
(2010) 12 MAD CK 0355
In the Madras High Court
Case No : S.A. No. 343 of 2001

Ganesan

APPELLANT

Vs

Sivaperumal @ Arjunan, Chinnappa and Palani

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Easements Act, 1882 — Section 60

Citation : (2011) 3 MLJ 1062

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; S. Arunachalam, Associates RR 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—The appellant herein/plaintiff has filed the suit in OS.NO.35/1999 for declaration that the plaintiff is entitled to take water through the pipelines laid beneath the lands of the respondents herein/defendants in S.NO.177/10 and 183 and for permanent injunction restraining the defendants from interfering with the plaintiff from taking water and for costs.

2. The case of the Plaintiff as set out in the plaint is as follows:

a. The property in S.NO.177/7 to an extent of 1 acre 15 cents, the property in S.No. 177/6 to an extent of 72 cents and the property in S.No. 177/9 to an extent of 70 cents and 62 cents in S.No. 177/9 originally belonged to one Ganapathi Pillai. The said Ganapathi Pillai sold the same in favour of one Annamalai Pillai under the sale deed dated 5.11.1965. An extent of 2 acres and 80 cents in S.NO.177/9 originally belonged to one Perumal Pillai, who settled the same in favour of one Settu by virtue of the settlement deed dated 19.7.72 along with the right in the well and trees thereon. In pursuance of the settlement deed, Settu was put in possession and enjoyment of the same. The above said Settu and Annamalai Pillai sold the properties along with the right in the well and trees

to the plaintiff's father Rajupillai on 1.12.73. Ever since the date of purchase, the plaintiff's father was in absolute possession and enjoyment of the same and thus, he perfected title to the suit property by adverse possession also.

b. On 12.8.1980, the father of the plaintiff Rajupillai executed a settlement deed in favour of the plaintiff and the plaintiff was put in possession and enjoyment of the same. At the time of settlement deed, the well in S.No. 177/9 had become dilapidated and so, the plaintiff dug up a new well in S.NO.177/9 for irrigating the other portion of the land in the same survey number. Since the S.No. 177/9 is an irregular shape, for convenient enjoyment, the plaintiff approached the defendants to permit him to take water through a pipeline embedded in S.No. 177/10 and 183 which belonged to the defendants. The defendants also gave permission as early as in 1981 for the plaintiff to lay pipeline beneath the lands in S.No. 177/10 and 183. Thereafter, the plaintiff spent about Rs.50,000/- even in the year 1981 to lay pipe line. The plaintiff obtained electricity connection with a Motor pump set in S.No. 177/9 which is standing in the name of the sister of the plaintiff. While so, the defendants who owned lands on the southern side of the land of the plaintiff started giving trouble and tried to remove the pipeline laid underneath the land of the Defendants. If the defendants are allowed to remove the pipelines, the plaintiff will be put to irreparable hardship and loss. Hence, the suit has been filed.

3. In the Written Statement filed by the 1st defendant adopted by the defendants 2 and 3, it is averred as follows:

a. The plaintiff never approached the defendants to permit him to take water through a pipe line beneath the lands in S.No. 177/10 and 183. The defendants never permitted the plaintiff to lay pipeline. The pipeline which runs beneath the land in S.No. 177/10 and 183 was laid by the defendants only. Since, the northern portion of the said land is in a higher level, the pipeline runs only upto the boundaries of the defendants land and in S.NO.177/10 and not extended to the land of the plaintiff. It is false to contend that the plaintiff obtained service connection for the suit well and the contention of the plaintiff that he had spent Rs.50,000/- to lay pipeline is false. Since, the plaintiff filed another suit against the defendants in OS.No. 469/98, which is pending and there is no merits in that case, the plaintiff has filed this false claim as if the defendants permitted the plaintiff to take water through the pipeline beneath the lands of the defendants. Further, the defendants contended that the plaintiff never took water from the existing pipeline and he has no right over the suit pipeline also and hence, the suit is liable to be dismissed.

4. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to A10 were marked and PW.1 to PW.3 were examined. On behalf of the Defendants, Ex.B1 was marked and DW.1 to DW.2 were examined. The report and the plan of the Advocate Commissioner were marked as Ex.C1 and C2.

