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S.A. No. 818 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.11.2024 :: Pronounced on : 19.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 818 of 2012

Anaikounder

...Appellant

Vs.

1. Annadurai
2. Manoharan
3. Ramamoorthy
4. Selvam

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 25.04.2012 made in A.S. No. 71 of 2011 on the file of the II Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 15.12.2010 made in O.S. No. 158 of 2008 on the file of the I Additional District Munsif Court, Thirukoilur.

For Appellant : Mrs.V.Srimathi

For Respondents : Mrs.T.R.Gayathiri
for M/s.Sarvabhauman Associates



JUDGMENT

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The appellant is the plaintiff who has filed a suit for the relief of the declaration and permanent injunction in respect of the suit property and got a decree before the trial Court but got it modified/reversed before the first appellate Court.

2. The short facts of the plaint runs as under :-

The suit property was originally belonged to one Vimala and the plaintiff had purchased the same from Vimala by virtue of a sale deed dated 02.06.1974. Pursuant to the said sale deed the plaintiff had taken possession of the suit property and had been in enjoyment of the same. The mutation of revenue records has been done in favour of the plaintiff and he is paying kist. The first defendant has got his property in Survey No. 228/5. One Chandrababu has got his land on the northern side of the property. The suit property and the property on the Eastern side has been irrigated through the lake water. The channel runs from the lake originates from the western side and runs towards East and then to the south and stops with the lands of Chandrababu Naidu and the plaintiff. There is no channel in the lands of the



plaintiff and the revenue records would also show the same.

2.1. The first defendant was working in the District Collectorate of Villupuram and taking advantage of his possession and along with his brothers, viz., defendants 2, 3 and 4, son of the defendants sister has trespassed illegally upon the lands of the plaintiff and damaged the crops and created a channel. The plaintiff has given a police complaint and sent a legal notice but the defendant did not stop the illegal activity. Hence, he has filed a suit for relief of declaration and also permanent injunction.

3. The averments made in the written-statement of the first defendant adopted by the defendants 2 to 4:-

It is true to state that the suit property belongs to the plaintiff and that he has been in enjoyment of the same. It is also true that the channel arising from the lake ends with the plaintiff's land. But it is false to state that there is no channel in the defendants' land and that the defendants have illegally trespassed on the plaintiff's land and damaged the plaintiff's crops. From the point where the channel runs on the northern side the channel continues west to East and irrigates the lands belonging to the defendants and the land in between the plaintiffs and the defendants land and the lands of one



Arumugam lying between the plaintiffs and the defendants and the said channel has been in use for more than 100 years and the defendants are being in enjoyment of the same without any objection from any quarters. In fact the defendants had got easementary right to take water to the lands through the channel. In an enquiry made on the police complaint made by the defendants, the plaintiffs accepted to restore the channel. Without restoring the channel, he filed a suit with false averments and got an order of injunction on 05.01.2008. On a petition given by the defendant the Deputy Tahsildar has inspected the spot and advised the plaintiff(s) to restore the channel and he also obeyed the said order and restored the said channel. Thereafter, he once again destroyed and raised paddy crops by suppressing the fact that the suit has been filed and got a decree in his favour. The defendants would file a counter-claim by paying the court-fees.

4. On the basis of the submission made, the trial Judge has framed the following three issues:-

“(1) தாவா நிலத்தில் உள்ள கிளை வாய்க்கால் வழியாக

பிரதிவாதியின் நிலத்திற்கு 100 வருடத்திற்கும் மேற்பட்ட

காலமாக ஏரி தண்ணீர் வருவதாகவும் பிரதிவாதிக்கு தாவா



S.A. No. 818 of 2011

நிலத்தில் வழியாக வாய்க்கால் செல்ல வசதியுரிமை

WEB COPY (easementary right) கிடைத்துள்ளது என்பது சரியா?

(2) தாவாவில் கோரியுள்ளபடி விளம்புகை மற்றும் நிரந்தர

உறுத்துக் கட்டளை பரிகாரம் பெற வாதிக்கு

உரிமையுள்ளதா?

(3) தரப்பினர்களுக்கு கிடைக்கக்கூடிய இதர பரிகாரம்

என்ன?"

5. On the side of the plaintiff, one witness was examined as PW1, Exs.A1 to A7 were marked and on the side of the defendants, four witnesses were examined as DW1 to DW4 and Exs.B1 is marked. The Commissioner's report and Rough Sketch has been marked as Exs.C1 and C2 respectively.

6. At the conclusion of the Trial and on appreciating the materials available on record, the Trial Court has chosen to decree the suit and the appeal preferred by the defendants challenging the judgment and decree of the Trial Court, the First Appellate Court has reversed the judgment of the Trial Court by allowing the appeal. Now, the plaintiff has filed this Second Appeal.



