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S.A.No.924 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.924 of 2021
and
C.M.P.No.17455 of 2021

Suvish Kumar

...Appellant

Vs.

1.Ramu
2.Senthil
3.Ganesan
4.Kumar
5.Thirupathy
6.Sundaram
7.Annadurai
8.Raju
9.Arukkani

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code,1908, against the judgment and decree of the learned Principal Subordinate Judge, Namakkal dated 19.12.2018 made in A.S.No.7 of 2014 confirming that of the learned Additional District Munsif Court, Namakkal dated 05.10.2023 made in O.S.No.680 of 2005.

For Appellant

: Mr.S.Saravana Kumar



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ORDER

The unsuccessful plaintiff in the suit is the appellant. The appellant/plaintiff filed a suit seeking permanent injunction restraining the defendants from in any manner interfering with the Outlet (Kadagal) by closing it so as to prevent the outflow of water from inside the landscape of Karia Perumal Eri and preventing the plaintiff to remove the obstruction for free flow of water and Mandatory injunction directing the respondents/defendants to restore the Kadagal Vari, the newly formed bund to its original position. The suit was dismissed by the Trial Court. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.7 of 2014 on the file of Principal Sub-ordinate Judge, Namakkal and the first appellate Court concurred with the findings of the Trial Court. Aggrieved by the concurrent findings, the appellant/plaintiff has come up by way of second appeal.

2. According to the appellant/plaintiff, the plaintiff is the owner of the suit properties which were purchased by him by two registered sale deeds dated 14.07.1993 and 21.08.1986 from the legal heirs of one Krishnaraju Reddiar. The suit properties originally known as Karia Perumal Eri Pul Punjai



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belonged to one N.Ponnusamy Reddiar and N.Krishnaraju Reddiar to an extent of 219 acres and 80 cents. During settlement proceedings, they were issued patta only for 103 acres and 18 cents and rest was treated as “poramboke”. Thereafter, one Krishnaraju Reddiar filed a suit in O.S.No.660 of 1982 seeking declaration and permanent injunction in respect of balance property to an extent of 116 acres and 62 cents which include bund of said Eri. The suit was decreed and appeal in A.S.No.58 of 1984 was dismissed ensuring that they are absolute owners of entire 219 acres and 80 cents. The lands in lower level receive water during rainy season with Outlet on the eastern side for the excess water to be drained. In these circumstances, the defendants closed the Outlet of said Eri preventing the excess water flowing outside the landscape including suit property of the plaintiff resulting in stagnation of water in the plaintiff's lands leads to submerging of crops. It was pleaded in the plaint that the Outlet has to be opened to drain the water but the defendants are preventing the plaintiff from opening the outlet (Kadagal) and also the defendants have created new Bund preventing the out flow of water. Hence, the plaintiff was constrained to file a suit seeking the above said reliefs.

3. The 1st defendant filed a written statement and contended that Outlet



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was located in Survey No.217 which belongs to the Government. It was further contended that as per Exhibits. X1 and X2, Survey No.217 was shown as cart track and the same belongs to the Government. It was averred that Government is a necessary party to the suit and no outlet was available on Earth as claimed by the plaintiff . It was also averred that the Outlet was not closed by the defendants and Government carried on the works for strengthening the bund of Eri to prevent the damages by flow of water to village residences.

4. Before the Trial Court, the appellant/plaintiff was examined as P.W.1 and 3 other witnesses were examined on his side as P.W.2 to P.W.4 and 7 documents were marked as Ex.A1 to Ex.A7. The 1st defendant was examined as D.W.1 and two other witnesses were examined on his side as D.W.2 and D.W.3. However, no document has been marked on the side of the defendants. The Trial Court also appointed an Advocate Commissioner and he filed a report and plan and the same were marked as Ex.C1 to Ex.C4.

5.The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff has not proved



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the location of the outlet and consequently, dismissed the suit. Aggrieved by the same, the appellant has filed an appeal in A.S.No.7 of 2014 on the file of Principal Sub-ordinate Judge, Namakkal. The first Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant/plaintiff is before this Court.

6. The learned counsel for the respondents/defendants by taking this Court to the findings of the fact that both the Courts below, on appreciation of oral and documentary evidence available on record, came to a factual conclusion that the plaintiff has not proved the location of the outlet and the said concurrent findings of the fact need not be interfered with by this Court while exercising power under Section 100 of CPC in the absence of any perversity in the findings of the Courts below.

