



S.A.No.65 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.65 of 2024

S.Chinnasamy

...Appellant

Vs

1. Kannammal
2. Kolandasamy
3. Muthusamy

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 20.09.2022 made in A.S.No.2 of 2022 on the file of the Subordinate Judge, Perundurai confirming the judgment and decree dated 20.11.2021 made in O.S.No.65 of 2021 on the file of the District Munsif Court, Perundurai.

For Appellant : Mr.M.Guruprasad



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JUDGMENT

The plaintiff who unsuccessfully contested the suit for permanent injunction in the Courts below is the appellant herein.

2. The facts are briefly set out herein below and for ease of understanding, the parties are referred to in the same ranking as before the trial Court.

3. The plaintiff had filed the suit O.S.No.65 of 2020 on the file of the District Munsif, Perundurai seeking the relief of permanent injunction restraining the defendants, their men, agents etc, from in any way and in any manner taking water from the bore well sunk in the first item of the suit property to the second item of the suit property through the first and third items of the suit properties by laying a new underground pipe line along with the existing underground pipe line.



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4. It is the case of the plaintiff that one Nallasamy, Sengottaian and defendants 1 to 3 had entered into a registered partition deed on 07.04.1998 in respect of their undivided properties. In the said partition deed, “A” schedule property was allotted to Nallasamy and Sengottian. “B” schedule property was allotted jointly to defendants 1 to 3. On the very same day, the above said persons also entered into an Exchange Deed, under which they had exchanged their properties in R.S.No.398/3 of Pethampalayam Village. The plaintiff would submit that from the said Nallasamy and Sengottaiyan and their family members, the plaintiff had purchased the properties in R.S.Nos.398/2 and 3 of Pethampalayam Village under a registered sale deed dated 27.10.2005. The plaintiff was put in possession of the property on the date of the sale deed and he has been in possession and enjoyment of the same. The plaintiff has also mutated the revenue records in his name. The landed properties in R.S.Nos.398/2 and 398/3 of

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Pethampalayam village are described as first item and second item of the suit properties respectively. The defendants are owning land in R.S.No.398/3 of Pethampalayam Vilalge which is described as third item of the suit properties. The plaintiff would submit that a common well is situate in R.S.No.398/2 of Pethampalyam Vilage. In the common well, there is an electric motor pump set and the electric service connection which the plaintiff's vendor had obtained and the plaintiff is entitled to a common 1/4th share in these. The said common well, electric motor pump set and electric service connection in R.S.No.398/2 are described as fourth item of the suit properties. The plaintiff would submit that the plaintiff and defendants are drawing water from the well in the suit properties from their respective lands by laying underground pipe lines. Such a right of laying underground pipe line for drawing water from the common well has been provided in the Partition Deed dated 07.04.1998 as well. The plaintiff would submit that his vendors has already laid the underground pipe line from



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the fourth item of the suit property to the second item of the suit property through the first item of the suit property.

5. The plaintiff would submit that the vendors of the plaintiff sunk a bore well, obtained a service connection from the Electricity Board and laid down underground pipe line. The plaintiff had decided to irrigate his lands using a drip system. The defendants have no right to prevent the plaintiff's enjoyment under the Partition Deed dated 07.04.1998. The plaintiff would submit that on 01.06.2020, when he took steps to lay the underground pipeline for drawing water from the bore well from the fourth item of the suit property to the second item of the suit property through the first and third items of the suit properties alongside the already existing underground pipeline, the same was prevented by the defendants. Therefore, he has come forward with this suit in question.



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6. The defendants had filed a written statement admitting the relationship, execution of the Partition Deed dated 07.04.1998, allocation of the shares as also the execution of the Exchange Deed dated 07.04.1998. The defendants would submit that under the Partition Deed dated 07.04.1998, no right was given to lay the underground pipeline over the third item of the suit property. This right has also not been conveyed to the plaintiff under the Sale Deed dated 27.10.2015 executed by the vendors in his favour. Therefore, the contention that the plaintiff has a right to lay the underground pipe line over the third item of the suit property is without any basis. The defendants also contended that the suit filed for bare injunction without seeking a declaration was not maintainable.

