



S.A.(MD)No.272 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.272 of 2018

and

C.M.P.(MD)No.7568 of 2018

- 1.V.Alagesan
- 2.Rajammal
- 3.Sudhanthiram @ Sudhanthirakani
- 4.Kartheesan
- 5.Radha
- 6.Saroja
- 7.Manikandan
- 8.Rekha
- 9.Kalpana
- 10.Nisha
- 11.Kamala
- 12.Kasthuri
- 13.Balakrishnan
- 14.Padma
- 15.Uthamaseelan

... Appellants

/Vs./

K.Evans Bright

... Respondent



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.161 of 2017, on the file of the Sub-Court, Tiruchendur, dated 10.10.2017 dismissing the judgment and decree passed in O.S.No.75 of 2009 on the file of the District Munsif Court, Tiruchendur dated 30.01.2013.

For Appellants : Mr.D.Venkatesh

For Respondent : Mr.D.Nallathambi

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellants are the defendants in the suit. The respondent is the plaintiff in the suit. The suit in O.S.No.75 of 2009 was filed by the plaintiff before the District Munsif Court, Tiruchendur, seeking for declaration and mandatory injunction. Declaratory relief sought for by the plaintiff is in respect of a water channel adjoining the appellants / defendants' property. The said water channel runs from east to west and is connected to the main water channel running from north to south. The plaintiff, by virtue of a sale deed of the year 1952 as well as another sale deed of the year 2009, which have been marked as Exs.A3 and A8 respectively before the trial



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Court claims ownership of the disputed water channel. Based on the aforesaid sale deeds, declaratory relief as well as the relief of mandatory injunction has been sought. The appellants / defendants are neighboring land owners of the respondent / plaintiff. The plaintiff claims that the appellants / defendants are interfering with their peaceful possession and enjoyment of the water channel.

2. However, as seen from the written statement filed by the appellants / defendants, they contended that there is no water channel as claimed by the respondent / plaintiff. They have also claimed that as per the parent document of the respondent / plaintiff, namely, the sale deed of the year 1952 (Ex.A3), there is no reference to any water channel and therefore, the respondent / plaintiff cannot claim that there is a water channel as alleged in the plaint. It is also contended by the appellants / defendants that since the parent document of the year 1952 does not refer to any water channel, subsequent document of the year 2009 (Ex.A8) cannot be relied upon by the respondent / plaintiff, though the said sale deed refers to a water channel as the said vendor did not have the title over the disputed property, namely, water channel.



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3. Before the trial Court, on the side of the respondent / plaintiff, 14 documents were filed and they were marked as Exs.A1 to A14. Three witnesses were also examined on his side, namely, P.W.1 to P.W.3. A subpoena was also taken to examine the Government Surveyor by the plaintiff and the Government surveyor, namely Kanthasamy was examined as P.W.3. The surveyor has also filed six documents pertaining to the suit schedule property, which were marked as Exs.X1 to X6 as Court documents.

4. On the side of the appellants / defendants, four documents were filed, which were marked as Exs.B1 to B4 which included the sale deed standing in the name of the appellants / defendants as well as the patta and property tax receipt. On the side of the appellants / defendants, only one witness was examined, namely, Alagesan, first appellant as D.W.1.

5. Ex.A1 sale deed standing in the name of the respondent / plaintiff reveals that there is a water channel as claimed by the respondent / plaintiff in the suit. The Government surveyor (P.W.3) in his



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deposition has also deposed that there is a water channel as claimed by the respondent / plaintiff. The Court exhibits namely Exs.X1 to X6 also reveal that there is a water channel, though the appellants / defendants would contend that the parent document of the plaintiff / respondent namely, sale deed of the year 1952 did not disclose that there is a water channel in the suit schedule property.

6. Except examining one witness on the side of the appellants / defendants, namely the first appellant (D.W.1), no other witness was examined on the side of the appellants / defendants to disprove the contention of the respondent / plaintiff. As seen from Ex.A8 and the Court exhibits, namely, Exs.X1 to X6, there is a water channel belonging to the respondent / plaintiff adjoining the appellant / defendants' property.

7. The trial Court, after giving due consideration to the oral and documentary evidence, produced by the respective parties, has come to the right conclusion observing that the respondent / plaintiff has discharged his burden by producing oral and documentary evidence to prove that there is a water channel belonging to him, which runs from



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east to west as claimed in the plaint, which is being used by the respondent / plaintiff. Accordingly, the suit was decreed as prayed for by the respondent / plaintiff in the suit by granting the declaratory relief as well as mandatory injunction to restore the water channel, which has been destroyed by the appellants / defendants.

8. Admittedly, no counter claim has been made by the appellants / defendants to seek for a declaration to declare the sale deed of the year 2009 standing in the name of the respondent / plaintiff (Ex.A8), which discloses water channel as null and void. The appellants / defendants have also not disputed the Court exhibits namely, Exs.X1 to X6 as seen from their deposition through D.W.1.

9. Even though the appellants / defendants have stated in para 10 of the written statement filed by the appellants / defendants, that the sale deed of the year 2009 (Ex.A8) standing in the name of the respondent / plaintiff is a forged document, they have not let in any oral and documentary evidence to substantiate the said contention before the trial Court. Therefore, this Court is of the considered view that the trial Court,



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only after giving due consideration to the oral and documentary evidence available on record has rightly decreed the suit in favour of the respondent / plaintiff.

10. The lower appellate Court, namely the Sub Court, Tiruchendur, in A.S.No.161 of 2017, by its judgment and decree dated 10.10.2017 has also confirmed the findings of the trial Court by dismissing the first appeal filed by the appellants / defendants. The substantial questions of law raised by the appellants / defendants in the grounds of this Second Appeal are all factual issues, which have been correctly considered by the Courts below by giving findings in favour of the respondent / plaintiff. There are no debatable questions of fact or law involved, which require consideration by this Court under Section 100 of C.P.C. There is no perversity in the findings of the Courts below. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:

- 1.The Sub Court, Tiruchendur.
- 2.The District Munsif Court, Tiruchendur.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.272 of 2018

Dated:
23.03.2023