

S.A.Nos.1617 & 1618 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.04.2025	Delivered On : 18.07.2025
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CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A.Nos.1617 & 1618 of 2001

and

C.M.P.No.17093 of 2001

S.A.Nos.1617 of 2001

1. Veeramalai
2. Chinnathambi
3. Danapalan

... Appellants in
both the SAs

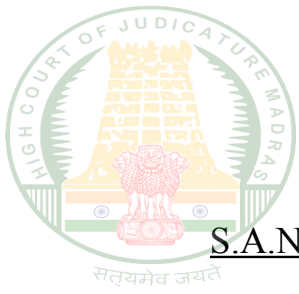
Vs

1. Veeramuthu
2. Kathan
3. Annavi

... R1 to R3 in
SA.No.1617 of
2001 & R2 to R4
in SA.No.1618 of
2001

- 4.Rangasamy

...R1 in SA.No.
1618 of 2001



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S.A.No.1617 of 2001 :

PRAYER: Second Appeal filed under 100 of the Civil Procedure Code, against the judgment and decree of the Sub Court, Kulithalai in A.S.No.44 of 2000 dated 30.4.2001 confirming the judgment and decree in O.S.No.376 of 1996 on the file of the District Munsif Court, Kulithalai dated 31.7.2000.

S.A.No.1618 of 2001 :

PRAYER: Second Appeal filed under 100 of the Civil Procedure Code against the judgment and decree of the Sub Court, Kulithalai in A.S.No.45 of 2000 dated 30.4.2001 in confirming the judgment and decree in O.S.No.403 of 1996 on the file of the District Munsif Court, Kulithalai dated 31.7.2000.

For Appellants : Mr.R.Ramesh for
for Mrs.V.Srimathi

For Respondents : Mr.K.Gonvindarajan
for M/s.Sarvabhauman Associates

COMMON JUDGEMENT

Second Appeal No.1617 of 2001 has been filed against the judgment and decree dated 30.4.2001 passed in A.S.No.44 of 2000 on the file of the Subordinate Court, Kulithalai confirming the judgment and decree dated 31.7.2000 passed in O.S.No.376 of 1996 on the file of the District Munsif Court, Kulithalai.



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2. Second Appeal No.1618 of 2001 has been filed against the judgment and decree dated 30.4.2001 passed in A.S.No.45 of 2000 on the file of the Subordinate Court, Kulithalai confirming the judgment and decree dated 31.7.2000 passed in O.S.No.403 of 1996 on the file of the District Munsif Court, Kulithalai.

3. Heard the learned counsel appearing on behalf of the appellants and the learned counsel appearing on behalf of the respondents.

4. O.S.No.376 of 1996 has been filed by the plaintiffs/appellants in both the second appeals seeking permanent injunction restraining the defendants, their men, agents, and servants from draining the excess water into the lands of the plaintiffs in S.No.19/1B3.

5. O.S.No.403 of 1996 has been filed by the respondents in SA.No. 1618 of 2001 seeking a declaration declaring that they have a right to drain excess water from the A scheduled property into the B scheduled property, for permanent injunction restraining the appellants, their men, agents, servants from interfering with their right to drain water and for



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mandatory injunction directing the appellants to restore the watercourse.

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6. The case of the plaintiffs in O.S.No.376 of 1996/appellants is as follows:

(i) The plaintiffs had purchased the suit property through a registered sale deed dated 11.9.1989 from one Mr.Srirangan. They had been in possession and enjoyment of the same by paying taxes and they got the patta transferred in their names. The suit property is located in S.No. 19/1B4. The defendants owned the land in S.No.19/1B3, which is situated west of S.No.19/1B4. Though the subject lands were classified as wet lands, the plaintiffs cultivated crops like paddy and banana. They took water from the channel that run from north to south for irrigation. The suit property was situated in a slope from north to south with the northern side being higher and the southern side being lower.

(ii) The defendants, who were the owners of the lands on the upper side, were trying to drain the excess water into the plaintiffs' land on the eastern side. The defendants had to drain the excess water towards south



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direction. Since the defendants had drained the excess water into the plaintiffs' land, it caused irreparable damage to the plaintiffs and they were not able to cultivate their land. Despite the plaintiffs trying to resolve the issue through neighbouring land owners, the defendants attempted to drain the excess water into the plaintiffs' land. Hence, the plaintiffs had sought for permanent injunction to restrain the the defendants from doing so.

