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S.A.Nos.942 & 943 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.Nos.942 and 943 of 2007
and M.P.No.1 of 2007

1.K.Sampath,
2.S.Valliammal

...Appellants in
both second appeals

Vs.

1.R.Balan,
2.Avinashi Gounder

...Respondents in
both second appeals

Prayer in S.A.No.942 of 2007: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 25.01.2007 made in A.S.No.31 of 2005 on the file of the Principal Subordinate Judge, Gobichettypalayam, modifying the Judgment and Decree dated 29.06.2004, made in O.S.No.357 of 1998, on the file of the District Munsif, Gobichettypalayam.

Prayer in S.A.No.943 of 2007: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree, dated 25.01.2007 made in A.S.No.58 of 2005 on the file of the Principal Subordinate Judge, Gobichettypalayam, confirming the Judgment and Decree dated 29.06.2004, made in O.S.No.357 of 1998, on the file of the District Munsif, Gobichettypalayam.



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For Appellants
in both second appeals : Mr.A.V.Arun

For Respondent-1 : Mr.B.Bharath Kumar
in both second appeals for Mr.V.Nicholas

COMMON JUDGMENT

At the instance of the defendants, both these second appeals have been filed. The first respondent is the plaintiff and the second respondent is the third defendant.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

3. Since both the second appeals arise out of the same suit, both the second appeals are considered and decided by this common judgment.

The brief facts which give rise to this second appeal are as follows:

4. The second defendant is the wife of the first defendant. The third defendant is the father of the second defendant. According to the plaintiff, the suit properties belong to him, absolutely being his ancestral



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and self acquired properties. The first defendant has purchased the adjacent land to the plaintiff's property, the well and adjoining portion, through a sale deed dated 19.06.1996. According to the plaintiff, the defendants did not have any right to title over the plaintiff's exclusive right over electricity motor pumpset erected in the well. It is the submission of the plaintiff that the suit electric motor pumpset was installed by the plaintiff's father about 38 years ago. It was also contended by the plaintiff that there was an old Uthi vaikkal, with a width of 4 feet that runs westwards from the common well for taking water to the other parties' lands. The said Uthi vaikkal is shown as 'ABCDEFGHI' in the rough plan attached with the plaint. According to the plaintiff, the said vaikkal was in existence for more than 60 years. However, the defendants attempted to put up a new cart track by obliterating the Uthi vaikkal. Hence, the plaintiff has come forward with the suit for injunction in respect of the Uthi vaikkal and in respect of the motor pumpset.

5. The said suit was resisted by the first defendant by contending that the rough plan attached to the plaint is not correct. It was further contended that the plaintiff has falsely claimed exclusive right over the electricity service connection and motor pumpset. According to



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the defendants, by virtue of the sale deed dated 19.06.1996, the first defendant has become entitled to a half share over the well and the pumpset. This defendant further submits that the said Uthi vaikkal is extended only for the small distance in portion 'ABHI' as referred to in the plaint plan and not the portion of 'ABCDEFGHI'. It is the case of the defendants that the Uthi vaikkal was not at all in existence. Therefore, for such a non-existing channel, injunction cannot be sought for. Hence, they prayed to dismiss the suit.

Evidence and documents:

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff himself examined as P.W.1 and 15 documents were marked as Exs.A1 to A15. On behalf of the defendants, the first defendant himself examined as D.W.1 and one more witness viz., Mr.Thangavelu, Electricity Board Official, was examined as D.W.2, and 16 documents were marked as Exs.B1 to B16. As Court documents, five documents were marked as Exs.C1 to C5 and as third party documents, seven documents were marked as Exs.X1 to X7.

Findings of the Courts below:



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7. After going through the evidence and materials on record, the Trial Court found that the plaintiff is not entitled for a permanent injunction in respect of the motor pumpset, however, granted permanent injunction in respect of the Uthi vaikkal. Aggrieved by the same, both the plaintiff and the defendants have preferred the appeals in A.S.No.31 of 2005 and A.S.No.58 of 2005. In A.S.No.31 of 2005, the plaintiff has preferred an appeal against the dismissal for the relief of permanent injunction in respect of the motor pumpset. Similarly, the defendants have preferred an appeal in A.S.No.58 of 2005 against granting of injunction in favour of the plaintiff in respect of the Uthi vaikkal. Both the first appeals had been disposed of jointly, by and in which, the appeal filed by the plaintiff in A.S.No.31 of 2005 was allowed and thereby, the defendants were granted injunction in respect of the motor pumpset. Whereas, the appeal filed by the defendants in A.S.No.58 of 2005 was dismissed. Thus, in the said appeal, the plaintiff was granted the decree as prayed for. Aggrieved by the findings of the both appeals, the defendants have preferred two second appeals before this Court.

