



S.A.No.738 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.738 of 2001

S.S.Palanisamy

...Appellant

vs.

1.State of Tamil Nadu,
Rep. by District Collector,
Karur.

2.The Tahsildar,
Aravakurichi,
Karur.

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 03.07.2000 in A.S.No. 34 of 1999 on the file of the Additional District Court cum Chief Judicial Magistrate Court, Karur reversing the Judgment and Decree dated 19.02.1991 in O.S.No.193 of 1989 on the file of the District Munsif Court, Karur.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For Respondents : Mr.A.Kannan,
Additional Government Pleader



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ORDER

Though the matter is listed under the caption 'notice of motion' today, it is taken up for final disposal.

2. The appellant is the plaintiff in the suit in O.S.No.193 of 1989 on the file of the District Munsif Court, Karur.

3. The appellant / plaintiff filed the above suit against the defendants, who are the respondents herein for (i) declaration declaring that the appellant / plaintiff is the exclusive owner of the suit channel and consequential relief of (ii) permanent injunction restraining the respondents / defendants and their men from in any manner interfering with the appellant / plaintiff's peaceful possession and enjoyment of the suit irrigation channel and (iii) mandatory injunction directing the respondents / defendants to restore the suit channel to its original state within a time to be fixed by the Court, failing which, allow the appellant / plaintiff to restore the suit kavar to its original state and recover the cost of such restoration and (iv) directing the respondents /



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defendants to pay damages of Rs.1,000/- for the period from 07.09.1988 till the date of the suit. After completion of the pleadings, the Trial Court framed the following issues.

"(i) Whether the plaintiff is entitled to get declaratory right in respect of the suit property?

(ii) Whether the plaintiff is entitled to get permanent injunction as prayed for?

(iii) What are the reliefs that plaintiff is entitled for?"

4. The appellant / plaintiff has examined himself as PW1 and marked 25 documents as Exs.A1 to A25 in order to substantiate his case. The respondents / defendants examined one Ragavendran, Village Administrative Officer as DW1 and marked 5 documents as Exs.B1 to B5 in order to substantiate their case.



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5. After the trial and conclusion of arguments, the Trial Court decreed the suit as prayed for by the appellant / plaintiff vide Judgment and Decree dated 19.02.1991. Challenging the said Judgment and Decree, the respondents / defendants filed an appeal in A.S.No.34 of 1999 before the Additional District Court cum Chief Judicial Magistrate Court, Karur. The learned Judge who dealt with the appeal had partly allowed the appeal by (i) setting aside the declaratory relief and permanent injunction granted in favour of the appellant / plaintiff, (ii) modifying the mandatory injunction to the effect that the appellant / plaintiff ought to restore the suit channel to its original state himself on his own costs and (iii) confirming the damages granted in favour of the appellant / plaintiff. Challenging the said Judgment and Decree, the plaintiff in the suit, who is the respondent in the appeal suit, has filed the Second Appeal before this Court, raising the following substantial questions of law.

"1. When the plaintiff has been issued patta for the property inclusive of the suit channel is the learned Additional District



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Judge right in dismissing the suit for declaration?

2. When the plaintiff has specifically pleaded that the defendants have not only widened the suit channel but also deepened it is the learned Additional District Judge right in limiting the decree only with reference to widening of the channel by the defendants?"

6. The specific case of the appellant / plaintiff is that an irrigation channel which branches off from Chinnadharapuram Raja Vaikkal, runs through land in S.F.Nos.911 and 903, Kallakurichi Village and enters into the appellant / plaintiff's land in S.F.Nos.902 and 898B, Kallakurichi Village and irrigates the southern portion of S.F.No.898B. The irrigation channel running in S.F.Nos.902 and 898B exclusively belongs to the appellant / plaintiff and the same is morefully described in the schedule of property (herein after referred as 'suit channel'). Except for the appellant / plaintiff, no other person has right and title over the suit channel. The suit channel was laid by the plaintiff's predecessors in title