7. In O.S.No.376 of 1996, the second defendant filed the written statement, which was adopted by the other defendants wherein it has been stated as follows:

(i) The defendants denied the plaintiffs' claim that they had title to the suit property through a sale deed dated 11.9.1989 from the said Mr.Srirangan and also denied that the patta had been transferred to the plaintiffs' names. The defendants claimed that they were the owners of the lands on the upper side. There was a channel on the northern side of their land and one Mr.Ramalingam's land. The water had flowed from west to east and run southwards through a channel that run along the lower western side of the defendants' land. Another channel was there on the southern side of the plaintiffs' land carrying water from north to south.



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(ii) The defendants claimed that the land was sloping with the northern and western sides being higher and the southern and eastern sides being lower. They needed continuous irrigation and drainage facilities for their crops. The defendants had drained the excess water from their lands to the southern end of the plaintiffs' land. The defendants had denied the plaintiffs' claim that they had to drain water towards south. They claimed that there were lands belonging to one Ms.Kamatchi and one Ms.Theivanai to the south of both the plaintiffs' and defendants' lands and the excess water was drained eastward to these lands.

(iii) Originally, the lands were owned by one person. Hence the excess water from the defendants' lands had flowed through the plaintiffs' lands on the eastern side. The easementary right was attached to the defendants' land and no one could interfere with or dispute this right. The defendants' father purchased the land on 28.12.1957 and since then, he had been exercising his right to drain the excess water into the plaintiffs' land without any obstruction. The drainage facility was necessary for the defendants' lands. The defendants had been exercising their right to drain the excess water through their land since 1957 without any interruption. If the defendants drained the excess water as stated above, it would not cause



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any harm to the plaintiffs. The plaintiffs were aware of these facts, but still filed the suit in O.S.No.376 of 1996 and obtained an order of interim injunction and destroyed a part of the water channel. Ultimately, they sought for dismissal of the suit.

8. Based on the abovesaid pleadings, the Trial Court framed the following issues:

O.S.No.376 of 1996

i. Whether the plaintiffs are entitled to permanent injunction relief as prayed for in the plaint?

ii. What other reliefs the plaintiffs are entitled to?

9. The case of the plaintiffs in O.S.No.403 of 1996/respondents is as follows:

(i) The first plaintiff/first respondent was the father of the other plaintiffs. The defendants were the sons of one Mr.Annavi, who was none other than the fourth plaintiff. The plaintiffs had filed this suit along with a sketch. 'A' schedule property was the plaintiffs' ancestral property. The patta



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for this property stood in the name of the first plaintiff. The first plaintiff had purchased the 'A' schedule property for a sum of Rs.5,000/- on 29.12.1957 with the total extent of acres 2.60 cents. Since the first plaintiff was getting old, plaintiffs 2 to 4 were cultivating and enjoying the A schedule property by having 1/3 share each. The fourth plaintiff cultivated the northern 1/3rd share, the third plaintiff cultivated the middle 1/3rd share and the second plaintiff cultivated the southern 1/3rd share.

(ii) The defendants/appellants had filed O.S.No.376 of 1996 before the District Munsif Court, Kulithalai and destroyed the 'B' schedule property. The green marked area in the sketch filed along with the plaint was the water channel. There was a channel on the north side of the marked portion "LG". Next to the "MN" line, there was a road to Mundalaipatti. The area marked as "ACDE" in the sketch was the 'A' schedule property. The area marked as "ABKL" was the defendants' property. There was a north-south channel on the western side of the "LAE" line, which branched off from the eastern water channel on the north. The water flowed from north to south in the channel marked as "LPQO" in the sketch. The area marked as "JFGHD" belonged to the defendants and there was another north-south water channel on its east, which also branched off from the

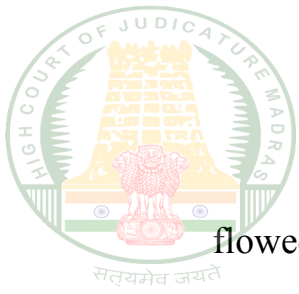


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eastern water channel on the north. This water channel was marked as "GTSR" in the sketch and the water flowed from north to south.

