

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.223/2017

Natarajan .. Appellant /1st respondent

Versus

1.M.Periyammal ..1st respondent/Appellant
2.Perumal
3.Vasantha
4.Sasikala ..2 to 4 Respondents /respondent
2 to 4

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 05.10.2016 made in AS.No.24/2016 on the file of the Sub Court, Namakkal reversing the judgment and decree dated 05/10/2016 made in OS.No.125/2010 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.T.L.Thirumalaisamy for
1st respondent / Caveator

JUDGMENT

The plaintiff in OS.No.125/2010 had succeeded before the Trial Court and on appeal filed by the 1st defendant, he lost it and consequently, the suit came to be dismissed and challenging the legality of the judgment and decree passed by the Lower Appellate Court, has filed this Second Appeal.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] It is the case of the appellant / plaintiff that the suit property in the form of 5 HP Motor Pump set as well as the service connections bearing Nos.E252 and E251, located in Survey Nos.191/1B and 192/1D, situate at Kondamanaickenpatty Village, Namakkal District, originally belong to his father as

well as his brother, viz., Perumal-the 2nd defendant herein and after the demise of his father, he mutated the revenue records and is enjoying the suit property and except him, no other party is having any right in respect of the same. The plaintiff would further aver that the 1st defendant / 1st respondent had purchased the site and 1/3rd share in the well from the defendants 2 to 4 and defendants 2 and 3 had right only in respect of 1/3rd share in the well as well as the site and in respect of service connections as well as 5HP Motor Pump set, they do not have any right at all. The plaintiff / appellant would also aver that the Motor Pump Set was put up by his father and the service connection was also obtained in his name and concealing the said fact, the defendants 2 to 4 had executed Ex.A17-Settlement Deed dated 23.11.2009 in favour of the 1st defendant, conveying 1/3rd right in the Motor Pump set as well as the service connections also and taking advantage of the same, his right over the same was sought to be disturbed and therefore, filed a suit for declaration that he is having exclusive right in respect of the suit property as well as permanent injunction, restraining the defendants from interfering in his peaceful possession and enjoyment of the same.

[b] The 1st defendant alone had contested the suit and defendants 2 to 4 were called absent and set exparte. The 1st defendant filed the written statement, denying the averments made in the plaint and would contend that since the Electricity Board took a stand that the electricity service connection can be given only in the name of the person who owned and possessed the well and the service connection was given in the names of the plaintiffs as well as the 2nd defendants and subsequently, the father of the plaintiff and the 2nd defendant, has executed an Agreement under Ex.B2 dated 25.03.1996 with regard to the user of the electricity motor, based on which, the said right was conveyed in favour of the 1st defendant under Ex.A17 dated 23.11.2009 and by virtue of the said Sale Deed, the 1st defendant had acquired right to use his share of the service connection as well as the Motor Pump set and it cannot be prevented by the plaintiff. The 1st defendant also filed an additional written statement, stating that the Court Fee paid and the relief sought for by the appellant/plaintiff is not correct and prayed for dismissal of the suit with cost.

[c] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

[a] Whether the Agreement dated 25.03.1996 [Ex.B2] executed between the father of the plaintiff and the 2nd defendant is true and valid?

[b] Whether the plaintiff is entitled to the relief of declaration and permanent injunction?

[c] To what other reliefs the plaintiff is entitled to?

[d] During the course of trial, the plaintiff examined himself as P.W.1 and examined two other witnesses as P.Ws.2 and 3 and Exs.A1 to A17 were marked. The 1st defendant / 1st respondent examined herself as DW1 and the 2nd defendant was examined as DW2 and one more witness was examined as DW3 and Exs.B1 to B4 were also marked. Ex.W1-Agreement dated 29.08.1997 between Jayaraman and Kaliannan and others was also marked as an exhibit.