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7. The learned counsel for the appellant/plaintiff submitted that the First Appellate Court has granted the right of easementary right even though the defendants have not raised any counter-claim for easementary right. The FMB sketch does not show the channel running across the plaintiff's lands to the defendants land by crossing the third parties (Arumugam's) land in between. The FMB sketch is marked as Ex.X1. The plaintiff's land has been given with the sub-divided Survey No.228/2b measuring 46 cents. In the absence of any pleadings and materials, it is not right for the First Appellate Court to modify /reverse the judgment and decree of the Trial Court. The Trial Court has categorically rendered a finding stating that there is no proof produced to show that there was a channel running on the lands of the plaintiffs as claimed by the defendants. The defendants did not show any materials to produce the same. The Trial Court has also recorded an observation that the defendants ought to have approved that there is an easementary right as per Sections 13 and 15 of the Easementary Act and they did not do so. The Trial Court has rightly appreciated and recorded that there is no easementary right established and that the defendants are not entitled to get any relief. But the First Appellate Court did not appreciate the above materials and proceeded to



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re-appreciate the evidence and arrived at a wrong conclusion that there was a channel running through the plaintiff's land. In fact, the First Appellate Judge has also observed that on the basis of the FMB sketch, channel stops with the plaintiff's land. However, he had chosen to rely on the cross-examination of the PW1, which is contrary to the written-documents.

7.1. Having rendered such a finding, the First Appellate Court has granted the relief of easementary right by taking into account of plaintiff's oral evidence. Even in the written-statement of the defendants, they did not specify what type of channel is running through the plaintiff's land. In the written-statement of the defendants, they had pleaded that the lake water has been running to his land through branch channel and got easementary right by having been in enjoyment of the channel for more than 100 years; but the records do not prove the same. Hence, this Second Appeal should be allowed.

8. The learned counsel for the defendants /respondents submitted that the appellant/ plaintiff has filed the suit for the entire suit property, despite there was no dispute about his title. The defendants /respondents have pleaded easementary right in their written-statement and to substantiate the same, they



have examined the witnesses. Even PW1 has also admitted the same. The report of the Commissioner shows that there was a water channel running in the suit property. The Trial Court has not properly appreciated the above evidence. But the First Appellate Court has considered the proof of easementary right over the channel and had rightly dismissed the suit.

9. Based on the above submissions of both side counsels and on perusal of records, the following substantial questions of law were seen to be arising in the Second Appeal:-

- “1. Whether the lower appellate court is justified in modifying the decree when the defendants have not sought for any easementary right in and over the property?*
- 2. When the defendants have not established the existence of any channel but admitted the channel ends with the property of the plaintiff, is the lower appellate court right in recognizing an easementary right with the defendants?*
- 3. In the absence of admission to the plaintiff's title and proof of enjoyment of right or water way for over a statutory period, could there be an easementary right?”*



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10. The main contention of the learned counsel for the appellant on the suit filed by the appellant /plaintiff seeking the relief of declaration and permanent injunction, the First Appellate Court has granted the relief of easementary right to the defendant.

11. For the sake of convenient discussion, the appellant is referred to as 'the plaintiff' and the respondents are referred to as 'the defendants'.

12. Insofar as the lands in the suit properties are concerned, there is no dispute. The dispute is with regard to the right to use an alleged channel running over the plaintiff's land by the defendants to get water from and nearby ari/lake and to irrigate his lands in Survey No. 228/5. The plaintiff would claim that the ari voikal(lake), which originates on the northern western side of the plaintiff's land runs through East. The channel originates from the lake runs East and then descends south and ends with the plaintiff's land. The plaintiff has got his land in Survey No. 228/2B. The lands in Survey No. 228/3 is situated on the Eastern side of the plaintiff's land and it belongs



to one Arumugam. According to the evidence of the plaintiff, who was examined as PW1, both the lands of the plaintiff and the defendants are being irrigated through the lake water and they do not have bore well in their respective lands.

13. However, it is seen from the evidence of the PW1 that there is a bore well on the western side. The plaintiff has further stated that there is an another bore well nearby to his bore well and that belongs to the first defendant. He has further stated that from the said bore well water cannot be irrigated to the defendant's land in Survey No. 228/5. So the above evidence of PW1 would only show that the defendants have got no other water resource except the lake water. The plaintiff also did not have any problem for the defendants to get the lake water. But the defendants could get the water only through a channel running on the plaintiff's land and thereafter cutting across the other lands owner in Survey No. 228/3. The plaintiff claims that even according to the FMB sketch, the channel ends with the plaintiff's land and it does not branch out on the Eastern side in order to facilitate the defendants to irrigate their land as well through the said channel.



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14. The defendants did not file any separate suit claiming easementary right over the plaintiff's land to get the water through the channel. The plaintiff has filed the suit for claiming the relief of declaration in respect of his property in Survey No. 228/2B. As stated already, there is no dispute as to the plaintiff's entitlement over the 46 cents of lands situated in Survey No. 228/2B. One Arumugam's land is situated in between the plaintiff and the first defendant's land and the water to the defendant's land can be taken by cutting across both by the Arumugam's land and the plaintiff's land on the northern side.

