



S.A.No.705 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.705 of 2021

and

C.M.P.No.14067 of 2021

M.Shanmugam (Died)

1. Govindasamy
2. Pappu @ Nallammal
3. Shanthi

... Appellants

Vs.

1. M.Arumugam
2. Radhamani

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 31.10.2019 in A.S.No.64 of 2016 on the file of the II Additional District Court, Salem, reversing the judgment and decree dated 13.04.2015 in O.S.No.1246 of 2006 on the file of the II Additional District Munsif Court, Salem.

For appellants	: Mr.K.Suresh
For R1	: Mr.D.Shivakumar
For R2	: No appearance



JUDGMENT

The defendants whose petition for rejecting the plaint has been allowed by the Trial Court, but, dismissed by the Lower Appellate Court, are the appellants before this Court.

2. The facts which have given rise to the above second appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.1246 of 2006 on the file of the II Additional District Munsif, Salem, for the following reliefs:

(a) restraining the defendants and their men from in any way laying a road marked “AB” across the cart track;

(b) restraining the defendants from in anyway causing damage to the air pipe line with water pipe line shown red and green colour in the rough plan;



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(c) restraining the defendants and their men from putting up and running any stone crushing factory any where in the suit properties and thereby causing nuisance by way of emanating stone dust, smoke and creating a hazardous atmosphere to the plaintiff and his properties;

(d) directing the defendants to pay the costs of the suit;

(e) granting relief or reliefs as the Court may deem fit under the circumstances of the case.

2.2. It is the case of the plaintiff that the first defendant and himself are the brothers and the second defendant is the son-in-law of the first defendant. Under a registered will dated 23.05.1955, their father Muthu Gounder had bequeathed 7 acres of the suit properties on the western side, to the first defendant and the remaining 9 acres of land on the east, to the plaintiff. The well was kept in common and this well is situate in the defendants' land in S.No.28/3. With respect to this common well, the plaintiff has filed a suit in O.S.No.166 of 2004 on the file of the District Munsif Court, Salem. The defendants have started to put up construction by obliterating the cart track which is situate south



of this common well and which proceeds west-east upto the house of the plaintiff.

2.3. The plaintiff had filed an application seeking an ad-interim injunction in this suit in I.A.No.279 of 2004 and initially, he had a benefit of ad-interim injunction. The plaintiff would submit that he has a half share in the common well, in which, both he and the defendants have installed an electric motor pump set to draw water. The plaintiff's electric motor pump set and water tank are situate in the southwest corner of the well. From this tank, the water is taken to the plaintiff's land through a pipe which has been laid immediately to the south of the cart track. There is also an air pipe line in the motor room.

2.4. It is the further contention of the plaintiff that in the second week of November 2006, the plaintiff had conducted a pooja for putting up a residential house. Thereafter, the defendants, with an intent to cause trouble, started laying a road from their house in the north towards south near their borewell which is marked as 'BW1' in the



plaint plan. This would cause damage to the cart track, air pipe line and water pipe line. When this action was questioned by the plaintiff and the respective persons of the locality, the defendants had threatened the plaintiff. The plaintiff also came to know that the defendants are also putting up a stone crushing factory in S.No.28/2B of Nallrayanpatti Village or in S.No.107/1 of Veerapandi Village.

2.5. The plaintiff would submit that if this comes, then, it would not only cause air pollution, but, also cause great prejudice and health hazards to the plaintiff and his family members. Therefore, the plaintiff has come forward with the suit for the aforesaid reliefs.

2.6. The defendants had entered appearance and apart from filing a written statement and denying the contention of the plaintiff, he had also taken out an application in I.A.No.155 of 2013 to reject the plaint. The defendants sought to reject the plaint on the following two grounds.

(a) that the suit is barred by law inasmuch as under Section 46



of the Air (Prevention and Control of Pollution) Act, 1981, the jurisdiction of the Civil Court stood ousted;

(b) that the suit has become infructuous as the road has been laid and the crushing factory has come into existence;

2.7. The respondent/plaintiff had filed a counter *inter alia* stating that he had taken out an application for amending the relief as one for mandatory injunction and once the same is ordered, he is ready to proceed with the case. With reference to the ground that the suit is barred by law, there was no response on the side of the plaintiff.