[e] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has found that the case of the plaintiff / appellant is acceptable and therefore, granted the decree as prayed for, vide judgment and decree dated 03.03.2016. The 1st defendant, aggrieved by the decree of the suit, filed an appeal in AS.No.24/2016 on the file of the Sub Court, Namakkal.

[f] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for consideration:-

- Whether the Judgment and Decree passed by the Trial Court is liable to be set aside? ; and
- To what other relief, the appellant is entitled to ?

[g] The Lower Appellate Court has taken into consideration, Ex.A14-Judgment and decree dated 13.09.1988 made in OS.No.393/1986 and as per the Judgment and decree, 6 HP Oil Engine as well as the Pump No.69483 located in S.No.192/1D, Kondamanaickkenpatty Village, belong to on Subbiah and thereafter, partition took place among the sharers. The Lower Appellate Court found that appellant/plaintiff/PW1 , in the course of his testimony, has stated that he is claiming his right in respect of the suit property under Ex.B4-registered Settlement Deed dated 17.11.2003 and on going through the contents, found that the plaintiff was given 1/6th right and 5HP Motor Pump Set as well as the service connection and whereas, he made a claim in respect of the entire item. The Lower Appellate Court has also taken into consideration the admission made by the plaintiff / PW1 / appellant in his cross-examination wherein he has admitted that the well is a common one and in the well, he along with his brother, viz., Peruma, and others are having right.

[h] The Lower Appellate Court taking into consideration the contents of Ex.B4 coupled with the admission on the part of the appellant / plaintiff / PW1, found that the claim made by the plaintiff claiming the right in respect of the Motor pump set as well as the service connection, is perse unsustainable and though the evidence has been conceded, there are other sharers also and the plaintiff/appellant had failed to add them as parties and therefore, citing the said reasons, had reversed the judgment and decree passed by the Trial Court vide impugned Judgment and decree dated 05.10.2016 and dismissed the suit. The plaintiff/appellant/PW1, challenging the legality of the judgment and decree passed by the Lower Appellate Court, has filed the present Second Appeal.

3 In the Memorandum Grounds of Second Appeal, the following Substantial Questions of law are raised:-

- Whether the judgment of the Lower Appellate Court is vitiated inasmuch as it failed to consider the oral and documentary evidence properly to hold that the plaintiff is entitled to the suit relief regarding service connection and the motors? ;
- Whether the judgment of the Lower Appellate Court is also vitiated in not applying the presumption regarding the ownership of service connection and the motors since they stand in the name of the plaintiff and his predecessors in title?

4 Mr.T.Dhanyakumar, learned counsel for the appellant / plaintiff has drawn the attention of this Court to the findings rendered by the Trial Court and would submit that the Trial Court, on a proper and correct appreciation of the oral and documentary evidences, had rightly reached the conclusion to decree the suit as prayed for and whereas, the Lower Appellate Court, without properly appreciating the testimony of PW1/plaintiff, placed reliance upon some snap answer and came to an erroneous conclusion that the plaintiff is not having any exclusive right in respect of the Pump Set and service connection and erroneously reversed the findings rendered by the Trial Court and prays for entertainment of this Second Appeal.

5 Per contra, Mr.T.L.Thirumalaisamy, learned counsel appearing for the 1st respondent / Caveator / 1st defendant has drawn the attention of this Court to the findings rendered by the Lower Appellate Court and would submit that the appellant/plaintiff did not dispute Ex.B4 and in the course of his cross-examination, PW1 has conceded that his brothers and others are also having right in respect of the suit property and

in the light of the said admission, the Lower Appellate Court has rightly reached the conclusion to allow the appeal and dismissed the suit and prays for dismissal of the Second Appeal.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7 The plaintiff / appellant did not disclose about the execution of the Settlement under Ex.B4 and when it was pointed out in the written statement filed by the 1st defendant, he did not file his reply also. PW1/plaintiff/appellant in the course of his cross-examination, has admitted about Ex.B4 and the contents of the document and the same would reveal that he is having only 1/6th right in respect of the suit property and it was also admitted by him during the course of his cross-examination while he was examined as PW1. The Lower Appellate Court found that in the light of the contents of Ex.B4 coupled with the admission on the part of the appellant/plaintiff/PW1, that the claim made by him with regard to the exclusive right over the suit property, is unsustainable.