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for the irrigation of the southern portion of S.F.Nos.902 and 898B. The suit channel runs on the ground level in S.F.Nos.902 and 898B having bunds on either side. The width of the channel is 3 feet including the width of the bunds on either side. The distance of the suit channel is 550 feet in S.F.Nos.902 and 898B. The height of the bunds on either sides is two and half feet. If the suit channel is deepened below the ground level, it would become impossible for the appellant / plaintiff to irrigate his lands in S.F.Nos.902 and 898B. While so, one Kombapalayathan @ Srinivasan and four others, who are the neighbours, interfered with the appellant / plaintiff's peaceful possession and enjoyment of the suit channel in S.F.Nos.902 and 898B. Therefore, the appellant / plaintiff filed a suit in O.S.No.791 of 1985 on the file of the District Munsif Court, Karur. While the suit was pending, the second respondent herein sent a notice dated 26.08.1988 to the appellant / plaintiff and his brother, namely, S.L.Rengasamy with false allegations. The appellant / plaintiff sent his reply on 05.09.1988 setting forth the correct facts. The second respondent / second defendant aware of the rights of the appellant / plaintiff in the suit channel, without his permission, deepened the suit



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channel with the help of their men on 07.09.1988. Subsequent to the deepening of the suit channel, the appellant / plaintiff is unable to irrigate his land in S.F.Nos.902 and 898B with the Amaravathi water or with the water from the wells, which caused irreparable and heavy loss to him. Therefore, the appellant / plaintiff filed the suit against the respondents / defendants for declaration and consequential relief of permanent injunction, mandatory injunction and damages.

7. The case of the respondents / defendants is that they admitted that the land in S.F.Nos.902 and 898B belongs to the appellant / plaintiff and the above said survey fields are irrigated by the suit channel. The suit channel is a common channel. The channel has no separate ayacut. Even though the suit channel runs through the appellant / plaintiff's patta land, he has no absolute right over the same. The suit channel is not established by the predecessors of the appellant / plaintiff. The water will flow through the suit channel, only if there is excess water in Chinnadharapuram Raja Vaikkal. The lands adjacent to the suit channel are dry lands. The Government is not bound to supply water to these



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lands. The appellant / plaintiff is taking water from this suit channel like other adjacent land owners. The appellant / plaintiff obstructed the flow of water by depositing the sand dugged from the well in the suit channel. The appellant / plaintiff has no right to stagnate the water even if the suit channel passes through his patta land. When there is surplus water in the main channel, the diversion has to be given through the suit channel. Water rates as per the Rules would be charged when water is taken from the channel by the adjacent owners including the appellant / plaintiff. The appellant / plaintiff has no separate right over the suit channel. When a direction is given to the appellant / plaintiff to remove the obstruction to free flow of water, he refused to do so. Therefore, the respondents / defendants have taken steps to remove the same. Though the Trial Court failed to consider the fact and decreed the suit in favour of the appellant / plaintiff, the Appellate Court rightly appreciated the evidences and dismissed the relief of declaration and permanent injunction. There is no merits in the appeal and it is liable to be dismissed.



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8. The learned counsel appearing for the appellant / plaintiff would submit that the channel runs through S.F.Nos.902 and 898B, which belongs to the appellant / plaintiff. The channel was formed by the appellant / plaintiff's predecessors. Though it is a common channel, it runs through the patta land of the appellant / plaintiff. The level of the suit channel and land in S.F.Nos.902 and 898B are same and the appellant / plaintiff has only raised bunds on either side. If the suit channel is deepened, the appellant / plaintiff would not get water from the suit channel for irrigation. However, the respondents / defendants have deepened and widened the suit channel which is admitted by them and evident from the Commissioner' Report. Therefore, the appellant / plaintiff is put to irreparable loss. Admittedly, the suit channel is in the patta land of the appellant / plaintiff. The respondents / defendants have no right to deepen the channel. Though the Trial Court rightly decreed the suit, the Appellate Court failed to appreciate the facts and therefore, it warrants interference.



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9. The learned counsel appearing for the respondents / defendants would submit that even though the suit channel runs through the patta land of the appellant / plaintiff, it is a common channel which belongs to the Government. The owners of the adjacent lands (pattadharars) including the appellant / plaintiff cannot claim exclusive right over the channel. The channel is meant for draining excessive water from the Chinnadharapuram Raja Vaikkal. Chinnadharapuram Raja Vaikkal gets water from Amaravathi river. The adjacent owners of the suit channel are making use of the excess water drained from the Chinnadharapuram Raja Vaikkal for irrigation. Since the appellant / plaintiff deposited the well sand and obstructed the passage of water through the suit channel, the respondents/ defendants received complaints from other land owners, owing to which, they have taken steps to remove the obstruction. Therefore, there is no necessity to grant damages to the appellant / plaintiff. The Appellant Court rightly set aside the declaratory relief and permanent injunction granted in favour of the appellant / plaintiff. There is no substantial question of law that arises for consideration and the appeal has to be dismissed.