15. A Commissioner has been appointed to visit the suit property and he has filed a report along with the plan. The report of the Commissioner helps to reduce the oral evidence. At the time when the Commissioner visited the suit property, there was no channel branching out towards East on the northern side of the plaintiff's lands. However, the Commissioner had noted only important features and that feature is shown as 'G', 'K', 'L', 'M', 'N' and 'H'. The point 'G' and 'H' appears to have started from the plaintiff's boundary on the East and proceeding towards the defendants' land on the further East.



16. To put it short, the above bit of the channel is seen to be present on the northern side of the Arumugam's land, which is in Survey No. 238/3, which runs till the defendants' land and branches out on the South. The said bit seems to be in continuation of the channel which ought to have run through the plaintiff's land through the points 'G' and 'J' as shown in the Commissioner's plan.

17. The above feature would only show that the plaintiff had obliterated the channel, which has been running within 'G', 'J', 'H' and 'G'. Even from the plaintiff's evidence, it is clear that the defendants' land are being irrigated only through the lake water and there is no other source of irrigation as of now. The owner of the lands situated in between the plaintiff and the defendants in Survey No. 238/3, viz., Arumugam who did not raise any objection to take the channel water through his land to the defendants land. It is probably because the land owner in Survey No. 238/3 can be benefited, only if he allows the channel to run inside his land.

18. Even though the defendants could not produce any revenue records,



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like FMB sketch to show that the tributary of the channel runs towards East on the northern side of the plaintiff's land and then proceeds towards the defendants' land, the features as noticed by the Commissioner would only show that the channel water runs through the plaintiff's land and continues across the Arumugam's land to the defendants' land in Survey No. 228/5.

19. In fact, the Commissioner had acted in excess of his power and collected evidence to show that the defendants have been irrigating their lands by using the lake water by collecting Adangal documents from the Village Administrative Officer.

20. However, the Commissioner's report would show that except the properties belonging to the said Arumugam and the defendants, all other properties in the area were being irrigated through the lake water through the channel running across there.

21. One of the neighbouring land owners, by name Chandrababu, has been examined as DW3 and his lands are situated on the north of the plaintiff's land and the defendants' land. The survey number of the lands belongs to the



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Chandrababu is shown as Survey No. 228/4B. He has stated in his evidence that the channel branches out from the plaintiff's land and runs through the plaintiff's land and Arumugam's land and irrigates the defendants' land and that the said channel was obliterated by the plaintiff and in view of that the lands of Arumugam and the defendants were lying dry. Though it has been suggested that DW3, Chandrababu, is hostile to the plaintiff, no material has been placed to show the same. Hence, the evidence of PW3 assumes relevance about the fact that the channel has been running through the plaintiff's land and Arumugam's land and then reached the defendants' land.

22. Even though there is no title dispute in respect of the land belonging to the plaintiff in Survey No. 228/2B, it appears that the cause of action for the suit itself had arisen only in view of the irrigation made to the defendants' land by using the lake water through the channel ran on the plaintiff's land.

23. As the relief of permanent injunction as sought by the plaintiff would deprive the defendants from getting the water through the channel ran on the plaintiff's land, the First Appellate Court had granted the partial relief of declaration of title to the suit property excluding the area where the channel



water was running on the plaintiff's land towards the defendants property.

Though it is observed that the defendants have got easementary right, no relief has been granted to the defendants as the defendants did not file any counter-claim. But the fact that the channel was running on the plaintiff's land and that has been obliterated has been established through evidence.

24. In view of the above discussion, the substantial questions of law Nos. 1 to 3 are answered against the appellant. The observation of the First Appellate Court with regard to the existence of easementary right is not the relief granted in favour of the defendant and hence, the substantial questions of law 1 and 3 will not arise. Insofar as the substantial question of law No.2 is concerned, it is wrong to state that the defendants have not established the channel running on the plaintiff's land.

25. In fact, the evidence on record including the Commissioner's report would only show that there was a channel running across the plaintiff's land and it branched out towards East on the Northern side of the plaintiff's land and reached the defendants' land across the lands of Arumugam. Hence, the substantial question of law No.2 is also answered against the appellant.



S.A. No. 818 of 2011

WEB COPY

26. The Second Appeal is dismissed confirming the judgment and decree dated 25.04.2012 made in A.S. No. 71 of 2011 on the file of the II Additional Subordinate Court, Villupuram reversing the judgment and decree dated 15.12.2010 made in O.S. No. 158 of 2008 on the file of the I Additional District Munsif Court, Thirukoilur. Consequently, connected Miscellaneous Petition is closed. No costs.

19.12.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

1. The Judge, II Additional Subordinate Court, Villupuram.
2. The Judge, I Additional District Munsif Court, Thirukoilur.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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S.A. No. 818 of 2012

R.N.MANJULA, J.

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S.A. No. 818 of 2012

19.12.2024