(iii) The land south of the 'A' schedule property and the line "EDH" belonged to the said Ms.Kamatchi and the said Ms.Theivanai. The lands, which were located to the south of this land, belonged to one Mr.Selvaraj and his brothers and the same was marked as "VWXY" in the sketch. The lands between the two north-south water channels were mostly cultivated with banana and other crops except for the area where the houses and wells were located. The lands between the water channels were sloping with the western side being higher and the eastern side being lower. The land west of the "LOQP" water channel was slightly higher and the land east of the "RSTG" water channel was slightly lower. Therefore, the excess water from the irrigation channels and the rain water flowed from west to east. Due to this topography, the eastern water channel on the north served as both an irrigation channel and a drainage channel. The defendants also irrigated their "ALKB" land through the eastern water channel on the north and drained water at point "K".

(iv) The plaintiffs had constructed pits on the western side of the "CD" line and drained the excess water from their land into it, which



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flowed through D3, D2, D1, H, D4 and D and drained into "GTSR" channel. This drainage channel was also the proper drainage for the defendants' "JGHD" land. This drainage channel was shown as the 'B' Schedule property and had been in existence for several years serving as the drainage channel for the plaintiffs' land. The plaintiffs and their predecessors had been draining water through the 'B' schedule property for several years. The plaintiffs including their predecessors had been draining the excess water from the 'A' schedule property through the 'B' schedule property and this right had been recognized by all including the defendants.

(v) The plaintiffs had been draining water from the 'A' schedule property through the 'B' Schedule property without any obstruction for a long time and this had been done with the knowledge of every one including the defendants. Hence, the plaintiffs had acquired a right to drain the excess water from the 'A' schedule property through the 'B' schedule property.

(vi) The lands of both parties originally belonged to one Ms.Ganasundaramal and later, the first plaintiff and the defendants' father had purchased their respective lands from her. Originally, the owners of



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the land had the right to drain excess water from their land to the 'B' schedule property. Since the original owner had drained the excess water from the 'A' schedule property through the 'B' schedule property, the plaintiffs had also acquired a right to drain water through the 'B' schedule property.

(vii) The plaintiffs had been using this drainage facility for a long time exceeding the period prescribed by law and therefore, they had acquired the right of easement. There had been a strong bund between the plaintiffs and the said Ms.Kamatchi's lands and they had cultivated banana and drained water into the 'GDSR' channel. The plaintiffs and others had constructed channels to drain water into the "GDSR" channel. The drainage channel had run from west to east and the plaintiffs had been draining from the 'A' schedule property through the 'B' schedule property for several years, by acquiring a right to do so.

(viii) Due to dispute between the parties, the defendants had destroyed a part of the drainage channel in the 'B' schedule property during the second week of July 1996, which was shown as the 'C' schedule property and this had caused irreparable damage to the plaintiffs. The plaintiffs needed to cultivate their lands and required a continuous drainage



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facility. The plaintiffs had asked the defendants to rebuild the channel. But, the defendants had evaded and instead, filed O.S.No.376 of 1996 and obtained an order of interim injunction. The plaintiffs have a legitimate right to drain water through the 'B' Schedule property and the defendants' actions caused harm to the plaintiffs. The plaintiffs needed to establish their right over the 'B' schedule property and they were entitled to an injunction to rebuild the C schedule channel. Hence the suit.

10. The third defendant in O.S.No.403 of 1996 filed a written statement and it was adopted by the other defendants wherein he took the following stand :

(i) This suit has been filed in opposition to O.S.No.376 of 1996 filed by the defendants against the plaintiffs. The defendants denied the allegations made by the plaintiffs.

(ii) The defendants denied the averment that the excess water flowed from the lands of one Mr.Periyasamy and others to "GDSR" channel. According to them, the said channel had been constructed by the said Mr.Periyasamy for his convenience. The defendants also denied that the excess water had flowed from eastern side of the channel to the lower



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channel, that the plaintiffs had dug pits on the western side of the bund and drained water and that the water had flowed through "D3D2HD4D".

(iii) The defendants further denied that the plaintiffs had been draining water through the said channel for several years. The plaintiffs had shown the 'B' schedule property only to claim right over the defendants' lands. There had been no channel as shown in the 'B' schedule property. No one could claim a prescriptive right to drain excess water. Only the marked area "JFD2D3" in the sketch and the defendants' land were owned by one person. "FGD2D2" portion was the defendants' ancestral property.