8 This Court, on going through the contents of Ex.B4 as well as the cross-examination of PW1, which have been extracted in the impugned judgment, is of the view that the plaintiff / appellant / PW1 cannot claim exclusive right over the suit property. It is also to be pointed out at this juncture that the appellant as plaintiff, did not state anything with regard to the execution of Ex.B4 in his favour, in his pleading also.

9 The findings rendered by the Lower Appellate Court are based upon proper appreciation of the oral and documentary evidences and this Court, is of the considered view that there are no questions of law, much less, the substantial questions of law arise for consideration in this Second Appeal.

10 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree passed by the learned Subordinate Judge, Namakkal, in AS.No.24/2016 dated 05.10.2016. However, there shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AP

To

1.The Sub Judge,
Namakkal.

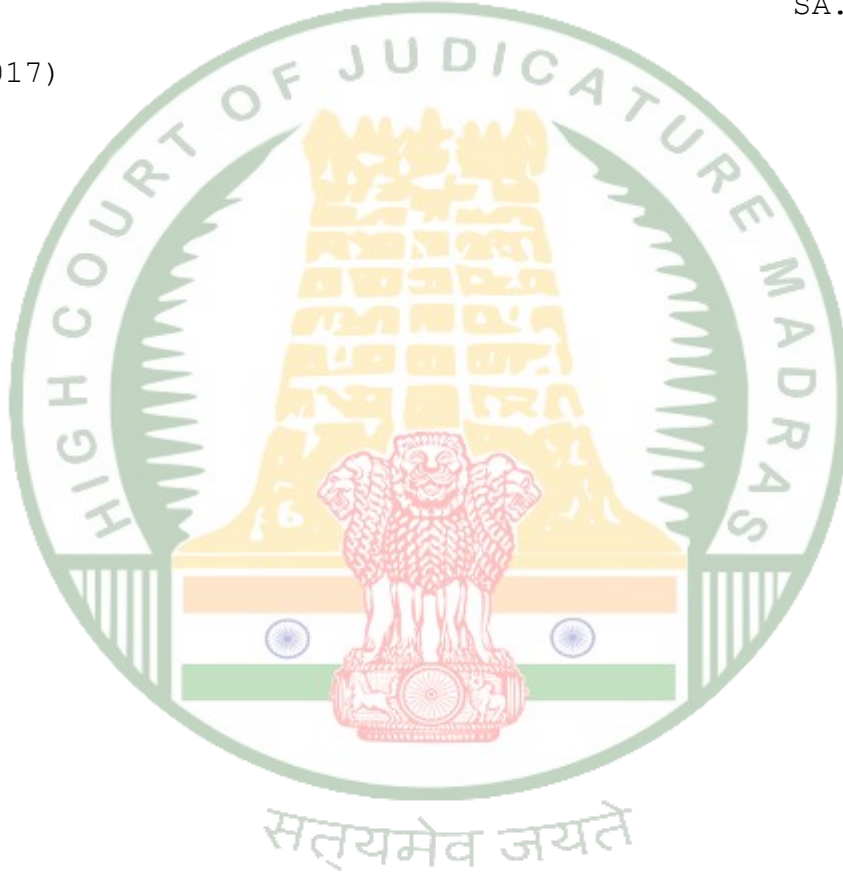
2.The Principal District Munsif Judge,
Namakkal.

+1cc to Mr.T.Dhanyakumar,Advocate sr.19054

+1cc to Mr.T.L.Thirumalaisamy,Advocate sr.18781

SA.No.223/2017

ss1 (CO)
SS(11/4/2017)



WEB COPY