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10. Heard the learned counsel appearing for the appellant / plaintiff and the learned counsel appearing for the respondents / defendants. Perused the materials available on record.

11. Admittedly the suit channel is an irrigation channel and it runs through S.F.Nos.902 and 898B, Kallakurichi Village, which belong to the appellant / plaintiff. The appellant / plaintiff has admitted that the channel branches off from Chinnadharapuram Raja Vaikkal and it runs through S.F.Nos.911 and 903 and thereafter, enters into his land in S.F.Nos.902 and 898B. The suit channel is meant for draining excess water from Chinnadharapuram Raja Vaikkal and it is a common channel, which belongs to the Government. The overall channel is maintained by the Government. The appellant / plaintiff has not proved either by oral or documentary evidence that his predecessors in title have laid the suit channel. After careful perusal of the entire pleadings, oral and documentary evidence, the learned counsel appearing for the appellant / plaintiff also fairly concedes that the appellant / plaintiff has no absolute right in the suit channel, which is a common channel. Admittedly, even



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if a channel runs through a patta land, the pattadharar cannot claim exclusive right over the channel, which is common in nature. Therefore, though the appellant / plaintiff has right and title to the land in S.F.Nos. 902 and 898B, he does not have any exclusive right over the suit channel and he is not entitled to the relief of declaration as sought for by him. The Appellate Court has rightly appreciated the oral and documentary evidence and held that the appellant / plaintiff is not entitled for declaratory relief and the same warrants no interference by this Court.

12. The appellant / plaintiff claims permanent injunction as a consequential relief for declaratory relief. As stated above, the channel is a common channel and the appellant / plaintiff cannot claim exclusive right over the same. That being the case, it is seen from the oral and documentary evidence that the appellant / plaintiff restricted the free flow of water in the channel. The channel is a common one belonging to the Government and maintained by the Government. The excess water from Chinnadharapuram Raja Vaikkal drains into the suit channel and the same is utilised by the appellant / plaintiff who is the owner of the land in



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S.F.Nos.902 and 898B and other adjacent land owners for irrigation purpose. Neither the appellant / plaintiff nor the adjacent land owners can get water as a matter of right. While so, the appellant / plaintiff has no right to obstruct the free flow of water in the channel to other fields. Be that as it may, when the plaintiff is not entitled to declaratory relief, he is not entitled to the consequential relief of permanent injunction also.

13. From the Commissioner's Report and Plan and also from the evidence on both sides, it is found that the suit channel runs on the ground level in S.F.Nos.902 and 898B, having bunds on either side. It is also evident that, deepening of the suit channel would cause injury to the appellant / plaintiff and he would not be able to take water from the suit channel to irrigate his land in S.F.Nos.902 and 898B. The Commissioner's report shows that on the date of inspection of the Commissioner, it was found that the suit channel was below the ground level in S.F.Nos.902 and 898B. The respondents / defendants themselves admitted in the written statement, that they have deepened the suit channel. In such circumstances, the Trial Court has rightly appreciated



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the evidence on record and granted mandatory injunction and directed the appellant / plaintiff to restore the suit channel to its original position on his costs.

14. The learned counsel appearing for the respondents / defendants submitted that since the appellant / plaintiff obstructed the free flow of water in the suit channel, they interfered with the same and therefore, damages awarded shall be set aside. However, it is to be noted that the respondents / defendants have not filed any appeal or cross objection against the Judgment and Decree of Appellate Court. It is only the appellant / plaintiff, who has approached this Court challenging the Judgment and Decree of Appellate Court. Therefore, this Court is of the opinion that there is no necessity to go into the aspect of damages at this juncture and the decision of the Appellate Court in granting damages at Rs.1,000/- to the appellant / plaintiff is confirmed.

15. In view of the above discussions, this Court finds that there is no substantial question of law involved in this Second Appeal for



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consideration. This Court finds no perversity in the appreciation of evidence by the Appellate Court and hence, the Second Appeal is liable to be dismissed.

16. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 03.07.2000 in A.S.No.34 of 1999 on the file of the Additional District Court cum Chief Judicial Magistrate, Karur reversing the Judgment and Decree dated 19.02.1991 in O.S.No.193 of 1989 on the file of the District Munsif Court, Karur are hereby upheld. No costs.

27.04.2023
(1/2)

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Additional District Court
cum Chief Judicial Magistrate Court, Karur
- 2.The District Munsif Court,
Karur.



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P.VELMURUGAN, J.

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