



*S.A.No.1103 of 2003*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25.04.2023

CORAM

**THE HON'BLE MR.JUSTICE P.VELMURUGAN**

S.A.No.1103 of 2003

1.K.Chidambaram  
2.C.Kamala

... Appellants

-VS-

D.Soundararajan

..Respondent

**PRAYER:** Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 24.12.1997 made in A.S.No.15 of 1995 on the file of the Sub-Court, Periyakulam, reversing the Judgment and decree dated 13.09.1994 in O.S.No.647 of 1988 on the file of the District Munsif, Periyakulam.

For Appellants

... Mr.S.Ramesh for  
Ms.V.Srimathi

For Respondent

... Mr.R.Subramanian



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## **JUDGMENT**

The respondent, as the plaintiff, has filed the suit in O.S.No.647 of 1988 on the file of the District Munsif, Periyakulam against the appellants for declaration and consequential relief of permanent injunction. After trial, the trial Court dismissed the suit. Challenging the said Judgment and Decree, the respondent/plaintiff has filed the appeal in A.S.No.15 of 1995 on the file of the Sub Court, Periyakulam. The first appellate Court, after hearing the arguments advanced on either side and considering the pleadings oral and documentary evidence, re-appreciated the evidence and also allowed the appeal suit. Challenging the said Judgment and Decree passed by the first appellate Court, the appellants/defendants have filed the present second appeal before this Court raising the following substantial questions of law:

*“1. Whether the lower appellate Court ought not to have held that the suit cannot be maintained, having come to a conclusion that injunction cannot be granted as against joint owners?*

*2. Whether the Court below ought not to have dismissed the suit on the ground that the suit property is a well and it cannot be demarcated in portions?*



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*3. Whether the Court below ought not to have laid reliance on Ex.B.5, especially when the respondent had accepted the veracity of Ex.B.5, the document executed by Rudrappa Naidu in favour of Balasamy and the fact that 4/8<sup>th</sup> share stood transferred to the predecessor in title of the appellants?*

*4. Whether the Court below had not committed as serious error in shifting the burden of proof on the appellants herein and commenting on Ex.B.1 not specifying the share particularly when Ex.B.5 speaks of 4/8<sup>th</sup> share being transferred to the predecessor in title of the appellants and Ex.B5 being anterior in time to Ex.B1?*

*5. Whether the lower appellate Court should not have erred in not noting the fact that Ex.B.5 is clear on the aspect of transfer and its placing reliance of Ex.B.1 and Ex.B2 without considering Ex.B5 is per se incorrect?”*

2. However, this Court, considering the facts and circumstances of the case, while admitting the second appeal, has formulated the following substantial questions of law:-

*“1. Whether the lower appellate Court ought not to have held that the suit cannot be maintained having come to a conclusion that injunction cannot be granted as against joint owners?*



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*2. Whether the Court below ought not to have dismissed the suit on the ground that the suit property is a well and it cannot be demarcated in portions? ”*

3. The specific case of the respondent/plaintiff is that the suit property is 10 cents of land in Ayan Survey No.748/2 and a Well in the suit land. From the said Well, the respondent/plaintiff is entitled to 7/8<sup>th</sup> share and the first appellant/first defendant is entitled to 1/8<sup>th</sup> share. The respondent/plaintiff is enjoying the suit Well and having electricity service connection in S.C.No.155. From the year 1976, he is taking the water from the said Well and irrigating the lands. Apart from that, pump-sets were there and there is no dispute with regard to the pump-sets. The respondent/plaintiff was enjoying the land for irrigating the water from the suit Well for more than 60 years. The land and the Well originally belonged to the family of one Narayana Naidu and Kasthuri Naidu. The father of the respondent/plaintiff had purchased 1/9<sup>th</sup> share in S.No.753/1 under registered sale deed, dated 29.07.1920. On the same way, he purchased the property to the extent of 56 cents in S.No.753 and 44 cents in S.No.753/4 and 2/9<sup>th</sup> share in the disputed Well. The remaining share of 2/3<sup>rd</sup> in the suit Well in S.Nos.753/2, 753/3 and 762 had been sold by



