



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.844 of 2021
and CMP.No.16201 of 2021

1.Sridharan
2.Gurumurthi

... Appellants

VS.

1.Madhusudhanan
2.Janardhanan

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 19.12.2019 passed in A.S.No.19 of 2019 on the file of the Subordinate Judge, Ulundurpet and to reversing the Judgment and Decree dated 18.10.2016 in O.S.No.121 of 2012 on the file of the Principal District Munsif, Ulundurpet by allowing this second appeal.

For Appellants : Mr.V.Manohar

For Respondents :Mr.D.Baskar

J U D G M E N T

The unsuccessful defendants are the appellants.



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2. The respondents/plaintiffs filed a suit for declaration of their right to take water through A, B, C, D, E, F, G pipeline laid in suit 'B' schedule property and for consequential injunction restraining the appellants/defendants from interfering with the said right. The suit was dismissed by the trial Court. An appeal filed by the plaintiffs, the First Appellate Court allowed the same and granted decree for declaration and injunction as prayed for. Aggrieved by the said judgment and decree, the defendants have come before this Court.

3. According to the respondents/plaintiffs, the suit 'A' schedule properties are ancestral properties of plaintiffs' family. In the year 1977, there was a registered partition in the family and plaintiffs were allotted suit 'C' and 'B' schedule properties. Since the plaintiffs were minors at the time of partition, their father Ramasamy acted as their guardian. In the year 2008, there was an exchange deed between the plaintiffs 1 and 2 and as per the exchange, $\frac{1}{2}$ portion allotted to 2nd plaintiff in suit 'A' schedule property was also given to the 1st plaintiff. Thus, the 1st plaintiff has become absolute owner of the suit 'A' schedule property.



4. The plaintiffs' father Ramasamy in his capacity as guardian of plaintiffs obtained oral licence from the defendants' father Kathiresa Nainar for taking pipeline through the property situated in 'B' schedule and irrigate water to 'A' schedule. The said permission was obtained in the presence of various persons mentioned in paragraph No.4 of the plaint including PW.2 Suburayan. The plaintiffs have been taking water through A, B, C, D pipelines laid in suit 'B' schedule property and have been cultivating their property in 'A' and 'D' schedules. The defendants in order to give trouble to the plaintiffs attempted to remove the pipelines laid in suit 'B' schedule property.

5. It was the specific case of the plaintiffs that oral licence granted by the defendants' father Kathiresa Nainar to plaintiffs to lay pipeline in suit 'B' schedule property was irrevocable licence and hence the defendants could not remove the pipelines. In view of the high handed action of the defendants, attempting to remove pipelines in suit 'B' schedule property, above said suit was laid seeking declaration and injunction as prayed for.

6. The appellants/defendants filed written statement and denied various averment found in the plaint:

6(i). It was the specific case that neither the defendants nor their



father Kathiresa Nainar had given any kind of permission or licence to the plaintiffs to lay pipeline in suit 'B' schedule property. The allegation in the plaint as if Kathiresa Nainar permitted plaintiffs to lay pipeline in the suit 'B' schedule property was denied as false.

6(ii) It was also further pleaded during June 2012, the plaintiffs attempted to lay pipeline in the suit 'B' schedule property without getting permission from the defendants. During 2nd week of July 2012 taking advantage of absence of defendants in the suit village, the plaintiffs high handedly entered the suit 'B' schedule property and laid pipeline. When Panchayat was convened in the village, the plaintiffs assured to remove the pipelines. However, contrary to the assurance, filed the present suit and sought for relief as mentioned above. The defendants further pleaded that plaintiffs are only trespassers in the suit property and hence they could not maintain the present suit.

7. Before the trial Court, the 2nd plaintiff was examined as PW.1 and one Subrayan was examined as PW.2. The defendants 1 and 2 have been examined as DW.2 and DW.1. On behalf of the plaintiffs, twenty documents were marked as Exs.A1 to A20. On behalf the defendants, three documents were marked as Exs.B1 to B3.



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8. The trial Court came to the conclusion that the plaintiffs failed to prove the plea that the defendants' father permitted them to lay pipeline in the suit 'B' schedule property and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.19 of 2019 on the file of the Subordinate Court, Ulundurpet. The First Appellate Court on re-appreciation of evidence available on record came to the conclusion that the plaintiffs proved the oral licence pleaded by them and hence decreed the suit as prayed for. Aggrieved by the same, the defendants have come before this Court.

9. The learned counsel appearing for the appellants would submit that the plaintiffs have not produced any legally acceptable evidence to prove oral licence pleaded by them and in such circumstances, the First Appellate Court was not justified in holding that the oral licence pleaded by the plaintiffs was proved.

10. A perusal of the plaint averment would indicate that the plaintiffs have stated that their father Ramasamy obtained permission from defendants' father Kathiresa Nainar for laying pipeline in the suit 'B' schedule property belonging to the defendants in the presence of persons



mentioned in paragraph No.4 of the plaint. One of the persons named in the plaint namely Suburayan was examined by plaintiffs as PW.2. The First Appellate Court recorded a finding that PW.2 was aged about 72 years and he categorically deposed that he was present when oral permission was granted by father of the defendants to father of the plaintiffs in the year 1986 to lay pipeline in suit 'B' schedule property. The evidence of PW.2 and that of PW.1 are complementary to each other with regard to the oral permission pleaded by the plaintiffs.