Substantial questions of law:



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8. At the time of admission of these second appeals, this Court has formulated the following substantial questions of law:

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“1. Whether the Courts below are right in decreeing the suit when admittedly Ex.B11, the Settlement deed in favour of the respondent, does not show the existence of the Vaikkal?”

2. Whether the First Appellate Court is correct in decreeing the suit filed by the respondent against the documents produced by the appellants herein?”

Submissions on both sides:

9. The learned counsel for the appellants would submit that the alleged Uthi vaikkal referred to as ‘ABCDEFGHI’ was not at all in existence and that the relief of declaration claimed by the plaintiff is barred by limitation. While considering the plaint, it appears that originally, the suit was not filed for both the relief of declaration and injunction, but, prayed only for the relief of injunction. In this regard, it is pertinent to mention here that the defendants have disputed the right of the plaintiff over the Uthi vaikkal as well as the pumpset through their written statement.

10. Per contra, the learned counsel for the respondent/plaintiff



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would contend that the suit property is their ancestral property and that they erected pumpset in the common well and that the defendant without having any right, in spite of the fact that he is the subsequent purchaser, attempting to obliterate the longstanding uthi vaikal and claiming right on the plaintiff's pumpset illegally. Hence, prayed to dismiss this second appeal.

11. I have given my anxious consideration of the submissions made on both sides.

Analysis of the submissions made by both sides:

12. The Trial Court, after considering the various aspects, found that the right of declaration sought in the suit is not barred by limitation. It is pertinent to mention here that when there is a predict pleading in respect of the title over the property available in the plaint, mere absence of seeking the relief of prayer for declaration will in no way deny the plaintiff's right to have an amendment, even beyond the period of limitation. Based on the above ground, the Trial Court, has rightly held that the suit is not barred by limitation.

13. The learned counsel for the defendants though would



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contend that Uthi vaikkal was not in existence, the Trial Court, by relying upon the defendant's documents *viz.*, defendant's title deed/Ex.B2 and his predecessors' title deed/Ex.B4, has found about existence of the said Uthi vaikkal. Even while perusing the plaint plan, it is clear that the said Uthi vaikkal is very much essential to draw water to the plaintiff's land, which is situated at the western side of the well. The Trial Court has also found that the existence of Uthi vaikkal can also be vindicated through the Commissioner's Report. The First Appellate Court has also confirmed the said finding relying upon the admissions made by D.W.2/Thangavelu, Electricity Board Official. Therefore, the finding of fact recorded by both the Trial Court as well as the First Appellate Court in respect of the Uthi vaikkal, is based upon the documents submitted by the defendants and admissions made by the defendants. Thus, this Court could not find any infirmity or perversity over the said finding.

14. Coming to the reliefs of declaration and injunction in respect of the well, though the Trial Court found that the plaintiff is not entitled to declaration and injunction, the First Appellate Court, through the evidence of D.W.2/Thangavelu, has found that for about past 40 years, the electricity service connection stands in the name of Rasa Gounder,



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who is the predecessor-in-title of the plaintiff. It was also further observed by the First Appellate Court that in Ex.B11/sale deed dated 29.04.1987 and the defendant's sale deed dated 19.06.1996, which is marked as Ex.B2, there is no reference in respect of the motor pumpset. Therefore, based upon such absence of reference as to the pumpset in the defendant's sale deed, the First Appellate Court has granted the relief of declaration and permanent injunction to the plaintiff in respect of the motor pumpset, which finding is also supported by materials on record.

15. Therefore, this Court is of the view that the finding of fact recorded by the First Appellate Court in respect of the existence of Uthi vaikkal, and granting of the right of declaration over the pumpset to the plaintiff, is well-merited and there are no materials as projected by the defendant, to deviate from the said finding. Therefore, in view of the above discussions, the substantial questions of law are answered in favour of the first respondent.

16. In the result, both these second appeals are dismissed by confirming the Judgment and Decree, dated 25.01.2007 made in



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A.S.Nos.31 of 2005 and 58 of 2005, on the file of the Principal Sub-ordinate Judge, Gobichettipalayam. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

28.11.2023

Internet : Yes/No

Index: Yes/No

Speaking order/Non-speaking order
apd

To

- 1.The Principal Sub-ordinate Judge, Gobichettipalayam,
- 2.The District Munsif, Gobichettipalayam,
- 3.The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.



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