(iv) The defendants denied the averments that the original owner had allowed water to drain and that the original owner allowed water to flow through the defendants' properties as a matter of necessity. The plaintiffs facilitated to drain water from the rear side ie., they could drain water only to the south of their land. The surplus water from the suit land had flowed to the south and the other land owners to the south had also drained water in the same manner. The lands had sloped towards the south. No one on the southern side of the suit land had drained water into "GDSR" channel. The defendants had not removed/destroyed any channel as alleged by the plaintiffs. The natural flow of water had been from north to south and it had



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been specifically denied that water had flowed from west to east. The defendants had been puzzled as to how the plaintiffs could claim to drain water from their land "ABKS" at point "K". If that had been held to be true, the plaintiffs could also have drained water from their lands to the west into the "LPQO" channel.

(v) The plaintiffs had no right to drain water through the defendants' lands. The lands had sloped from north to south and the plaintiffs had not disputed the same. The 'B' schedule property shown in the sketch as "DD3D1H" was fictional. There was no channel of 2 feet wide on the southern boundary of the land. The defendants denied that the drainage channel had existed for several years. There was no pit to the west of the CD line as alleged by the plaintiffs. The property details were incorrect. The plaintiffs had no right to drain water through the defendants' lands. This suit had been filed by the plaintiffs to claim a new right. The plaintiffs had no right to drain water through the 'B' schedule property. The defendants had not closed nor destroyed any channel as shown in the 'C' schedule property. There was no drainage point at "DD3" as alleged in the plaint. Ultimately, the defendants prayed for dismissal of this suit.



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11. Based on the abovesaid pleadings, the Trial Court framed the

following issues in O.S.No.403 of 1996:

i Is it true that the “B” schedule property has been used as a drainage for the properties in 'A' schedule for a period exceeding the statutory limitation, as claimed by the plaintiffs?

ii. Whether the plaintiffs are entitled to the relief of declaration and consequential permanent injunction?

Iii. Whether the plaintiff are entitled to the relief of mandatory injunction?

iv. What other reliefs the plaintiffs are entitled to?

12. Based on the order of joint trial, evidence was recorded in O.S.No.376 of 1996. During trial, on the side of the plaintiffs/appellants, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A7 were marked. On the side of the respondents/defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.3 were marked. Further, the Commissioner's report and sketch were marked as Ex.C.1 and Ex.C.2. After contest, the Trial Court, by common judgment dated 31.7.2000, decreed the suit in O.S.No.403 of 1996 and dismissed the suit in O.S.No.376 of 1996.



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WEB COPY 13. Aggrieved by that, the appellants filed A.S.Nos.44 and 45 of 2000 on the file of the Subordinate Court, Kulithalai. By common judgment dated 30.4.2001, the Lower Appellate Court dismissed both the appeals thereby confirming the decrees and the common judgment passed by the Trial Court. As against the same, the above second appeals have been preferred.

14. The second appeals were admitted on 23.11.2001 on the following substantial question of law:

“Whether there could be any easement among purchasers of a common owner?”

15. The learned counsel for the appellants made the following submissions :

(a) The respondents had not established any right warranting the Trial Court to grant them the relief. The draining of water into the appellants' land was neither a natural right nor an easementary right. There was a contradiction in the claim of the respondents as to the right of



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easement of necessity to drain the water. The respondents were seeking to drain the water into the appellants' property, which would, in effect, sever the lands and its utility would be lost.

(b) Further, the respondents did not claim any natural right, but asserted the prescriptive right to drain water into the appellants' land. Admittedly, the property had been purchased from a common owner and the issue of this land being subjected to easement did not arise. Section 13(l) of the Indian Easements Act, 1882 would not be applicable to the case on hand. The appellants raised paddy and plantain alternatively in their land and there could not be a continuous flow of water for over 20 years. The respondents could not claim to drain the surplus water into the appellants' land.

(c) None of the documents produced by the respondents permitted them to drain the water through the appellants' land and even the title deed produced failed to disclose that the water was draining on the eastern side of the property into the appellants' land. The respondents filed suit in O.S.No.403 of 1996 as a counter blast to the suit filed by the appellants in O.S.No.376 of 1996, which was prior in point of time. The revenue records



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did not indicate the existence of any channel in and over the appellants' property. The field measurement book in respect of the appellants' property did not indicate that the suit property was subjected to any easementary right. When a regular channel was running on the western and the southern sides of the respondents' property, there was no necessity to drain the water into through the appellants' property. The issue of easement by the purchasers of a common owner does not arise.