7. On perusal of the typed set of papers, it would make clear that according to the plaintiff, he has purchased the suit properties through two Sale Deeds dated 14.07.1993 and 21.08.1986 and the defendants closed the outlet of Karia Perumal Eri on 31.10.2005 using JCB to prevent the excess water flowing outside the lands including the suit properties of the plaintiff



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and so that water is stagnated in the plaintiff's lands submerging the crops ready for harvest and that the outlet (Kadagal) has to be opened to drain the water, but the defendants are preventing the plaintiff from opening the kadagal and also the defendants have created new bund preventing the out flow of water and so the defendants have to be restrained from interfering with the outlet by closing and preventing the plaintiff to remove the obstruction and the defendants have to be directed to restore the Kadagal Vari Outlet to its original position. In this connection, the Advocate Commissioner was appointed by the Trial Court to note down the physical features of the suit property and he had inspected the suit properties and filed reports and plan which were marked as Ex.C1 to Ex.C4.

8. A perusal of the Advocate Commissioner's reports and plan would suggest that there are cultivating lands surrounding and adjacent to Karia Perumal Eri. When the Advocate Commissioner visited the suit properties during rainy season, she has stated in her report marked as Ex.C1 and Ex.C2, that some lands surrounding the Eri were cultivating lands and the crops were submerged with water. When he visited the suit properties during non-rainy season, she has stated in her report marked as Ex.C3 and Ex.C4 that lands



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surrounding the Eri were barren land.

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9. The First Appellate Court, on appreciation of evidence available on record, held that the plaintiff has filed Ex.A1 and Ex.A2 to show that he purchased the suit properties through sale deeds but he has not filed any documents to show his possession in the suit properties which suffer damages due to stagnation of water. Further, the plaintiff has not properly pleaded and proved what are the Survey number properties in his possession which are affected by the closure of the Outlet. The plaintiff has not clearly established the location of the Outlet and also not clearly stated who closed the Outlet and who prevented the plaintiff from opening the Outlet. Even though the defendants have contended that the Outlet is located in Government Poramboke land and the Government is a necessary party to the Suit, the plaintiff has not taken steps to implead the State as a party to the suit. From the evidence adduced in this case, the First appellate Court observed that the Outlet as well as the Eri are in Government Poramboke lands under the control of the Government. Though the plaintiff has sought for Mandatory Injunction regarding the Outlet, he has not clearly stated the location, measurements and the nature of construction of the Outlet.



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10. Though the plaintiff has sought for the relief of permanent injunction and for mandatory injunction, he has not stated the exact survey number in which the point A is located in the plaint schedule. The plaintiff has stated in his plaint that the outlet is situated on the Eastern side of the lands. But in Ex.A3, Plan filed along with the plaint, outlet is shown as point A on the southern side, whereas in the plaint schedule, outlet is stated to be on the West of the North-South Path and opposite to Athuvari adjacent to Stone Revetment. So the plaintiff has stated different versions regarding the location of the Outlet. Thereby, the plaintiff has not proved the location of the outlet.

11. After perusing the Advocate Commissioner's reports which were marked as Ex.C1 to Ex.C4, as the plaintiff has not come forward with the clear case, the exact survey number in which the Point A is located in the plaint schedule, both the Courts below concurrently came to the conclusion that in respect of unidentifiable property, injunction cannot be granted and hence, dismissed the suit. It remains to be stated that from the Advocate Commissioner, who has examined as P.W.3 and filed report and plan marked as Ex.C1 to Ex.C4 had categorically stated that there are cultivating land



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surrounding and adjacent to Karia Perumal Eri. From the evidence adduced in this case, the Outlet as well as Eri are in Government poramboke lands and the same is under the control of Government, non-impleading of the Government as a party to the suit is fatal to the plaintiff case and when the permanent injunction is sought for, specific survey number is essential for implementation of the injunction decree and when the mandatory injunction is sought for under the Specific Relief Act, the location of the site has to be specified and should be identifiable. In the instant case, both the details that are essential for grant of the relief of permanent injunction and mandatory injunction are lagging and hence, both the Courts below has rightly come to the conclusion on the above factual position and I do not find any error in the order passed by the Courts below and the same requires no interference by this Court. Accordingly, this second appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

22.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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RMT.TEEKAA RAMAN,J.,

nr

To

- 1.The Subordinate Court, Namakkal
2. The Additional District Munsif Court, Namakkal

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and

C.M.P.No.17455 of 2021

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