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S.A.No.912 of 2010 & M.P. No.1 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.912 of 2010
and M.P. No.1 of 2010

Thangamuthu Gounder

...Appellant

Vs.

Sundarasamy Gounder

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 07.01.2010 passed in A.S. No.9 of 2009, on the file of the Sub Court, Dharapuram, upholding the decree and judgment dated 03.10.2007 passed in O.S. No.26 of 2003, on the file of the District Munsif Court, Dharapuram.

For Appellant : Ms.Zeenath Begum
for M/s.T.Muruga Manickam
For Respondent : Ms.H.Sujithra
for Mr.B.Dyaneswaran



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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 rank in the present second appeal would also be indicated.

3.The plaintiff filed the suit for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property which is morefully described in the plaint as a pipeline ('A'-B') in S.No.1228/A of Maalurpalayam Village, Dharapuram Taluk, Erode District along with 5 HB Motor and a Well.

4.The brief facts of the case of the plaintiff are as follows:

The plaintiff was drawing water from the suit Well in S.No.1224/A in order to fill the Well in S.No.1228 through a pipeline



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using an electric motor and thus he was irrigating his land in S.No.1228 of Maalurpalayam Village without any interference from anyone. Neither the defendant nor the other share holders of the entire property objected the plaintiff drawing water from the Well through the suit pipeline. In fact, he has been using the same since May 1973. On 18.01.2003, the defendant, along with his henchmen, attempted to damage 'A-B' pipeline and also attempted to remove the same. The plaintiff successfully prevented it with the help of some elders/mediators in the village. Since the defendant is threatening the plaintiff that he would remove the pipeline at any cost, he was forced to file the suit for permanent injunction restraining the former from interfering with his peaceful possession and enjoyment of the suit pipeline.

5.The suit was resisted by the defendant on the ground that the plaintiff cannot draw water from the Well which is situate in his land nor lay a pipeline in his land. According to him, there is a land belonging to Highways Department between his property and the property of the plaintiff. He therefore prayed for dismissal of the suit.



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6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the plaintiff is entitled to a permanent injunction as prayed for?
- ii. What other relief the plaintiff is entitled to?"

7. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A4. On the side of the defendant, the defendant examined himself and one another witness and marked Ex.B1. An Advocate Commissioner was appointed by the trial court and he filed his report and plan which were marked as Ex.C1 to Ex.C4.

8. After full contest, the learned District Munsif, Dharapuram dismissed the suit filed by the plaintiff, vide her decree and judgment dated 03.10.2007 on the following grounds :



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- i. The Advocate Commissioner who filed his report and plan had specifically stated that there is a land belonging to Highways through which the 'A-B' pipeline is laid.
- ii. The plaintiff has no right to draw water from the Well in S.No.1224/A in order to fill the Well in S.No.1228 through the alleged pipeline 'A-B' since the plaintiff himself in his evidence admitted that no permission was obtained by him from the Highways Department to lay the pipeline through their land.
- iii. The plaintiff has not also established his case that he has been using the pipeline since May 1973 and on the other hand the oral and documentary evidence adduced on the side of the defendant shows that the plaintiff laid the pipeline very recently and that too only after the police complaint.

9. Aggrieved over the decree and judgment passed by the trial court the plaintiff filed an appeal in A.S.No.9 of 2009 before the Sub Court, Dharapuram. The learned Subordinate Judge, Dharapuram, after analysing the oral and documentary evidence adduced on both sides,



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upheld the findings recorded by the trial court judge and dismissed the suit filed by the plaintiff, vide his decree and judgment dated 07.01.2010.

10. Now the present second appeal is filed by the plaintiff. Notice of motion was ordered in the second appeal and after several adjournments, it is posted for final hearing today (19.04.2023). Substantial questions of law raised in the grounds of appeal is extracted hereunder:

- i. "Whether the judgments of the Courts below are vitiated in that they have held, that a co-owner is not entitled to use the water in a common well to irrigate lands other than the lands which such well was intended for?"

11. Heard Ms.Zeenath Begum for M/s.T.Muruga Manickam, learned counsel for the appellant and Ms.H.Sujithra for Mr.B.Dyaneswaran, learned counsel for the respondent.

12. Ms.Zeenath Begum, learned counsel for the appellant contended that when the plaintiff and the defendant are co-sharers and the plaintiff has also been using the suit 'A-B' pipeline to draw water from



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the Well situated in S.No.1224/A of Maalurpalayam Village to fill the Well in S.No.1228 (plaintiff's property) and that both the Courts below dismissed the suit filed by the plaintiff erroneously.

13. Per contra, Ms.H.Sujithra, learned counsel for the respondent would contend that both the Courts below, after analysing the oral and documentary evidence adduced on both sides have rightly dismissed the suit and in fact there is no substantial question of law involved in the present appeal.

14.The case of the plaintiff is that the plaintiff has been using the 'A-B' pipeline to draw water from the Well in S.No.1224/A without any interference since May 1973. In order to establish the same, the plaintiff merely relied on his title deeds which were marked as Ex.A1 to Ex.A4 as well as the Advocate Commissioner's report and plan (Ex.C1 to Ex.C4). A perusal of his title deed itself clearly shows that no right was given to the plaintiff to draw water from the Well in S.No.1224/A which exclusively belonged to the defendant. Both the Courts below had also held that the owners of properties of S.No.1224/A can alone draw water from the Well and the same cannot be extended to S.No.1228 which



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belonged to the plaintiff as it is not specifically provided in the sale deed Ex.A1. The plaintiff also cannot fill water in his Well in S.No.1228 by drawing water from the Well in S.No.1224/A through a pipeline. The specific case of the plaintiff is that he has been using the pipeline since May 1973 and that the other co-sharers had never objected to the same. However, the plaintiff had not established this particular aspect by adducing any acceptable evidence.

15. In fact, in the plaint, there is a specific pleading that no hardship would be caused to the defendant if the plaintiff lays a pipeline to draw water from the Well in S.No.1224/A. Moreover, it is also seen from the Advocate Commissioner's report that there is a land which belongs to the Highways Department between the point A & B and the plaintiff also admitted that he did not get any permission from the Highways Department to lay a pipeline in their land. Therefore, the first appellate court was right in holding that the plaintiff has not come to the Court with clean hands. Both the Courts below had considered all the aspects of the dispute between the parties in extenso and I do not see any reason to interfere with the findings recorded by both the Courts below as



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they are based on facts and evidence. In fact there is no substantial question of law in the present appeal.

16. In the result,

i. the second appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

ii. the decree and judgment dated 07.01.2010 passed in A.S. No.9 of 2009, on the file of the Sub Court, Dharapuram, and the decree and judgment dated 03.10.2007 passed in O.S. No.26 of 2003, on the file of the District Munsif Court, Dharapuram, are upheld.

19.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The Sub Court, Dharapuram.
2. The District Munsif Court, Dharapuram.
3. The Section Officer, VR Section, High Court, Madras.

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