



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1359 of 2011

T. Gandhinathan ...Appellant/Appellant/Plaintiff

Vs.

1. T. Ashok Kumar

2. M. Sivakumar ... Respondents/Respondents/Defendants

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 28.07.2011 passed in A.S. No.32 of 2010, on the file of the Sub Court, Arani, upholding the decree and judgment dated 30.07.2010 passed in O.S. No.34 of 2010, on the file of the District Munsif, Arani.

For Appellant : Mr. P. Satheesh Kumar

For Respondents : Mr.Kumaraguru
for Mr. Sai

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, T.Gandhinathan, filed a suit in O.S. No.34 of 2010 before the District Munsif, Arani, Tirivannamali District, for a Permanent Injunction restraining the defendants 1 and 2 from digging a well / bore well in the suit schedule property and for costs.

4. The plaintiff and the first defendant are brothers. In a partition that took place in the family, the suit property in



Survey No.226/3 of Vinnamangalam Village, Arani Taluk, Tiruvannamali District, measuring 10 cents was allotted to the share of the first defendant. At the time of partition, there was an arrangement among the family members that the first defendant should execute a sale deed in favour of the plaintiff in respect of the suit property after receiving consideration from him. However, the first defendant alienated the suit property in favour of the second defendant, who, according to the plaintiff, is taking steps to dig a well in the suit property. The further contention of the plaintiff is that, if the second defendant is permitted to dig a well / bore-well in his property, it would result in depletion of water level in the plaintiff's land. He therefore, filed a suit for Permanent Injunction against the defendants as stated above.

5. Both the defendants remained ex-parte before the trial court. However, the learned District Munsif, Arani, dismissed the suit filed by the plaintiff vide his decree and judgment dated 30.07.2010 by observing that the second defendant has got every right to exercise his ordinary right over his property.

6. Aggrieved over the same, the plaintiff filed an appeal in A.S.No. 32 of 2010 before the Subordinate Judge, Arani. The learned Subordinate Judge, after analysing the oral and documentary evidence on records, dismissed the appeal filed by the plaintiff vide his decree and judgment dated 28.07.2011.

7. Now the present second appeal is filed by the plaintiff on the following substantial question of law.

"Whether the courts below are justified in rejecting the relief sought for by the plaintiff especially when the relief sought for is based on objectionable claim?"

8. Heard Mr.P. Satheesh Kumar, learned counsel for the appellant and Mr. Kumaraguru, learned counsel for the respondent.

9. Learned counsel for the appellant contended that though the plaintiff was willing to purchase the suit property i.e. 10 cents of land from the first defendant, he did not sell the same to him and on the contrary, he has sold it to a stranger, the second defendant. His further contention is that the second defendant is attempting to dig a well in his property, which would affect the water level in the plaintiff's land. It is also his contention that there should be a minimum of 100 meters distance between two bore-wells and that though in the instant case, there is a bore-well in the land of the defendant



and the plaintiff, the second defendant is attempting to dig a bore-well without getting any license from the concerned authorities.

10. Per contra, the learned counsel for the second respondent would contend that the suit filed by the plaintiff is totally mis-conceived and that both the courts below had rightly dismissed the suit filed by the plaintiff.

11. At the outset, it may be observed that the plaintiff has filed the suit against the defendants 1 and 2 restraining the second defendant from digging a bore-well/well in his property in survey No. 226/3, which is described as suit property. Mr.P. Satheesh Kumar, learned counsel for the appellant contended that there should be a minimum distance between two bore-wells. He has not explained as to where exactly the other two bore-wells are situated. He has also not specifically stated which law bars the second defendant from having a bore-well in his land. It is also important to point out at this juncture that there are absolutely no pleadings in this regard in the plaint. Merely because the defendants did not contest the suit in O.S. No.34 of 2010, the plaintiff cannot be granted any relief as sought for by him especially when the suit property absolutely belongs to the second defendant. In view of the same, the substantial question of law is answered against the appellant .

12. In the result,

i. the second appeal is dismissed. No costs.

ii. the decree and judgment dated 28.07.2011 passed in A.S. No.32 of 2010, on the file of the Sub Court, Arani, and the decree and judgment dated 30.07.2010 passed in O.S. No.34 of 2010, on the file of the District Munsif, Arani, are upheld.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To

WEB COPY

1. The Subordinate Judge,
Arani.
2. The District Munsif,
Arani.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Sai Krishnan, Advocate Sr.8181

S.A.No .1359 of 2011

rsv[co]
srg 21/03/2022