

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No. 934 of 2015

&

M.P. No. 1 of 2015

N. Palanivel

..Appellant

Vs.

1. S. Thiagarajan

2. S. Pappathy

..Respondents

Prayer: Second Appeal as against the judgment and decree dated 27.02.2015 made in A.S. No. 1 of 2014 on the file of Sub Judge, Rasipuram, confirming the judgment and decree dated 25.06.2013 in O.S. No. 25 of 2012 on the file of the District Munsif, Rasipuram.

For Appellant :: Mr.V.V. Sairam

For Respondents :: Mr.P.K. Shivakumar

J U D G M E N T

The above second appeal arises against the judgment and decree dated 27.02.2015 passed in A.S.No.1 of 2014 on the file of the Sub Judge, Rasipuram, confirming the judgment and decree dated 25.06.2013 passed in O.S.No. 25 of 2012 on the file of District Munsif, Rasipuram.

2. The plaintiff is the appellant and the defendants are the respondents in the suit.

3. The plaintiff and the defendants belong to the same family, claiming their respective shares, through one Nalla Gounder. The defendants are the legal heirs of Sadasivam, the brother of the plaintiff. There was a partition effected between the sons of Nalla Gounder, namely, Thirumurthy, Sadasivam and Palanivel (plaintiff) on 08.02.1979 under Ex-A1. As per the partition deed, "C" schedule properties were allotted to the plaintiff. The said partition deed refers to the existence of a common pathway in S.No. 95/1. However, the lands in S.No. 95/1 belong to the plaintiff as per the partition deed Ex-A1. As per the covenants in the partition deed and it is also admitted that the owner of "B" schedule properties can have

access to the common pathway, apart from drawing water from the common well situated in S.No. 95/1, by laying a pipeline, to his lands in S.No. 96/3.

4. The suit has been laid by the plaintiff for permanent injunction and mandatory injunction, on the premise that the defendants, having purchased another land in S.No. 146/2D, are attempting to take water from the common well in S.No. 95/1 to the land situated in the said survey number. A written statement has been filed stating that the common pathway can be used by the defendants to draw water from the common well in S.No. 95/1 through a pipe line, even to their land situated in S.No. 146/2D.

5. Both the Courts below dismissed the suit by placing reliance upon the covenants available in Ex-A1 coupled with the evidence of the plaintiff, who, in a way, admitted that he has got no objection, in the defendants taking water, to the lands owned by them, that too, from the common well situated in S.No. 95/1. Though the plaintiff does not have any objection, either for the usage of the common pathway in S.No.95/1 or for the defendants drawing water from the common well situated in S.No. 95/1 to their lands, as contained Ex-A1, but, it should be clarified so as to prevent the defendants from taking water from the common well in the said survey number to the land situated in S.No. 146/2D. In fact, the Lower Appellate Court has observed that the stand taken by the plaintiff, which forms the basis of the suit, is not available any longer. Aggrieved over the judgment and decree rendered by the Courts below, the present second appeal has been filed.

6. At the time of admission of the second appeal, the following substantial questions of law arose for consideration:

"1. Whether the Courts below were right in dismissing the suit by holding that the defendants have got right to take water through the plaintiff's land comprised in S.No. 95/1 to the land of the defendants and comprised in S.No. 146/2D at Nadupatti Village, Namakkal District?

2. Whether the right of easement granted by means of partition deed to take water through S.No. 95/1 to the land of the defendants in S.No. 96/3 could be enlarged so as to take water through S.No. 95/1 to the land comprised in S.No. 146/2D, which was subsequently purchased by the defendants?

7. When the matter is taken up for hearing, learned counsel for the appellants made a submission to the effect that the statement made by P.W.1 has to be seen, in the context of Ex-A1, and therefore, while there is no difficulty in permitting

the defendants to use the pipeline, apart from laying a new one, to take water from the common well situated in S.No. 95/1 to their lands situated in S.Nos. 96/3 and 96/5, as the case may be, they cannot be allowed to use the water from the common well to their lands in S.No. 146/2D. Learned counsel for the defendants also reiterated the same by stating that there is no intention to take water from the common well situated in S.No. 95/1 to the land, especially, in S.No. 146/2D. On the contrary, only a pipeline is being laid to use water exclusively belonging to the defendants alone.

8. Thus, there is no controversy, that exists any longer. Accordingly, while confirming the judgment and decree of the Courts below, it is hereby clarified that,

(i) the defendants are permitted to use the common pathway situated in S.No. 95/1 for laying a pipeline to take water from the common well situated in S.No. 95/1 to only those lands mentioned in Ex-A1;

(ii) the defendants can lay a pipe line and continue with the same to take water to their lands, owned by them under Ex-A1 and also the one purchased by them, situated in S.No. 146/2D, subject to the rider that, in respect of the land situated in S.No. 146/2D, water from the common well situated in S.No. 95/1 shall not be used; and

(iii) the defendants can use the common pathway in S.No. 95/1 to take water either from S.No. 96/5 or S.No. 96/3 to S.No. 146/2D and viceversa.

9. The second appeal is decreed accordingly. No costs. Connected M.P. is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Sub Court, Rasipuram.

2.The District Munsif Court, Rasipuram.

+1cc to P.K.Shivakumar, Advocate sr.3731

+1cc to V.V.Sairam, Advocate sr.3989

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ss(13/02/2017)