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Narayanasamy Naidu's family to one Rengasamy Naidu S/o of Kannaiya Naidu. Hence, the said Rengasamy Naidu has got  $\frac{2}{3}$ <sup>rd</sup> share in the suit Well and he sold the share of  $\frac{4}{9}$ <sup>th</sup> in the disputed Well to one Nallusamy Naidu on 04.09.1931. Thereafter, one Kannammal purchased the same on 13.12.1952. From them, the respondent/plaintiff's mother purchased the said property on 06.07.1960 under registered sale deed. After the death of the mother of the respondent/plaintiff, the respondent/plaintiff and his father are legal heirs and his father has got  $\frac{1}{3}$ <sup>th</sup> share under sale deed dated 06.07.1960 i.e,  $\frac{4}{9}$ <sup>th</sup> share. Totally, the respondent/plaintiff has got  $\frac{7}{8}$ <sup>th</sup> share in the suit Well. The said Rengasamy sold  $\frac{1}{8}$ <sup>th</sup> share in the suit Well to one Utharappa Naidu under registered sale deed dated 23.08.1932 and Utharappa Naidu sold the same to one Balusamy Naidu. From them, the second appellant/second defendant purchased the said  $\frac{1}{8}$ <sup>th</sup> share. The said Utharappa Naidu has got only  $\frac{1}{8}$ <sup>th</sup> share under registered sale deed 23.08.1932. However, he sold, as if, he has got  $\frac{1}{4}$ <sup>th</sup> share in the said Well. Hence, the respondent/plaintiff has got only  $\frac{7}{8}$ <sup>th</sup> share and the second appellant/second defendant has got  $\frac{1}{8}$ <sup>th</sup> share and no other persons are entitled to any share in the suit Well. Since the first appellant/first defendant has got land nearby the Well, he tried to disturb and therefore, the respondent/plaintiff was constrained to file the suit for



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declaration declaring that he is entitled to 7/8<sup>th</sup> share in the suit Well and the second appellant/second defendant is entitled to 1/8<sup>th</sup> share and for consequential relief of injunction.

4. The case of the appellants/defendants is that they denied the right of the respondent/plaintiff 7/8<sup>th</sup> share and also the second appellant/second defendant is only entitled to take water to S.No.248/2A land. The respondent/plaintiff should prove all the sale deeds and rights of the respondent/plaintiff. One Muniyasamy Naidu has got 1/4<sup>th</sup> share in the suit Well. Under the sale deed, dated 25.09.1952, he sold to one Nagammal the right of 1/4<sup>th</sup> share in the said Well. she enjoyed only 1/4<sup>th</sup> share and not 1/8<sup>th</sup> share. Thereafter, the said Nagammal sold the right of 1/4<sup>th</sup> share under registered sale deed, dated 29.08.1981 and the lands, which are entitled to get irrigation from the said Well, were sold to the second appellant/second defendant. The second defendant set oil pump-set and took the water from the said Well and was enjoying her right of 1/4<sup>th</sup> share in the Well. One Utharappa Naidu purchased and was enjoying the property with irrigation right and he sold the same to the second appellant/second defendant. The second appellant/second defendant was enjoying 1/4<sup>th</sup> share in the suit well. Thereafter, on



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11.10.1988, 1/4<sup>th</sup> share was purchased from one Kamalam Ammal with other landed properties by the second appellant/second defendant.

Therefore, the second appellant/second defendant has got 1/2 share. The respondent/plaintiff only got the remaining 1/2 share. Therefore, no injunction can be granted as against the co-owners. Hence, the suit has to be dismissed.

5. Based on the pleadings, the trial Court framed the issues. In order to prove the case of the respondent/plaintiff, on the side of the respondent/plaintiff, one witness was examined as P.W.1 and 10 documents were marked as Exs.A1 to A10. On the side of the appellants/defendants, two witnesses were examined as D.W.1 and D.W. 2 and 12 documents were marked as Ex.B1 to B12. Besides, two Court documents viz., Advocate Commissioner's Report and Plan were marked as Exs.C1 and C2. After trial, the trial Court found that the respondent/plaintiff had not proved the case and hence, dismissed the suit. As against which, the respondent/plaintiff filed the appeal suit before the first appellate Court. The first appellate Court re-appreciated the entire materials and found that the respondent/plaintiff has established his case and allowed the appeal suit by setting aside the Judgment and Decree passed by the trial Court. Challenging the same,



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the present second appeal is filed by the appellants/defendants.

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6. While admitting the second appeal, this Court formulated above mentioned substantial questions of law.

7. The learned counsel for the appellants/defendants would submit that Ex.B5 is the ancient document. The respondent/plaintiff had not taken steps to disprove the same. On the other hand, the appellants/defendants have proved their case. It is the duty of the respondent/plaintiff to prove his case on his own strength and he cannot take advantage of the weakness of the defence. Though the trial Court rightly appreciated the evidence and dismissed the suit, the lower appellate Court misplaced the burden of proof on the appellants/defendants in calling upon them to prove Ex.B1 and that it has not specified the share. Ex.B5 speaks of 4/5<sup>th</sup> share being transferred to the predecessor in title of the appellants/defendants herein and the observation made to the fact that the documents prior to Ex.B1 and not being filed as *per se* quietus, especially, Exs.B4 and B5 are the documents prior to Ex.B1, which shows that the lower appellate Court, as non-application of mind, rejected the defence taken by the