11. The First defendant who was examined as DW.2 in his evidence deposed that the defendants also laid pipeline in the properties of 3rd parties to irrigate water to 'B' schedule property after getting permission from 3rd parties namely Vijaya and one Reddiar. He categorically admitted that the licence obtained by defendants for laying pipeline was oral. Moreover, he also deposed that the practice of laying pipeline in another person's land after getting oral permission from the land owner has been in existence in the suit village. He also admitted that till date, the defendants have not issued legal notice or preferred a police complaint against the plaintiffs, objecting their act of laying pipeline in the suit 'B' schedule property.



12. It was also admitted that he has not filed any suit or counter claim seeking removal of the pipeline laid by the plaintiffs in the suit 'B' schedule property. Therefore, it is clear, DW.2 clearly admitted that laying pipeline in other person's land after getting oral permission is a practice followed in the village and till date, the defendants have not taken any legal action for removal of the pipeline laid by the plaintiffs in the suit 'B' schedule property. The well pronounced admission of DW.2 and inaction of the defendants adds support to the plea of plaintiffs that their father laid pipeline in the suit 'B' schedule property under oral permission.

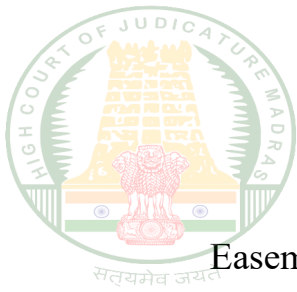
13. The 2nd defendant who was examined as DW.1 in his evidence deposed that plaintiffs during 2nd week of July 2012 laid pipeline during night hours and the said fact came to his knowledge only after four days. He also deposed that after laying of pipeline by the plaintiffs, he raised paddy crop during December 2012 and harvested in February and March 2013. He further admitted that the Advocate Commissioner visited the suit property on 21.07.2012 and he found sugarcane crop in the suit property at the time of visit. When a suggestion was made to DW.1 that the deposition made by him, as if he raised paddy crop during December 2012 was not correct in the light of the finding rendered by Advocate Commissioner that there was sugarcane crop in the suit property, he denied the said suggestion.



He also admitted that immediately after laying of pipeline, the defendants have not issued any legal notice to the plaintiffs objecting to the same. He also admitted that Advocate Commissioner in his report did not say that the pipeline was new one and the same was covered up with fresh soil.

14. The First Appellate Court also noted that the plaintiffs filed Revenue documents to show existence of crop at the relevant point of time. Had the pipelines been laid by the plaintiffs just prior to the filing of the suit as contended by the defendants the standing crops in the suit 'B' schedule property should have been damaged and the pipeline should have been covered with new soil. The Advocate Commissioner has not noted any such physical features as admitted by DW.1.

15. The First Appellate Court on careful scrutiny of the evidence of PW.2, who was the Panchayatar present at the time of oral permission granted by the defendants' father in favour of plaintiffs' father to lay pipeline and also the admissions of DW.1 and DW.2 as pointed out earlier, came to a factual conclusion that the plaintiffs proved oral licence pleaded by them. The said factual conclusion is not vitiated by any misreading of evidence or perversity. Hence, the same is binding on this Court while exercising power under Section 100 of Code of Civil Procedure.



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16. The First Appellate Court relying on Section 60(b) of Easements Act also found that pipeline laid by the plaintiffs' father was a permanent nature and hence it was irrevocable.

17. Section 60 of Indian Easement Acts reads as follows:

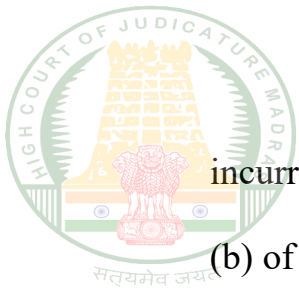
60. License when revocable.—A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

18. In the case on hand, the plaintiffs pleaded that father of the defendants permitted plaintiffs' father to lay pipeline in suit 'B' schedule property. The permission alleged by the plaintiffs was spoken to by PW.2 and the same has been accepted by the First Appellate Court. Therefore, it is clear that the plaintiffs' father acting upon the licence granted by defendants' father laid pipeline for the purpose of taking water to plaintiffs' land. The pipeline for the purpose of irrigation is a permanent character and removal of the pipeline will certainly affect the agriculture operation in the properties of the plaintiffs. Therefore, the pipelines laid by the plaintiffs are permanent in nature. There is no doubt that the pipelines in the suit 'B' schedule property could not have been laid by the plaintiffs father without

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incurring any expenditure. Therefore, all the ingredients under Section 60

(b) of the Indian Easements Act 1882, namely:

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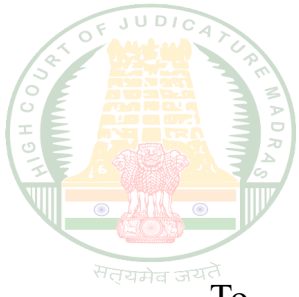
- (1) Action upon permission/licence;
 - (2) Work of permanent character;
 - (3) Incurring of expenditure
- are satisfied in this case.

19. The First Appellate Court rightly applied provisions of Section 60(b) of Easements Act and held the plaintiffs were entitled to declaration and injunction as prayed for.

20. I do not find any legal error in the said conclusion reached by the First Appellate Court. Accordingly, the second appeal stands dismissed. Consequently, the Connected Civil Miscellaneous petition is closed. No costs.

27.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
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- 1.The Subordinate Judge, Ulundurpet.
- 2.The Principal District Munsif, Ulundurpet.



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S.SOUNTHAR, J.

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