(d) Unfortunately, the Trial Court failed to appreciate the oral and documentary evidence and ultimately decreed the suit in O.S.No.403 of 1996 filed by the respondents and dismissed the suit in O.S.No.376 of 1996 filed by the appellants vide common judgment dated 31.7.2000. When the appellants filed first appeals, the First Appellate Court had also failed to re-appreciate the evidence independently and simply endorsed the views of the Trial Court and dismissed both the first appeals thereby confirming the decrees and the common judgment of the Trial Court dated 30.4.2001. Hence, the appellants were constrained to file the above second appeals.

16. Per contra, the learned counsel appearing on behalf of the respondents submitted as follows :



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(a) Admittedly, the predecessors of both the appellants as well as the respondents were common. The structure and the level of the land contain ups and downs. In both sides, there were channels. The channel on the western side was used only for irrigation purpose and the same was at a higher level than both the appellants as well as the respondents' land and the eastern side channel was used for draining the water, which was lower than both the western side channel as well as the land of the respondents. Both the lands were cultivatable lands.

(b) It was not in dispute that the appellants had lands. One of the lands is situated west to the respondents' land and another is to the east of the respondents' land. The appellants have provision to drain the water from the east-west-northern side land and also from the north-south eastern side land. whereas the respondents have no such provision. Since the western side channel is higher than the respondents' land, that channel can be used only for irrigation. Therefore, the respondents could use the eastern side of their land for draining the water.

(c) Since the appellants restrained the respondents from draining the water into their land, the respondents filed the suit in O.S.No.403 of 1996 seeking to declare that the respondents had the right to drain the water and



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for permanent injunction and also for mandatory injunction. The respondents filed a rough plan, which was marked as Ex.B3 and it would clearly show that the respondents had a necessity to drain the water as shown in the rough plan Ex.B3 and it was also explained in the averments in the plaint. During the pendency of the suits, an Advocate Commissioner was appointed and he was examined as D.W.3. The plan filed by the Advocate Commissioner has been marked as Ex.C.2. The respondents rightly established their case as to the nature of the land, channel and classification of land, which clearly proved their case in O.S.No.403 of 1996.

(d) D.W.2, who is the neighbouring land owner of the appellants and the respondents, clearly stated in his evidence that the respondents had to drain water as narrated in the plan from his land through north-south eastern channel. The report of the Advocate Commissioner also confirmed the same. Hence, the Trial Court rightly appreciated the oral and documentary evidence produced by the respondents, disbelieved the oral and documentary evidence of the appellants, rightly decreed the suit filed by the respondents and dismissed the suit filed by the appellants.



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(e) As against the common judgment of the Trial Court in the said suits, the appellants filed two appeals before the First Appellate Court. The First Appellate Court, as a final Court of fact finding, re-appreciated the evidence and gave an independent finding that the appellants had not established their case whereas the respondents established their case and ultimately dismissed both the first appeals. Hence, there is no merit in these second appeals and the same are liable to be dismissed.

17. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the judgments of both the Courts below.

18. Admittedly, the appellants filed the suit in O.S.No.376 of 1996 seeking permanent injunction restraining the defendants, their men, agents, and servants from draining the excess water into their lands in S.No.19/1B3. The respondents also filed the suit in O.S.No.403 of 1996 seeking for (i) declaration declaring that they had a right to drain excess water from the A scheduled property into the B scheduled property, (ii) permanent injunction restraining the appellants, their men, agents, servants from interfering with



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their right to drain water and (iii) for mandatory injunction directing the appellants to restore the watercourse. Ultimately, the Trial Court decreed the suit filed by the respondents and dismissed the suit filed by the appellants. Pursuant to that, the appellants filed two appeals before the First Appellate Court and they were also dismissed. Aggrieved by the same, the appellants filed the above second appeals.

19. The specific case of the respondents is that their ancestors purchased the 'A' scheduled property in the year 1957 under a registered sale deed dated 29.12.1957. The respondents 2 to 4 were enjoying 1/3rd share each of the 'A' scheduled property. Since the appellants destroyed the 'B' Scheduled property, the respondents could not drain the water. Hence, the respondents filed the suit in O.S.No.403 of 1996. On the side of the respondents, Ex.B.3 the rough plan was marked, in which, it was clearly mentioned about the properties of both the appellants as well as the respondents and also the channels.

