

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.893 of 2011

and

M.P.No.1 of 2011

S.P.Natarajan .. Appellant/3rd Defendant

Vs.

1. S.K.Anumantha Gounder ..1st Respondent/Plaintiff
2. A.Natarajan
3. Ramasamy @ Chinna Ramasamy ..2&3 Respondents/1&2 Defendants

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.02.2011 in A.S.No.32 of 2010 on the file of the Sub-Court, Sathyamangalam, against the judgment and decree dated 06.09.2008 in O.S.No.62 of 2004 on the file of the District Munsif Court, Sathyamangalam.

For appellant : Mr.N.Manokaran

For respondent : Mr.M.V.Venkateshan for R-1

No appearance for RR-2 & 3

JUDGMENT

The unsuccessful third defendant before the first appellate Court, has filed this Second Appeal, challenging the judgment and decree of the first appellate Court in A.S.No.32 of 2010 (Sub-Court, Sathyamangalam), dated 28.02.2011, against the judgment and decree dated 06.09.2008 in partly decreeing the suit in O.S.No.62 of 2004 (on the file of the District Munsif Court, Sathyamangalam).

2. It is the case of the plaintiff that he purchased agricultural landed properties in S.F.Nos.214 and 215 from and out of the ancestral properties of the plaintiff, which properties came to him under family partition between himself, his father and his brothers, dated 02.08.1967. Thereafter, he sold the ancestral properties in 1968 and purchased the agricultural properties in S.F.Nos.204-5 and 214 and 215. On 12.12.1986, the plaintiff and his brother, the second defendant, purchased 0.10 cents of lands with a Well in New S.F.No.425/2B (Old S.F.No.159-A and 160-A) with the right of laying and maintaining water supply pipelines in new S.F.No.425/3 to its

Northern end. Thereafter, the plaintiff partitioned his share in the Well in New S.F.No.425/3 from his brother, the second defendant under separate sale deed, dated 16.11.1987, wherein the plaintiff had exclusive right, title and interest over the Western half of the Well in S.F.No.425/3 with the right of laying and maintaining pipelines in S.F.No.425/3. The plaintiff had also purchased the right of laying pipelines through the lands in new S.F.No.424 and 426/1 and 2 in the year 1986 and 1987 respectively.

3. It is the further case of the plaintiff that he obtained permission from the Municipal, Public Works and Revenue Departments to lay underground pipeline from the Well in new S.F.No.425/3B to his lands in S.F.No.214 and 215 through the Government cart track Natham, Vari and Salai Poramboke lands in S.F.Nos.282, 286, 287, 345, 348, 349, 350/1, 352/3, 353/3, 353/1, 396, 408/5 and 407 by virtue of an order of the District Revenue Officer by proceedings dated 17.09.1987, and thereafter, pipeline was laid through the above said lands and tap water from the Well by pumping the same by an electric motor and pump-set to his lands. Ever since then, the plaintiff and the first defendant jointly enjoyed the right of taking water and cultivation of their lands peacefully. Under partition deed, dated 15.11.1989 among the plaintiff, the first defendant and his sister, the first defendant was given half share in the suit Well, electric motor pump-set, underground pipeline etc.

4. The plaintiff further alleges that the first defendant sold 1/8 share in the suit Well, water pipeline, electric motor pump-set and tapping of water through the suit pipeline to one Palani Gounder under sale deed, dated 06.03.1990 and the plaintiff learnt that the first defendant was to sell the water right against one Rayappan and hence, the plaintiff caused lawyer's notice to the defendants 1 and 3, dated 22.07.1996, for which, there was no reply. The plaintiff also learnt that the first defendant has again sold another 1/8 share in the suit water right to one Velusamy. Hence, the plaintiff filed O.S.No.244 of 1997 for declaration that the permission / licence granted by the District Revenue Officer was only meant for taking out water from the suit Well to the plaintiff's family properties in new S.F.Nos.214 and 215 only and also for a consequential permanent injunction against the said persons from taking water from the suit pipeline. The said suit was dismissed, against which, A.S.No.5 of 2002 is pending before the Principal Sub-Court, Gobichettipalayam. Thereafter, the first defendant again sold the remaining 1/8 share to the second defendant together with a land under sale deeds, dated 26.04.1999 and 20.12.2000. Thereafter, on 10.09.2003, the defendants 1 and 2 sold their 1/8 share in the suit Well, motor pump-sets, water tapping rights to the third defendant. Even

before filing of the suit, the third defendant laid pipelines to his land from the suit pipeline.

