



S.A.No.581 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.581 of 2021 and C.M.P. No.12384 of 2021

Pommalai Gounder

.. Appellant

vs.

1.Ponnusamy

2.Saravanan
Respondents

..

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, 1908 against the judgment and decree dated 11.03.2021 made in A.S. No.6 of 2019 on the file of the Sub Court, Paramathi reversing the judgment and decree dated 14.09.2017 made in O.S. No.122 of 2014 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.H.Shabeer Ali

For Respondents : Mr.T.L.Thirumalaisamy

JUDGMENT

This second appeal has been filed by the plaintiff in the suit O.S. No.122 of 2014 on the file of the District Munsif Court, Namakkal, aggrieved by the findings of the Lower Appellate Court in its judgment



S.A.No.581 of 2021

and decree dated 11.03.2021 passed in A.S. No.6 of 2019 on the file of the Sub Court, Paramathi.

2.The respondents are the defendants in the aforementioned suit. In the forthcoming paragraphs, the parties are described as per the litigative status in the suit.

3.The suit was filed for a permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of C1 C2 canal and 'XY' pathway (bund). The plaintiff claims that he is the exclusive owner of C1 C2 canal and no one has right over it. He also claims that 'XY' pathway (bund) in the sketch cannot be used by the defendants as the same was neither used by the defendants nor by their predecessor in title.

4.The contention of the plaintiff has been disputed by the defendants as seen from the written statement, wherein they had pleaded that the contentions of the plaintiff are false.

5.Based on the pleadings of the respective parties, the Trial Court



S.A.No.581 of 2021

framed the following issues:

WEB COPY

i)Whether the plaintiff is entitled for permanent injunction relief insofar as C1 C2 canal is concerned as prayed for in the plaint?

ii)Whether the plaintiff is entitled for the permanent injunction relief insofar as 'XY' pathway (bund) is concerned as prayed for in the plaint?

iii)To what other reliefs?

6.Before the Trial Court, the plaintiff filed three documents, which are marked as Exs.A1 to A3 and on his side, two witnesses were examined, i.e. the plaintiff himself as PW1 and a person by name M.Sengodan as P.W.2. On the side of the defendants, 16 documents were filed, which are marked as Exs.D1 to D16 and witnesses were examined as DW1 and DW2 . DW1 is the first defendant and DW2 is the person by name Rajalingam.

7.The Trial Court by its judgment and decree dated 14.09.2017 passed in O.S. No.122 of 2014 decreed the suit in entirety as prayed for by the plaintiff by granting the relief of permanent injunction in respect of canal as well as the pathway. Aggrieved by the findings of the Trial Court



S.A.No.581 of 2021

that the plaintiff is entitled for the permanent injunction relief insofar as 'XY' pathway (bund) is concerned, the defendants preferred a First Appeal in A.S. No.6 of 2019 on the file of the Sub Court, Paramathi.

8.However, insofar as the finding rendered by the Trial Court that the plaintiff is entitled for the permanent injunction relief insofar as C1 C2 canal is concerned, the defendants have not preferred any First Appeal. Therefore, the findings with regard to C1 C2 canal, rendered by the Trial Court, has attained finality. The Lower Appellate Court modified the findings of the Trial Court in its judgment and decree dated 11.03.2021 passed in A.S. No.6 of 2019 by allowing the appeal filed by the defendants and dismissed the suit filed by the plaintiff insofar as 'XY' pathway (bund) is concerned by giving a finding that the defendants have proved through their documentary evidence, i.e. Exs.B2 and B3 that they are entitled to use 'XY' pathway (bund) as the documents will prove that the defendants as well as the predecessor in title have been using the pathway (bund) right from 1960 onwards. However, the Lower Appellate Court has taken note of the fact that the plaintiff has not discharged his initial burden of proving that he is having exclusive usage of 'XY' pathway (bund) through his oral and documentary evidence.



S.A.No.581 of 2021

WEB COPY 9. On 14.09.2021, this Court, while admitting the Second Appeal, has framed the following substantial questions of law:

a) Whether the Court below is correct in law by coming to a conclusion on its own that XY pathway which is 1 muzham as per Ex.B2 would have subsequently been widened by not relying on any evidences and rejecting the Advocate Commissioners report?

b) Whether the Lower Appellate Court is correct in law by failing to consider that as per Ex.B6 and Ex.B7, no pathway rights were mentioned and also in parallel the respondents did not take any steps to rectify the same?

c) Whether the Courts below is correct in law by relying solely on Ex.B2 and decreeing the suit in favour of the respondents?

10. Admittedly, no documentary evidence was produced by the plaintiff to prove that he alone is entitled for the usage of 'XY' pathway (bund). Based on the evidence before the Trial Court, excepting filing three documents, which are marked as Exs.A1 to A3, which do not relate to 'XY' pathway (bund), no other documentary evidence has been



S.A.No.581 of 2021

produced by the plaintiff to prove that he is entitled for the exclusive usage of 'XY' pathway (bund). The Lower Appellate Court has rightly modified the findings of the Trial Court by refusing to grant the relief of permanent injunction as prayed for by the plaintiff. Insofar as 'XY' pathway (bund) is concerned, has rightly allowed the appeal filed by the defendants.

11.This Court is of the considered view that only based on the evidence available on record, the Lower Appellate Court has modified the findings of the Trial Court by refusing the relief of permanent injunction in favour of the plaintiff. Insofar as 'XY' pathway (bund) is concerned, there are no debatable issues of fact or law involved in this Second Appeal, which requires further consideration by this Court.

12.The substantial questions of law framed by this Court while admitting this Second Appeal are answered against the plaintiff by holding that

a)the plaintiff is not entitled for the permanent injunction relief insofar as C1 C2 canal is concerned since the plaintiff has not proved through his oral and documentary evidence that C1 C2 canal is under his



S.A.No.581 of 2021

exclusive usage as the said canal can be used by both the plaintiff and the defendants;

b)The plaintiff is not entitled for the permanent injunction relief insofar as 'XY' pathway bund is concerned as prayed for in the plaint since the plaintiff has not proved that 'XY' pathway bund can be exclusively used only by him through his oral and documentary evidence;

c)The Lower Appellate Court has come to an erroneous conclusion by mistakenly accepting Ex.B2, without any supporting evidence and has also erroneously opined that 'XY' pathway bund has been widened subsequently on its own presumption without there being any oral or documentary evidence available on record for arriving at such a conclusion.



WEB COPY



S.A.No.581 of 2021

ABDUL QUDDHOSE, J.

vga

13.In the result, there is no merit in this Second Appeal. Hence, the Second Appeal is dismissed. Consequently, connected C.M.P. is closed.
No costs.

20.06.2024

vga

To

- 1.The Sub Court, Paramathi.
- 2.The Principal District Munsif Court,
Namakkal
- 3.The Section Officer,
V.R. Section, High Court, Madras.

S.A. No.581 of 2021 and C.M.P. No.12384 of 2021