



S.A.No.861 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2023
Pronounced on	21.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.861 of 2005
and
C.M.P.No.12092 of 2005

1. S.Palanisamy
2. S.Muthurakkianna Gounder
3. Perianna Gounder (died)
4. Sarawathi
5. Poovaran
6. Sakthivel

(Appellants 4 to 6 brought on record as LR's of the Deceased 3rd Appellant vide order of Court dated 10.04.2019 made in CMP.No. 20173, 20175 and 20178/2018 in S.A.No. 861/2005)

7. P. Lakshmi
8. P. Lineshwaramurthy
9. V.Ganthimathi

(Appellant 7 to 9 brought on record Lrs of the Deceased First Appellant S.Palanisamy vide Court order dated 06.07.2021 made in C.M.P.No. 454 of 2021 in SA.861 of 2005)

... Plaintiffs/Appellants

-Vs-



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1. Senniappan
2. Duraisamy
3. Appachi

... Respondent

Prayer:- Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Learned Additional District Judge (Fast Track Court No. IV) Erode at Bhavani in A.S.No.13 of 2002 dated 31.07.2002 reversing the judgment and decree of the Learned Second Additional District Munsif, Bhavani in O.S.No. 32/1998 dated 25.04.2001.

For Appellants : Mr.A.K.Kumarasamy
Senior Advocate
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr. C. Munusamy (for R1)

R2-refused

R3-died-given up
Vide Court order dated 16.11.2023

JUDGMENT

The instant Second Appeal has been filed at the instance of the Plaintiffs. The respondents are the defendants.

2. For the sake of convenience, the parties will be referred to according to their litigative status.



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The brief facts, which give rise to the instant Second Appeal

are as follows:-

3. According to the plaintiffs, the suit property belongs to plaintiffs, the defendants are the neighbors. Both the plaintiffs and the defendants are descendants from same ancestors. The defendants are the owners of the property situated at 512/5, 512/6, 512/8 and 512/9, Salangapalayam Village. It is the submission of the Plaintiffs that the Lower Bhavani project channel come to the plaintiffs land through the defendants land. Through that channel, the Plaintiffs are drawing water and has been doing agricultural operations. However, the defendants obliterated such channel and attempted to put up cart-track. It was also contended that the defendants are interfering with the usage of cart-track situated in 512/3 and 512/4. Hence, the plaintiffs have come forward with the suit for permanent injunction as well as mandatory injunction.

4. The said suit was resisted by the defendants contending that the Plaintiffs are not at all the persons entitled to irrigate through Lower Bhavani Project Channel, and that they never obliterated the channel. It was also further contented that they never objected or interfered in the



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cart-tract situated in S.F.No. 512/3 and 512/4. Hence, prays to dismiss the suit.

Evidence, Documents and finding of the Court below:-

5. Before the Trial Court, the Plaintiffs have marked nine documents as Ex.A1 to A9 and the defendants have marked 14 documents as Ex. B1 to B14. Further, the Plaintiffs have examined two witnesses as PW1 and PW2 and on the side of the defendants, three witnesses were examined as DW1 to DW3. The Court documents Ex.C1 and C2 were marked.

6. The Trial Court after having considered the oral and documentary evidence granted the relief of permanent injunction and mandatory injunction. Aggrieved by the same the defendants preferred an appeal before the First Appellate Court. The First Appellate Court on re-appreciation of oral and documentary evidence reversed the findings by allowing the appeal, and thereby dismissed the suit. Aggrieved by the same, the Plaintiffs are before this Court.



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Substantial question of law:-

7. On 12.08.2005 when the appeal was admitted, the following substantial question of law was framed.

“Inasmuch as there is no legal right in favour of the defendants, based on customary or otherwise, to have a cart track in the lands of the plaintiff, has not the lower appellate Court committed an error of law in reversing the judgment of the trial Court granting the decree for injunction.”

Submissions of either side Counsel:-

8. The learned Senior Counsel appearing for the appellants/plaintiffs would vehemently contend that the order passed by the Trial Court is a well considered one and that whether or not the Plaintiffs come under the Ayakattuthar of Lower Bhavani Project, the defendants have no business to obliterate the channel, and it was also contended by the learned Senior Counsel that all along the plaintiff have been drawing water through the channel and that whether it is legal or illegal it is for the Government to levy charges upon the plaintiffs and the defendants have no business to obliterate the channel. The Learned



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Senior Counsel during his arguments is very much particular about the Lower Bhavani Project channel and has not put forth any ground as to the finding in respect of the cart-track for the prayer 'A'. The learned Senior Counsel would contend that the First Appellate Court while reversing the judgment has not determined points for determination and has only determined omnibus point for determination. Therefore, there is a manifest contravention to Order 41 Rule 31 of CPC. Hence, contended that the judgment of the First Appellate Court is liable to be interfered with. Hence, prayed to allow this second appeal.