7. The trial Court had, on going through the pleadings, framed the following issues.



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- 1. Whether the plaintiff is in lawful possession and enjoyment of the suit properties?*
- 2. Whether the suit is maintainable without seeking the relief of declaration of 3rd item of the suit property?*
- 3. Whether the suit is bad for non-joinder of necessary parties?*
- 4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- 5. Whether the plaintiff is entitled to the cost?*
- 6. To what other relief?*

8. The plaintiff had examined two witnesses and exhibited six documents. On the side of the defendants, only one witness, Muthusamy, the third defendant was examined as D.W1, and three



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documents were marked. The trial Court ultimately dismissed the suit, as against which the plaintiff had filed A.S.No.2 of 2022 on the file of the Subordinate Judge, Perundurai. Along with the appeal, the plaintiff has filed an application in I.A.No.2 of 2022 to amend the plaint to include the prayer for declaration. The learned Judge had dismissed the I.A on the ground that the plaintiff despite being put on notice by the defendants in their written statement and the trial Court having framed a separate issue regarding the maintainability of the suit for permanent injunction in the absence of a prayer for declaration had chosen to proceed with the suit without amending the prayer. The learned Judge had also noted that the application was bereft of any explanation as to why the application had not been taken at the earliest point in time.

9. The appellate Court thereafter had proceeded to concur with the findings of the trial Court and dismissed the appeal thereby



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confirming the judgment and decree of the trial Court. Aggrieved by the same, the appellant is before this Court.

10. Mr.M.Guruprasad, learned counsel for the plaintiff would submit that the plaintiff is not seeking to lay a fresh pipe line from the common well and he is only seeking to draw water from the well dug by him which has been permitted in the Partition Deed dated 07.04.1998. Under Ex.A1-Partition Deed, the sharers have been permitted to dig a well, a separate well or a bore well in the properties allotted to their respective shares. He would submit that a bore well has been installed in the portion allotted to him and he only seeks to draw the water from this newly sunk bore well to his other properties which lies to his lands on the south of re-survey No.397, i.e R.S.No.389/3. He would submit that already from the existing well, a pipe line is running through the properties of the defendants the new pipe line is sought to be laid alongside the existing one, therefore, the finding of



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the Courts below is totally erroneous and the judgment and decree are liable to be set aside.

11. Heard the learned counsel for the appellant and perused the materials available on record.

12. The plaintiff seeks to assert the right claimed by him in the suit on the basis of Ex.A1-Partition Deed. Ex.A1-Partition Deed would recite as follows:-

“இத்துடன் பட்டா மாறுதல் மனுவும் தாக்கல் செய்து
கொண்டுள்ளோம். இந்தப் பாகப்படி பிரிபட்ட அவரவர்
பாகச் சொத்துக்களில் தனித்து கிணறுகள் ஆழ்குழாய்
கிணார்கள் மற்றும் கட்டிடங்கள் போன்றவற்றை புதியதாக
ஏற்படுத்திக் கொள்ளலாம், அது சம்பந்தமான மின்
இணைப்பு போன்றவைகளை தனித்துபெற்றுக் கொள்ளலாம்
இதை ஒருவருக்கொருவர் தடை செய்யக் கூடாது”



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A perusal of this clause only gives the right to each sharer to dig a well or a bore well in suit properties. However, the deed would also make it clear that one sharer cannot disturb the other sharer and the only common right that is reserved for all the sharers is the right to draw water from the common well described as item No.4. The plaintiff already has a pipe line running from item No.4 of the suit property through item No.1 of the suit property belonged to him, thereafter covering item No.3 through item No.2. This right has been conferred under Ex.A1. However, there is no right given to any party to this deed to install an additional pipe line from the common bore well / well that they would be digging in future. The recitals in Ex.A1 is crystal clear and does not brook any doubt. The Courts below have rightly dismissed the suit and I see no reason to interfere with the same. Accordingly, the second appeal stands dismissed. There is no substantial question of law made out and what is sought to be examined



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is only a re-appreciation of the evidence which was already considered by the Courts below. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Subordinate Judge, Perundurai
2. The District Munsif Court, Perundurai.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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