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appellants/defendants and also decreed the suit. Without taking into consideration, the lower appellate Court had committed error, as if, the respondent/plaintiff has established his case that he is entitled to 7/8<sup>th</sup> share and the appellants/defendants are entitled to 1/8<sup>th</sup> share, which is without any basis. The lower appellate Court allowed the appeal only based on Ex.B5 and without finding out the veracity of Ex.B5. The lower appellate Court shifted the burden on the appellants/defendants and committed error on Ex.B1 not specifying the error, particularly, Ex.B5 specifies 4/8<sup>th</sup> share being transferred to the predecessor in title of the second appellant/second defendant and Ex.B5 being anterior to Ex.B1. Exs.B1 and B2 are anterior to Ex.B5 and therefore, the materials mentioned in Ex.B1 and B2 have to be taken into consideration. However, the lower appellate Court failed to consider the same and allowed the appeal, which warrants interference of this Court.

8. The learned counsel for the respondent/plaintiff would submit that the respondent/plaintiff purchased the property under Exs.A1 to A4. From the said exhibits, the respondent/plaintiff is entitled to 7/8<sup>th</sup> share in the suit Well. The second appellant/second defendant is entitled to only 1/8<sup>th</sup> share as per Ex.B5. Though in her prior title deed, it was mistakenly



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mentioned as 1/4<sup>th</sup> share, actually, the vendor of the second appellant/second defendant is entitled to convey 1/8<sup>th</sup> share. The vendor of the second appellant/second defendant has got only 1/8<sup>th</sup> share and he cannot convey a better title than what he had. From Exs.A1 and A4, it is clear that the respondent/plaintiff is entitled to 7/8<sup>th</sup> share and the respondent/plaintiff has established his right and title in the suit Well through oral and documentary evidence, whereas, the second appellant/second defendant is only entitled to 1/8<sup>th</sup> share and whatever share mentioned in the subsequent deed will not bind and the appellants/defendants cannot claim right and title under the documents which is not a valid one. Though the trial Court failed to consider the fact and dismissed the suit, the lower appellate Court correctly appreciated the oral and documentary evidence, especially, Exs.A1 to A4, and found that the respondent/plaintiff has proved the right of 7/8<sup>th</sup> share in the suit Well and therefore, allowed the appeal and decreed the original suit. However, Exs.B1, B2 and B5 would clearly show that the second appellant/second defendant is entitled to only 1/8<sup>th</sup> share and subsequent documents will not create any right and the original vendor has right only in respect of 1/8<sup>th</sup> share and he conveyed only 1/8<sup>th</sup> share and the subsequent purchaser cannot convey more than the share, to which they



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are entitled to. The first appellate Court has rightly appreciated the oral and documentary evidence and allowed the appeal and set aside the Judgment and Decree passed by the trial Court and there is no merit in the second appeal. Hence, the learned counsel prays for dismissal of this second appeal.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The respondent/plaintiff filed the suit for declaration declaring that the respondent/plaintiff is entitled to 7/8<sup>th</sup> share in the suit Well and the second appellant/second defendant is entitled to 1/8<sup>th</sup> share in the suit Well. The said suit was dismissed. The respondent/plaintiff filed the appeal suit before the lower appellate Court and the lower appellate Court allowed the appeal and decreed the suit. Hence, the present second appeal.

11. The specific case of the respondent/plaintiff is that both the respondent/plaintiff and the appellants/defendants are having the property in the adjacent to the suit Well and also they have share in the



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said Well. The respondent/plaintiff purchased the property also right in the Well under Exs.A1 to A4 and therefore, he is entitled to 7/8<sup>th</sup> share in the suit Well. As per Ex.B5, the second appellant/second defendant is entitled to 1/8<sup>th</sup> share and the witnesses also admitted the right of the parties in the Well. In this case, the only quantum of the share alone is disputed.

12. According to the appellants/defendants, both the appellants and the respondent are equally entitled to 1/2 share in the suit Well. However, the respondent/plaintiff has proved that he is entitled to 7/8<sup>th</sup> share in the suit Well and the appellants/defendants are entitled only 1/8<sup>th</sup> share. The respondent/plaintiff mainly relied on the documents Exs.A1 to A4. Though on the side of the respondent/plaintiff, they marked Exs.A1 to A10 and on the side of the appellants/defendants, they marked Exs.B1 to B12, a perusal of the appellants' documents would show that all the sale deeds have not been the share of the appellant in the suit Well over the same share than Ex.A5, which is mentioned as 1/8<sup>th</sup> share which is the earlier document to Ex.B6, wherein it is mentioned as 1/4<sup>th</sup> share. In Ex.B3, it is mentioned as 1/4<sup>th</sup> share and Ex.B10, it is mentioned as 1/2 share. Therefore, it is a settled proposition of law that the



