



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.444 of 2015
and M.P.No.1 of 2015

1.Rajendiran

2.Subramani

...Appellants/Defendants 2 & 3
Vs.

1.R.Chidambaram

2.R.Ganesan

..Respondents 1 & 2/Plaintiffs 1 & 2

3.Chinnakannu

...3rd Respondent/1st Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 18.12.2014 passed in A.S.No.141 of 2014 on the file of the Sub Court, Arakonam, in confirming the judgment and decree dated 30.06.2010 passed in O.S.No.16 of 2001 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.P.Mani

For Respondents : Mr.G.Rajan, for R1 & 2

: No Appearance for R3

JUDGMENT

The defendants 2 and 3 are the appellants in the present Second Appeal.

2. The first and second respondents / plaintiffs filed a suit seeking for the relief of permanent injunction restraining the defendants from in any manner obliterating the channel described in 'B' schedule to the suit property and also for mandatory injunction directing the defendants to restore the channel that is shown as E,F,C,D in the 'B' schedule property.



3. The suit was laid by the plaintiffs on the ground that the property described in 'A' schedule and other properties were partitioned by one Bagavan Naicker, and the father of the defendants by a registered Partition Deed dated 02.04.1949. They divided the property equally among themselves. On the death of Bagavan Naicker, his share vested on the first defendant. The other sharer Munusami Naicker, sold the 'A' schedule property in favour of the father of the plaintiffs through a registered Sale Deed dated 01.06.1961. On the demise of the father of the plaintiffs, there was a family arrangement and the 'A' schedule property was allotted in favour of the first plaintiff in the year 1992. The plaintiff was in possession and enjoyment of the property.

4. The further case of the plaintiffs is that the agricultural lands in the 'A' schedule property is irrigated from the channel that was shown as E,F,C,D in the sketch. The grievance of the plaintiffs is that the defendants attempted to obliterate the channel and prevent the plaintiffs from carrying on with the agricultural activities. During the pendency of the suit, the defendants proceeded to obliterate a portion of the channel. Hence the plaintiffs had sought for the reliefs of permanent injunction and mandatory injunction against the defendants.

5. The defendants have taken a stand to the effect that there was no such channel available and that the plaintiffs have filed a suit without any basis.

6. Both the Courts below on appreciation of the oral and documentary evidence found that even when the partition took place in the year 1949, there was a specific understanding between the parties that one feet channel must be left out to enable the flow of water which will be enjoyed by all the parties. Even when the Sale deed was executed on 01.06.1961 in favour of the father of the plaintiffs, it was clearly stated that there is a one feet channel and the water can be used for irrigating the agricultural lands. The Courts below also relied upon the report filed by the Advocate Commissioner and the sketch of the Surveyor and came to a conclusion that the defendants had obliterated the channel. Hence both the Courts below granted the reliefs sought for by the plaintiffs. Aggrieved by the same the present Second Appeal has been filed before this Court.



7. In the considered view of this Court, both the Courts below have rendered their findings after appreciating the oral and documentary evidence and this Court does not find those findings to be perverse. There are no grounds to interfere with the findings of the Courts below and there is no substantial question of law involved in the present Second Appeal.

8. In the result the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

jv/jeni

To

1.The Subordinate Judge,
Arakonam.

2.The District Munsif,
Sholinghur.

Copy to

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

+1 CC to Mr.P. Mani, Advocate sr 8921

+1 CC to Mr.R.Rajarajan, Advocate sr 9079.

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NRJK(CO)
SP(07/03/2022)