5. On consideration of the oral as well as the documentary evidence, the Trial

Court decreed the suit as prayed for and the appeal filed as against the same by the defendants was allowed, setting aside the Judgement and Decree of the Trial Court. As against the same, this Second Appeal has been filed.

6. This Second Appeal has been entertained on the following substantial questions of law:

(a) When the plaintiff had relied upon the permission granted by the defendant vendor and had spent considerable amount in putting up a construction whether the defendant could withdraw the license unilaterally?

(b) Whether the order of the lower appellate court is not against Section 60 of the Easement Act?

7. This court heard the rival submissions made by the learned Counsel on either side and also perused the material on record and the impugned judgements of the courts below.

8. The case of the appellant is that he had purchased the properties in the year 1973 and sought permission from the owner of the property in S.No. 177/10 and S.NO.183, namely, Lakshmanan and his father Vadamlai and laid pipelines embedded in the earth for about 500 sq.ft. It is the categorical case of the appellant that the pipelines embedded in the earth in the above said properties of the Defendants were in existence for nearly twenty years. Mr.V. Raghavachari, the learned senior counsel for the Appellant contended that the license granted by the defendants' vendors was irrevocable and acting upon the said license granted by the predecessors of the Respondents/defendants, the appellant had laid pipelines permanently beneath the lands in S.No. 177/10 and 183 by incurring heavy expenditure of Rs.50,000/-. The learned Counsel referred to Section 60(b) of the Easements Act and argued that the license had become irrevocable under the said provision of the Easements Act as the condition stated thereon are fulfilled. The learned Counsel pointed out that the land in S.No. 177/10 and 183 belonging to the Respondents/defendants are in between the two portions of his property, namely, the lands in S.No. 177/9.

9. The learned Counsel for the appellant strenuously contended that the defendants having not objected to the pipelines laid already beneath the lands in S.No. 177/10 and 183, even after their purchase in 1993, the license granted became irrevocable and , the defendants who are the transferees from the vendors of the defendants cannot revoke it unilaterally. In support of his contention, the learned Counsel for the appellant cited a decision reported in Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, .

10. The Honourable Supreme Court in the decision cited supra observed that a license may be oral also and in such case, the terms and the nature of the license can be gathered from the purpose for which the license is granted coupled with the conduct of the parties and the circumstances which led to the grant of the license. The Honourable Supreme Court after making a reference to

a number of decisions of the High Court held that a license is irrevocable u/s 60(b) of the Easements Act, if the following three conditions are fulfilled:

- (i) The licensee executed work of a permanent character,
- (ii) He did so acting upon the license and
- (iii) He incurred expenses in doing so.

11. If the above said conditions are fulfilled, then the license become irrevocable u/s 60(b) of the Easements Act. In the present case, admittedly no written document was executed by the parties containing the terms and conditions of the license. The same could be inferred from the attending circumstances and the conduct of the parties. The lands in S.No. 177/9 consist of two pieces of lands, namely, 0.70 cents and another extent of 2.80 acres in the same survey number are owned by the appellant. His father had purchased the same by a registered sale deed dated 1.2.1973 and the same has been settled in favour of the appellant. There is no dispute over the said fact. The well is situated in S.No. 177/9 that is on the south of the land belonging to the defendants in S.No. 177/10. It is claimed by the appellant that since the old well became disuse, he had dug a new well in the same land for irrigating the lands in S.No. 177/9.

12. It is seen that the land in S.No. 177/9 is in an irregular shape which is also seen from the plan and the report of the Advocate Commissioner. It is the specific case of the appellant that he was granted permission by the predecessors-in-title of the respondents/defendants and in pursuance of such license granted by them, he laid pipeline permanently beneath the lands in S.No. 177/10 and 183 by incurring expenses of a sum of Rs.50,000/-. The service connection stood in his sister's name and PW.2 the sister of the plaintiff has also spoken to the said fact. PW.2 and PW.3 have also spoken to the effect that the appellant was taking water from the well lying in S.No. 179/9 lying on the south of the defendants' land through pipelines embedded in S.NO.177/10 and 183 for the past 20 years. The Advocate Commissioner in his report has stated that a pipeline existed in S.No. 177/9 and in S.Nos.177/10 and 183.