TRIAL COURT:

3. The learned II Additional District Munsif, Salem, by an order dated 13.04.2015, rejected the plaint, on the ground that the same is barred by law as under Section 46 of the Air (Prevention and Control of Pollution) Act, 1981, the jurisdiction of the Civil Court has been ousted in relation to any matter in which the Appellate Authority of the Act has been constituted. The learned Judge relied upon two judgments



viz., (a) in the case of *Aditya Masala Nani Agro Foods(P)Ltd. vs.*

M.Selvaraj reported in *2007 (1) LW 964 : 2007 (1) MLJ 611* ;

(b) in the case of *Shipping Corporation of India Ltd. Vs.*

Machado Brothers and others reported in *AIR 2004 SC 2093* and ultimately, rejected the plaint.

4. The Trial Court has also taken note of the fact that the petition filed by the plaintiff for amending the reliefs as one for mandatory injunction had been dismissed on 27.01.2014 and the revision petition filed against the said order in C.R.P.No.2691 of 2014 had also ended in a dismissal, against which, the plaintiff has not gone on further appeal and therefore, the reliefs claimed have become infructuous.

LOWER APPELLATE COURT:

5. Challenging the said order, the plaintiff has filed an appeal in A.S.No.64 of 2016 on the file of the II Additional District Munsif Court, Salem. The Lower Appellate Court took a view that on the date



of filing of the suit, the defendants had not obtained any prior permission for the construction of the stone crushing factory and therefore, the plaintiff had a cause of action for filing the suit in question. With reference to the bar of jurisdiction of the Civil Court, the learned Judge relied upon this Court's judgment in the case of ***A.R.Ponnusamy Vs. Thoppalan @ Karuppa Gounder*** reported in ***2003 (2) LW 631*** to state that it is only the matters where the Appellate Authority was constituted under this Act and empowered, that the Civil Court's jurisdiction has been ousted. The defendants in the instant case had not obtained any prior permission from the Tamil Nadu Pollution Control Board to use the crusher on the date of the suit and therefore, the Lower Appellate Court would observe that the filing of the suit is very much in order.

6. Challenging the said order, the defendants are before this Court.

7. Heard the learned counsel on either side and perused the



materials available on record.

DISCUSSION:

8. Admittedly, the suit had been filed for the relief of injunction restraining the defendants from laying a road marked as 'AB' in the plaint plan across the cart track and restraining the defendants from damaging the air pipe line and water pipe line and an order of injunction restraining the defendants, their men and agents from putting up the stone crushing factory.

9. Admittedly, the road has been laid and the stone crushing factory has also been established. This is clear from the fact that the plaintiff had taken out an application in I.A.No.136 of 2013 to amend the relief as one for mandatory injunction. This application was dismissed after contest and the revision petition filed against the said order in C.R.P.No. 2691 of 2014 was also ended in a dismissal. Therefore, the reliefs that are claimed had become infructuous. The plaintiff had further not challenged the order in C.R.P.No.2691 of 2014.



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10. The Hon'ble Supreme Court in the judgment in the case of ***Shipping Corporation of India Ltd. Vs. Machado Brothers and others*** reported in ***(2004) 11 SCC 168*** has held that it is the duty of the Court to take into consideration the subsequent events, if the original proceeding has become infructuous. In the case on hand, the fact that the plaintiff has taken out an application for amending the reliefs as one for mandatory injunction would clearly show that the earlier reliefs have become infructuous and therefore, applying the above fact, the suit has to necessarily be rejected and the Lower Appellate Court has reversed the well-considered judgment of the Trial Court on a misconceived appreciation of the law.

11. The above second appeal was admitted on 16.09.2021, on the following substantial questions of law.

“(a) Whether a suit relating to the Air Pollution is maintainable before the Civil Court, despite the bar u/s.46 of the Air (Prevention and Control of Pollution) Act, 1981?

(b) Whether the bar u/s.46 of the Air (Prevention and



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Control of Pollution) Act, 1981, will be applicable only when consent is given by the Tamil Nadu Pollution Control Board?

(c)Whether the Court can take cognizance of a subsequent event to decide whether a pending suit should be disposed of or kept alive?

(d)Whether a plaint can be rejected on the ground of that the suit become infructuous by exercising powers u/s.151 of C.P.C.?

(e)When the plaintiffs sought for amendment for mandatory injunction, can it be implied that the injunction relief already sought for become infructuous?”

12. After hearing the arguments on both sides, the substantial questions of law is reduced to only points (c), (d) and (e).

13. Considering the fact that the suit has become infructuous, this Court need not traverse into the maintainability of the suit on the ground of jurisdiction. Therefore, the substantial questions of law (c), (d) and (e) are answered in favour of the defendants.



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Accordingly, this second appeal stands allowed. Consequently,
connected C.M.P. stands closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order
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To

1. The II Additional District Munsif,
Civil Judge(Junior Division),Salem.
- 2.The II Additional District Judge, Salem.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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