

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.12.2017

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.120 and 121 of 2015

and M.P.No.1 of 2015

S.A.No.120 of 2015

1. Munusamy
2. Saroja
3. Senthil

...Appellants (Defendant)

-vs-

Muthu

...Respondent (Plaintiff)

Prayer in S.A.No.120 of 2015:- Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 20.01.2014 passed by the Subordinate Judge, Kallakurichi made in As.21 of 2017 confirming the decree and judgment dated 07.07.2011 and made in O.S.No.442 of 2009 on the file of the District Munsif Court, Sankarapuram .

S.A.No.121 of 2015

Saroja

...Appellant (Plaintiff)

-vs-

Muthu

...Respondent (Defendant)

Prayer in S.A.No.121 of 2015:- Appeal under Section 100 of the Civil Procedure Code, praying to call for the records in A.S.No.22 of 2012 on the file of the Subordinate Judge, Kallakurichi and set aside the decree and judgment dated 20.01.2014 confirming the decree and judgment dated 07.07.2011 and made in O.S.No.444 of 2009 on the file of the District Munsif Court, Sankarapuram and allow the suit.

For Appellant in both appeals : Mr.V.Bhiman

For Respondent in both appeals: Mr.N.Manokaran

C O M M O N J U D G M E N T

The above appeals arise out of common judgment dated 20.01.2014 made in A.S.No.21 of 2012 and A.S.No.22 of 2002 respectively on the file of the Principal Subordinate Judge Kallakurichi.

2. The unsuccessful plaintiff before the Courts below is the appellant in S.A.No.121 of 2015. The unsuccessful defendants before the Courts below are the appellants in S.A.No.120 of 2015.

3. The plaintiff in O.S.No.444 of 2009 is the second defendant in O.S.No.442 of 2009. The defendant in O.S.No.444 of 2009 is the plaintiff in O.S.No.442 of 2009.

4. The plaintiff in O.S.No.442 of 2009 had filed the suit for declaration of the plaintiff's absolute title to the suit property and for permanent injunction restraining the defendants from interfering with the peaceful possession. O.S.No.442 of 2009 was decreed by the trial Court, against which, the first appeal was filed by the defendants and the same was dismissed by the lower Appellate Court. Challenging the same, the defendants have preferred the above Second Appeal No.120 of 2015.

5. The plaintiff in O.S.No.444 of 2009 had filed the suit for permanent injunction restraining the respondents from taking water from the "A" schedule property. O.S.No.444 of 2009 was dismissed by the trial Court, against which, the plaintiff has preferred the first appeal, which was also dismissed by the lower Appellate Court. Challenging the same, the plaintiff has preferred the above Second Appeal No.121 of 2015.

6. The entire dispute revolves around the suit Well. The case of the plaintiff in O.S.No.442 of 2009, who is the respondent herein in S.A.No.120 of 2015, is that the suit property originally belonged to one Thangavel Gounder and his wife Chinnapillai Ammal. They have purchased 1/2 share of the suit property and 1/2 share in the Well from one Balaamirthambal, as per the sale deed dated 22.08.1961. As per the sale deed dated 12.07.1969, they have purchased 1/4 share of the suit property and 1/4 share in the Well from one Kulla Udaiyar and as per the sale deed dated 11.01.1971, the said Chinnapillai Ammal purchased the remaining share in the suit property and Well from Malli Ammal. In 1984, the Well was closed by the said Thangavel Gounder, as it became dry. The plaintiff had purchased the property in the year 2007 and a new Well was dug by the plaintiff. As water was available in the newly dug

Well, the defendants wanted to irrigate their lands from the Well. The request was rejected by the defendants and the plaintiffs who claimed possessory title over the Well. Hence the suit was filed by the plaintiff.

7. The case of the plaintiff in O.S.No.444 of 2009 is that her husband is entitled for 1/2 share in the Well by way of possessory title. Her husband had settled the property in her favour on 01.09.2008 and the plaintiff is entitled to irrigate the lands in Survey Nos.29/3A, 29/3B, 29/7 by using oil engine from the suit Well. As the defendants attempted to prevent the same, the suit for injunction was filed by the plaintiff.

8. After considering the oral and documentary evidence, the trial Court decreed O.S.No.442 of 2009, against which, the defendants preferred A.S.No.21 of 2012, which was dismissed, against which, the defendants preferred Second Appeal in S.A.No.120 of 2015. The suit in O.S.No.444 of 2009 was dismissed by the trial Court, against which, the plaintiff preferred A.S.No.22 of 2012, which was dismissed, against which, S.A.No.121 of 2015 was preferred by the plaintiff.

9. Heard both the parties and perused the materials available on record.

10. It is evident from the facts that the dispute is with respect to a Well. According to the respondent, even at that time, when he purchased the property under Ex.A-1, there was no Well and the alleged well, which was originally there with Thangavel Gounder, who was owning the property, was closed by him even in the year 1984. Even the sale deed in favour of the plaintiff does not disclose the existence of the Well. The appellants herein/defendants, only out of enmity, are trying to claim a share in the Well. From the above facts, it is clear that there is a Well in the respondent/plaintiff's property, which was dug by him after his purchase in the year 2007 and the earlier Well that was in existence was closed by Thangavel Gounder in the year 1984 itself, whereas the appellants claimed that they owned the land in Survey Nos. 29/2A, 29/2B, 29/7, 29/3A, 29/3B and the said lands were irrigated only through Well situated in Survey No.29/6. Though the appellant's husband has been exercising the said right for several years, the respondent was denying her the said right.

11. So far as the closure of the Well by the said Thangavel Gounder in the year 1984 is concerned, there is no material placed by the respondent, excepting his interested testimony, But in the document of title under which the respondent/plaintiff claimed title, there is no mention about the Well. Therefore, on the date of purchase of the property in

the year 2007, there was no Well in the property, as the same does not find mentioned in Ex.A-1. However, the appellants herein contended that the plaintiff had been using the Well even after the year 1984 and it is the same Well that is in existence and the statement that a new Well was dug by him in the year 2009, was denied. Admittedly, the appellants are claiming right to take the water from the suit Well on the basis of customary right exercised by the first defendant prior to the partition in the year 1983. However, the said right has also not been established by the appellants. Even Ex.B2-Settlement Deed was found to be created for the purpose of the suit, which is dated after the reply notice was sent. The appellant has also not traced the title over the suit Well in Ex.B-1, whereas the respondent/plaintiff has clearly established that as per Exs.A2 to A4, originally, the said Thangavel Gounder and Chinnapillai Ammal had Well in their land. When the appellants/defendants are claiming the specific right over the suit Well, burden is on them to establish the same and excepting the interested testimony stating that they were using the water from the Well to irrigate the lands, there is no other evidence to prove the same. Thus, the Courts below have categorically found that as per Ex.A-1, the plaintiff has purchased the property in the year 2007 and the Well was dug subsequently, over which the respondent/plaintiff has got their right and the defendants, having failed to establish their customary rights and also to prove that the old Well is still in existence, is not entitled to the injunction. Thus, the Courts below decreed the suit of the respondent and dismissed the suit filed by the appellants. As there is no infirmity in the findings of the Courts below, this Court finds no reason to interfere with the same.

12. Accordingly, the Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Kallakurichi
2. The District Munsif Court, Sankarapuram

3. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

+2cc to Mr.V.BHIMAN, Advocate, S.R.No. 85740 & 85741
+2cc to Mr.N.MANOKARAN, Advocate, S.R.No.85773 & 85775

S.A.Nos.120 and 121 of 2015
and M.P.No.1 of 2015

NM(CO)
TR(05/02/2018)



WEB COPY