13. The respondents/defendants have admitted the existence of pipeline beneath the lands in S.No. 183 and 177/10 for nearly 17 years, but they claim that the same was laid by them. Admittedly, they have purchased those lands only in the year 1993 and the pipelines are in existence for about 17 years and so, it could be easily inferred that the permission to lay pipelines through the lands in S.No. 177/10 and 183 has been granted only by the vendor of the defendants.

14. The learned Counsel for the respondents pointing out to the admission made by the plaintiff that the permission was not granted by the Defendants contended that the license granted by the vendor of the defendants is not transferable and as such, the respondents have got all right to revoke the said license. The learned Counsel for the respondents placed reliance on a decision reported in *Sunder Lal Vs. Sita Bali and Another*, wherein it is held that a license is personal

to the person in whose favour the license has been granted and it is not heritable on the death of the licensee.

15. The decision cited *supra* is not applicable to the facts of this case, as in the above case, it is held that on the death of licensee, his legal representatives would not be entitled to inherit the grant of license, whereas in the present case, the grantor has transferred the land in favour of the transferee and when the license is irrevocable, the license is not affected by the transfer of property. If the grantor of a license cannot himself revoke a license, how could his transferee revoke it.

16. At this juncture, it is relevant to refer to a decision reported in *Manoolal Balchand Vs. Kaluram Gulabchand*, wherein it is held that when the license becomes irrevocable u/s 60(b) of the Act, a licensor cannot put an end to an irrevocable license by a transfer of property and a transfer ipso facto cannot extinguish a license. It is held as under:

Where the license has become irrevocable, as u/s 60(b), a licensor cannot put an end to an irrevocable license by a transfer of property affected by the license and a transfer does not ipso facto extinguish a license. As the grantor of the license cannot himself revoke it, the transferee also cannot revoke it. The transferee does not get any better rights than those possessed by the transferor.

17. I am in entire agreement with the views expressed by the learned Judge in the above said decision. It is not the case of the respondents that either their vendors or the respondents have revoked the license granted to the appellant. The grant of license which is oral in this case could be inferred from the attending circumstances and the conduct of the parties. The evidence on record clearly shows that the appellant/plaintiff has laid pipelines beneath the lands in S.No. 177/9 and 183 to take water from the well of the plaintiff in S.No. 177/9 to his other lands. Admittedly, the said pipelines are in existence for more than 17 years. There was no objection from the vendor of the defendants and there is no material to infer any such objection raised by the defendants vendor. Therefore, it is clear that the pipelines have been laid by the plaintiff with the permission of the defendants' vendor. The rights so conferred is license. The grant of license may be express or implied.

18. Section 60 of the Easements Act provides that 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 permanent character and incurred expenses in the execution. In this case, the appellant has laid pipelines which are permanent in nature and has incurred expenses in execution thereof acting on the license. If the vendor of the defendants did not grant any license, then they would not have permitted the appellant to lay pipelines beneath their land and would have certainly raised objections. They would have taken steps to remove those pipelines once they come to know that the pipelines are laid in their land. Their conduct of

acquiescence to the pipelines laid in their land is sufficient to show that the license was irrevocable. There is also nothing on record to show that the licensor had retained right to revoke the license.

19. It is held in *Amjad Khan and Ors. v. Shafiuddin Khan and Ors.* 1925 All 203 that a kuchcha thatched house may be a work of permanent character and the fact that the thatch is renewed from time to time does not make it a work of temporary character. It is further held that unless the license is shown to have been granted under restrictive conditions of the nature set up, no revocation can be allowed to the prejudice of the licensee by whom a permanent structure has been built.

20. In the present case, the evidence clearly indicates that the pipeline embedded on the earth in the lands of the defendants are permanent in character and the license was perpetual and irrevocable. That being so, the respondents/defendants who are the transferees of the grantor cannot revoke the license.

21. Therefore, I am of the considered view that the findings of the lower appellate court cannot be sustained as it is against the import of Section 60(b) of the Easement Act (5 of 1882). Accordingly, the substantial questions of law are answered.

22. In the result, this appeal stands allowed and the judgement and decree of the first appellate court is set aside and the judgement and decree of the trial court is restored. However, in the circumstances of the case, there will be no order as to costs.