.Raghavachari, Advocate sr 52529

+1 CC to Mr.M.A. Sivakumar, Advocate sr 52528.

S.A.No.926 of 2009

NMI (CO)  
SP(20/12/2021)