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respondent/plaintiff has to prove the case on his own strength and he cannot take advantage of the weakness of the defence. Whereas, in this case, the respondent/plaintiff has filed the suit for declaration declaring that the respondent/plaintiff is entitled to 7/8<sup>th</sup> share in the suit Well and the second appellant/second defendant is entitled to 1/8<sup>th</sup> share. In order to substantiate his claim, he was examined as P.W.1 and through him, Exs.A1 to A10 were marked. Exs.A1 to A5 are the sale deeds and among them, Exs.A1 to A4 are the sale deeds in favour of the respondent/plaintiff. Ex.A5 is in favour of the appellant/defendant. Ex.A6 is the proceedings of the Sub Registrar. Ex.A7 is the kist receipts. Ex.A8 is the notice from the Electricity Board and Ex.A10 is the accounts for digging the Well.

13. Perusal of the evidence of P.W.1 and Exs.A1 to A4 would show that the respondent/plaintiff has purchased the share in the suit Well as per Exs.A1 to A4 and he has got 7/8<sup>th</sup> share. The respondent/plaintiff has proved his case by way of pleadings and oral and documentary evidence. Though the trial Court did not appreciate the oral and documentary evidence and dismissed the suit, the lower appellate Court, as the fact finding Court, while re-appreciating the evidence,



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found that the respondent/plaintiff has proved his case with oral and documentary evidence and found the Judgment of the trial Court perverse and allowed the appeal and set aside the Judgment and Decree passed by the trial Court.

14. The main contention of the respondent/plaintiff is that the vendor of the appellants/defendants purchased the share in the suit Well under Exs.B1 and B3, which 1/4<sup>th</sup> share and they would be entitled to 1/2 share. Whereas the prior title deed of the appellants/defendants is Ex.B5. Under Ex.B5, in the year 1935, Utharappa Naidu got 1/8<sup>th</sup> share and conveyed the same. Whereas, in the subsequent documents, it is mentioned as 1/4<sup>th</sup> share. Therefore, the person cannot convey better title, then, which he has got. The appellants have not proved that the predecessor in title was having 1/4<sup>th</sup> share or more than 1/8<sup>th</sup> share and they conveyed the same right to the subsequent purchaser. Originally, the second appellant's/second defendant's predecessor was having 1/8<sup>th</sup> share in the suit Well and hence, he cannot convey more than what he was entitled to.

15. A perusal of the records would show that though the trial Court



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missed off certain documents and misconceived the materials and dismissed the suit, the lower appellate Court had rightly appreciated the oral and documentary evidence and found that the respondent/plaintiff has proved his claim of 7/8<sup>th</sup> share in the suit Well and also found that the second appellant/second defendant is entitled to 1/8<sup>th</sup> share in the suit Well. In Ex.A5 sale deed, dated 23.08.1932, it is clearly stated that the vendor of Utharappa Naidu conveyed only 1/8<sup>th</sup> share in the suit Well. Hence, under Ex.A5, the said Utharappa Naidu has got only 1/8<sup>th</sup> share alone. The said Utharappa Naidu had sold the property to one Baluchamy under sale deed, dated 19.08.1935, which was marked as Ex.B5, wherein, it has been mentioned that he has 1/4<sup>th</sup> share in the suit Well. Utharappa Naidu has 1/8<sup>th</sup> share from his predecessor, namely, Rengasamy Naidu and he cannot convey more than 1/8<sup>th</sup> share to his purchaser Baluchamy. Therefore, the share mentioned in Ex.B4 as 1/4<sup>th</sup> share will not bind the respondent. Subsequently, the second appellant/second defendant purchased the same under Exs.B1 and B2 and therefore, she cannot get better title.

16. A reading of Ex.A5 would show that the subsequent documents, viz., Exs.B1, B2 and B5 did not have better title and



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therefore, the lower appellate Court has rightly found that the first appellant/first defendant is entitled to 1/8<sup>th</sup> share and not more than. If the first appellant/first defendant is entitled to 1/8<sup>th</sup> share, the plaintiff/respondent is entitled to the remaining share of 7/8<sup>th</sup> share. Therefore, this Court does not find any perversity in the Judgment and Decree passed by the lower appellate Court. Hence, the substantial questions of law are answered in favour of the respondent/plaintiff.

17. In the result, this Second Appeal fails and the same is **dismissed** as devoid of merits. No costs.

**25.04.2023**

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

1.The Sub Judge, Periyakulam.

2.The District Munsif, Periyakulam.

3.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VELMURUGAN, J.**

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