9. Per contra, The Learned Counsel appearing on behalf of the respondents/defendants would vehemently contend that the very basis of the plaintiffs case rest upon the right to draw water under Lower Bhavani Project, and that they have nowhere stated that they are drawing water without having any right, from the Lower Bhavani Project. The Learned Counsel would also further contend that there is no proof available as to the existence of the channel and also its obliteration by the defendants. Hence prayed to dismiss the second appeal.

Analysis of the submissions:-



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10. In order to answer the substantial question of law, it is appropriate to find whether the case put forth by the plaintiffs that they have a right to draw water under Lower Bhavani Project is correct. In this connection, the learned counsel for the Respondents would rely upon the Ex-B4 which is the document given by the Revenue Authority, where it has been specifically stated that both the plaintiffs and the defendants are not at all Ayakattuthar to draw water from Lower Bhavani Project. The First Appellate Court after gone into this aspect and further by relying the admission of the plaintiffs that they were doing agriculture operations only through the seepage water, and held that the plaintiffs are not entitled for any relief.

11. At this juncture, the learned Senior Counsel for the appellants would submit that the defendants have obliterated the channel therefore, he must be directed to be restore the same, by way of mandatory injunction. When the plaintiffs come forward with the specific claim that they are entitled to use the channel by way of Ayakattuthar to the Lower Bhavani Project, and when such factum was disproved by the defendants by producing the Ex.B4, the Plaintiffs have no right or title to seek for the relief of mandatory injunction, as the channel, even according to the



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plaintiffs belongs to the Government. Therefore, the finding of facts recorded by the First Appellate Court that the plaintiffs are not entitled to have relief of mandatory injunction is not to be interfered with. There was also finding of fact recorded by the First Appellate Court that the Plaintiffs have not proved as to the existence of channel in the past. This Court is of the firm view that the finding of facts recorded by the the First Appellate Court is based on materials and supported by documentary evidence.

12. Coming to the prayer in respect of Cart-track, the First Appellate Court after referring to various documents, held in Para 14 that the Plaintiffs are not entitled to have any relief of permanent injunction. But to dislodge such finding, the learned Senior Counsel also has not put forth any contention with regard to Ex.C1,C2, B5, B6 and B8.

13. On perusal of the above documents, this Court could find that the S.F.Nos. 512/3 and 512/4 are classified as “pathway” in their respective Adangal. Therefore, the First Appellate Court found that the other land owner is entitled to have easementary right over the S.F.Nos. 512/3 and 512/4 to reach their land. By such finding, the First Appellate Court even declined to grant relief of permanent injunction. Such findings



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are based on acceptable evidence. Further, this Court could not find any perversity over the said finding.

14. At this juncture, the learned Senior Counsel by referring to various judgments of the Hon'ble Supreme Court of India (i) in the case of ***Santosh Hazari Vs Purushottam Tiwari(Deceased) by Lrs.*** reported in ***(2001) 3 SCC 179*** and (ii) in the case of ***Parimal Vs. Venna @ Bharti*** reported in ***2011(2) CTC 329***, would contend that the First Appellate Court has only formulated omnibus point for determination and such practice is contrary to the very tenor of Order 41 Rule 31 of C.P.C. Hence, prayed to set aside the judgment of the First Appellate Court. This Court absolutely cannot have any grievance over the legal principles of the above precedents.

15. However, in the case in hand, though the First appellate Court has formulated only the omnibus point for determination, as to whether the appeal has to be allowed or not, while harmoniously reading the judgment of the First Appellate Court, this Court could find that the First Appellate Court has re-appreciated the evidence and answered all those issues separately with adequate reasoning. As rightly contended by the learned senior counsel, though no separate point for determination was



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formulated in view of the above factum, this Court could not find any material irregularity or deviation from the principles enunciated under order 41 and Rule 31 of CPC. In this regard, it is useful to refer to the judgment of the Supreme Court reported in **(2006) 3 SCC 224 (G.Amalorpavam and others vs R.C.Diocese of Madurai)** and the relevant portion of judgment read thus:-

9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment deliver in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellant court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered



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the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provision of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavor on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective case and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of



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second appeal conferred by Section 100 CPC.”

(Emphasis Supplied)

16. Therefore, in view of the above discussion and above precedent, this Court is of the view that the Judgment of the First Appellant Court cannot held to be in contravention to Order 41 Rule 31 of C.P.C. Further in view of the discussions stated supra, this Court could not find any perversity in the finding of fact recorded by the First Appellate Court. Thus, the substantial question of law is answered in favour of the respondents.

17. In the result, the Second Appeal is dismissed. No costs. Consequently, C.M.P.No. 12092 of 2005 is also dismissed.

21.12.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To
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1. The Additional District Judge
(Fast Track Court No. IV)
Erode at Bhavani.
2. The Second Additional District Munsif,
Bhavani
3. The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.



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Pre-Delivery order

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and

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Order pronounced on 21.12.2023