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S.A. No.166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.166 of 2021
and
C.M.P. No.3416 of 2021

S.K. Subramanian

.... Appellant

vs.

1. Kuppusamy
2. Madeswaran
3. Siddanthan

.... Respondents

Prayer : Second Appeal filed under Section 100 CPC, against the decree and judgment dated 25.09.2019 passed in A.S. No.58 of 2018 on the file of the First Additional Subordinate Court, Erode, Erode District confirming the decree and judgment dated 17.09.2018 passed in O.S. No.28 of 2016 by the District Munsif and Judicial Magistrate Court, Kodumudi, Erode District.

For Appellant

: Mr.J. Titus Enock,
Senior Counsel
for Mr.C. Vasudevan

For Respondents

: Mr.A. Sundaravadhanan

JUDGMENT

This Second Appeal has been filed by the defendant in the suit challenging the concurrent findings of the Courts below.

2. Heard Mr.J. Titus Enock, learned Senior Counsel assisted by



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Mr.C.Vasudevan, learned counsel for the appellant and
Mr.A.Sundaravadhanan, learned counsel for the respondents.

3. The suit was filed by the respondents seeking for declaration and injunction in respect of a common water channel, which has been marked in the sketch filed as documents before the Trial Court (Exs.C1 & C2). The plaintiffs and the defendant are paternal cousins. He has pleaded in the plaint that the subject water channel is a common water channel enjoyed by both the plaintiffs and the defendant covered under the Partition Deed, dated 29.11.1981(Ex.A1). However, according to the plaintiffs, the defendant is interfering with the plaintiffs' usage of the common water channel which has necessitated him to file the suit for declaration and for injunction.

4. However, in the written statement filed by the appellant / defendant, though they have admitted that the subject water channel is a common water channel, commonly enjoyed by both the plaintiffs and the defendant, he has pleaded that no consent was obtained from the plaintiffs for obtaining electricity connection for the subject Well which is located in the appellant's / defendant's property.

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



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had framed the following issues :

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a) Whether the plaintiffs are entitled for the relief of permanent injunction, insofar as Item No.1 of the suit schedule property is concerned ?

b) Whether the plaintiffs are entitled for the declaratory relief in respect of Item No.2 of the suit schedule property? and

c) Whether the plaintiffs are entitled for permanent injunction insofar as item Nos.1 and 2 of the suit schedule property is concerned?

6. Before the Trial Court, the respondents / plaintiffs filed eight documents which were marked as Exs.A1 to A8. On the side of the plaintiffs, two witnesses were examined viz., PW1, the first plaintiff and PW2, the Official from the E.B. Department. On the side of the defendant, no documents were filed before the Trial Court. The third party Exhibit was also marked (X1) through PW1. On the side of the defendant, one witness was examined viz., the sole defendant as DW1.

7. Based on the pleadings and the admission made by the



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defendants in the written statement that the subject water channel is a common water channel enjoyed by both the plaintiffs and the defendant, the Trial Court has decreed the suit as prayed for by the plaintiffs in the suit by granting both the declaratory relief as well as the injunction relief. The Trial Court decreed the suit by its judgment and decree dated 17.09.2018 passed in O.S. No.28 of 2016.

8. Aggrieved by the findings of the Trial Court, the defendant in the suit filed a first appeal before the 1st Additional Sub Court, Erode in A.S. No.58 of 2018. The Lower Appellate Court also confirmed the findings of the Trial Court by dismissing the first appeal filed by the defendant. Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed.

9. The learned Senior Counsel for the appellant would submit that the property owned by the defendant is under active cultivation. He would also submit that the water channel cuts off the access from one side of the appellant's property to the other side of the appellant's property. He would submit that the appellant is unable to carry on the agricultural activities due to the access that is denied due to the water



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channel that cuts across appellant's property into two halves. According to him, the Courts below without protecting the rights of the appellant to cultivate his land peacefully have passed the decree for the easementary right of the water channel in the appellant's property. He would submit that the appellant is entitled to have access from one side to the other side of the property without obstructing the right of water channel by putting up the cement slabs over the water channel, for easy access.

10. The learned Senior Counsel for the appellant also drew the attention of this Court to a judgement of this Court rendered in the case of ***Krishnammal vs. Periasamy reported in 1997 1 MLJ 309*** and in particular, he referred to paragraph Nos.17 & 18 of the said judgment and would submit that there cannot be a blanket prohibition from putting up construction in the common water channel.

11. The learned counsel for the respondents would submit that only based on the admission made by the defendant in his written statement which has also been reiterated in the deposition of the defendant that the subject water channel is a common water channel to be enjoyed both by the plaintiffs and the defendant, both the Courts below have rightly held



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in favour of the plaintiffs by decreeing the suit as prayed for by the plaintiffs in the suit. Being factual findings, he would submit that there is no substantial question of law and hence the Second Appeal will have to be dismissed.

12. As seen from the pleadings of the appellant / defendant in his written statement as well as from his deposition, there is a clear admission that the subject water channel is a common water channel enjoyed in common both by the plaintiffs and the defendant. The plaintiffs have filed documents which have been marked as Ex.A1 to Ex.A8 and the Partition Deed dated 29.11.1981(Ex.A1) also confirms the same. Only based on the pleadings and evidence available on record both the Courts below have rightly held in favour of the plaintiffs by decreeing the suit in their favour as prayed for in the plaint. No documentary evidence has also been filed by the defendant in the suit to disprove the contentions of the plaintiffs as pleaded in the plaint.

13. Though the learned Senior Counsel for the appellant would contend that there cannot be any blanket prohibition for the defendant to put up construction for the easy access over the water channel to his



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property, the said relief cannot be granted in this Second Appeal as the suit has been filed only by the plaintiffs to protect their interest over the water channel.

14. The decision relied upon by the learned Senior Counsel for the appellant in Krishnammal's case, referred to supra also does not have any bearing on the facts of the instant case as the said suit was filed for mandatory injunction, but the present one has been filed for a declaration and permanent injunction and no mandatory injunction relief was sought for by the plaintiffs. If at all, the defendant is having any difficulty with regard to his access to his property over the water channel, he will have to redress himself by filing a separate suit against the plaintiffs and he cannot seek the relief in the suit filed by the plaintiffs when he has not made any counter claim in the said suit.

15. Being factual findings rendered by both the Courts below and the said findings having been rendered only based on the pleadings and evidence available on record and since there are no debatable issues of fact or law involved for further consideration by this Court, this Court has to necessarily dismiss the Second Appeal as there is no substantial



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question of law involved for further consideration by this Court.

Accordingly, this Second Appeal is dismissed. However, liberty is granted to the appellant / defendant to file a separate suit against the respondents / plaintiffs, in case, the appellant / defendant is having any difficulty in getting access to the adjoining properties near the common water channel, which is the subject matter of the Second Appeal. However, it is made clear that the defendant is having the right to raise all defences available to him under law including the plea of limitation. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

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ABDUL QUDDHOSE, J.

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To

1. The First Additional Sub Judge,
Erode.
2. The District Munsif and Judicial Magistrate,
Kodumudi, Erode District.
3. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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