20. On a perusal of the pleadings of the respondents in O.S.No.403 of 1996, the rough plan - Ex.B.3, the evidence of D.W.1, D.W.2 - the

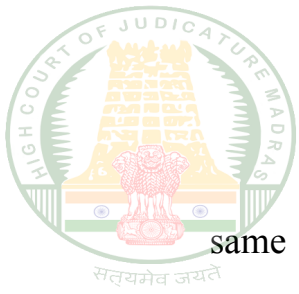


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neighbouring land owner, D.W.3- the Advocate Commissioner, Ex.C.1 - the Commissioner's report and Ex.C.2 - the Commissioner's plan, it has been clearly shown that the respondents' land is on the western side and the appellants' land is on the eastern side and also on the northern side. The nature of the land is sloping from west to east and the western side is higher and the eastern side is lower. In order to drain water from the western side since it is at a higher elevation, the excess water has to flow only through the eastern side.

21. As per the rough plan marked as Ex.B.3 and the evidence of D.W.1 and D.W.2 and also the Advocate Commissioner's plan marked as Ex.C.2, it is seen that there is a channel on the eastern side. Hence, it is necessary for the respondents to drain the excess water towards the west to east side and the excess water has to pass through the appellants' land. The respondents created a channel (vaikal) within their land and also on the eastern side of their land and on the southern side of the appellants' land and it has to flow from the north to south eastern side. Therefore, the respondents have established their claim. Further, admittedly, the appellants' land on the eastern side and the respondents' land initially belonged to the



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same person. The respondents' ancestors purchased the land way back in the year 1957. Subsequently, the appellants purchased the property only in the year 1989.

22. Though the appellants stated that there is no easementary right and that the respondents have also not claimed any natural right, it is for the respondents to establish that they have got easementary right to drain the water through their land. Through the evidence of D.Ws.1 and 2 and 3 through the documents such as Ex.B.1, Ex.B.2 and Ex.C.2, the respondents have clearly established their right. In addition to that, Ex.A1 - the title deed of the appellants would clearly show that a portion of the appellants' land and the respondents' land belonged to a common ancestors. Since the land is sloping from the western side to the eastern side, it is necessary to drain the excess water to the lower side. During the relevant point of time, before sale, since both the properties of the appellants as well as the respondents belonged to the common ancestors, there was no problem in draining the excess water. Subsequently, at a later point of time, the title to the properties was transferred to the third parties and hence, the problem has arisen regarding the draining of excess water.

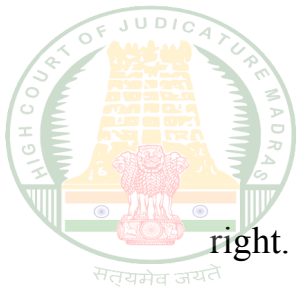


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23. The appellants' claim is that there was a north-south channel lying on the western side of the respondents' land. In Ex.B3 - the rough plan, it has been clearly shown that on both the western side of the respondents' land and the eastern side of the appellants' land, channels were running. The respondents, through oral and documentary evidence, have clearly established that the western side of the channel is on the higher side and hence, the respondents cannot drain water through the western side channel. Therefore, the plea of the appellants is not acceptable. Instead, the plea of the respondents is acceptable.

24. Considering the fact that originally, both the appellants' and the respondents' lands belonged to a common person and the same were subsequently sold to third parties and also considering the nature, level and classification of the lands, this Court is of the considered view that the respondents' claim is genuine and that the respondents have established their plea in O.S.No.403 of 1996 through the pleadings and the oral and documentary evidence and hence, the Trial Court decreed the suit filed by the respondents and dismissed the suit filed by the appellants. In view of the above conclusion, the excess water has to be drained from the higher side land to the lower side land and the respondents have got an easementary



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right.

25. One of the stands taken by the appellants is that the respondents have not produced any document to show their easementary right whereas this Court, through the pleadings and the oral and documentary evidence, found that the respondents have established the nature, level and classification of lands. The appellants have also not denied the said fact. When the appellants have stated that the respondents have got an alternative channel to drain the excess water, it is for the appellants to prove the same. On a reading of the oral and documentary evidence, the appellants have not come forward to establish that the respondents have an alternative channel to drain the excess water.

26. In the light of the above discussions, the substantial question of law formulated in these second appeals is answered in favour of the respondents and against the appellants. Accordingly, the second appeals fail and are dismissed. No costs. Consequently, the CMPs are closed.

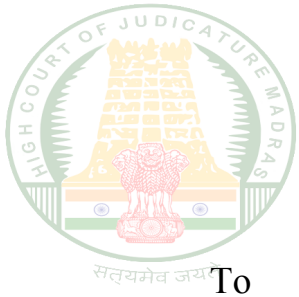
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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To
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