5. The plaintiff further states that the first defendant had no manner of right, title and interest to sell the suit water right to the other defendants. The permission to tap water through the underground pipeline is granted only to the plaintiff for the lands in New S.F.Nos.214 and 215 and not to any other survey field lands. The water cannot be supplied without the permission from the concerned authorities and the right of water is indivisible right which runs along the lands, and therefore, the same cannot be partitioned and alienated to third parties. Hence, the sale deed executed to the third defendant by the first and second defendants, is void-ab-initio and has no binding force. It is the apprehension of the plaintiff that the Revenue authorities and other authorities may cancel the permission granted to the plaintiff to take water, in view of the illegal sale of the right. Even suit in O.S.No.175 of 2001 would detail about these facts. Hence, the plaintiff has filed the present suit for the relief of declaration to declare that the permission granted by the Government authorities of the plaintiff to the lands in S.F.Nos.214 and 215 of Sathyamangalam Village, is absolute and inalienable and consequently for grant of permanent injunction restraining the first defendant from alienating the suit water right to the third parties and also for grant of mandatory injunction to direct the third defendant to disconnect their pipeline connections to the suit pipelines within a time to be fixed by the Court, and in default, to do the same by the third defendant, the Court shall order the same to be executed through the process of the Court.

6. The third defendant has filed written statement before the trial Court contending that the first defendant was given 1/2 share in the suit Well, electric motor pump-set, the underground pipeline etc. These properties were in fact the joint family properties of the plaintiff and the first defendant, as evidenced by partition deed, dated 15.11.1989. The third defendant is not aware of the proceedings in O.S.No.244 of 1997 and the consequential A.S.No.5 of 2002, as he is not a party to the same. The third defendant learnt from Court records that A.S.No.5 of 2002 was dismissed for default on 12.06.2002 and that the issues in dispute in the above said suit in O.S.No.244 of 1997 are same as in the present suit, more particularly, that the suit properties in both the suits are same, and hence, the present suit is barred by the principle of res-judicata.

7. It is the further contention of the third defendant that he had not laid any pipeline as contended by the plaintiff. He admits laying the pipeline for a distance of about 800 feet in his land in S.F.No.217 in the second week of September 2003

itself and using the same since then and accordingly, he was also irrigating his lands, which was never objected to by the plaintiff. Apart from denying the averments made in the plaint, it is stated by the third defendant that the plaintiff clearly admitted in his pleadings that the suit properties were the joint family properties, which were partitioned under partition deed, dated 15.11.1989. Having admitted the said fact, the plaintiff cannot question the right of the first defendant in alienating the suit properties to others. There is no condition in the partition deed that the first defendant should not alienate the suit properties to any third party and the first defendant was allotted shares in the suit properties absolutely and hence, he had every right to deal with the same as he likes. The sale deeds executed by the first defendant in favour of the third defendant and others, are legally valid and binding. The rights of the first defendant in the suit properties are legally alienable, as the plaintiff is not the exclusive owner of the suit properties.

8. It is further contended by the third defendant that he is not a party in O.S.No.175 of 2001 and hence, he is not aware of the same. In the said partition deed, dated 15.11.1989 itself, it has been specifically mentioned that the parties to the partition are entitled to take water from the suit Well and irrigate not only to the lands allotted to them in the partition, but also all the other lands they acquire in future. Hence, the plaintiff cannot question the right of the first defendant in alienating his share in the suit properties or using the suit properties to irrigate the lands other than S.F.Nos.214 and 215. Moreover, the plaintiff himself has purchased the share of his daughter in the suit properties, and admitted the right of his daughter to alienate, and hence, he is barred by the principle of estoppel. It is further averred by the third defendant that subsequent to the purchase, his name had been included in the patta relating to the suit survey field by the Revenue authorities, and hence, the apprehension of the plaintiff that at any time, the Revenue authorities may cancel the permission, is baseless. The suit without a prayer for declaration of the alleged exclusive title of the plaintiff to the suit properties, is not maintainable. The relief of permanent injunction sought for by the plaintiff has become infructuous, as he himself has admitted that the first defendant has already alienated his share to the defendants. Since the plaintiff is not the absolute owner of the suit properties, he is not entitled to seek the relief of declaration and mandatory injunction as prayed for in the present suit. There is no cause of action to file the suit, and hence, the suit may be dismissed.

9. The second defendant has also filed written statement averring on the same lines as that of the third defendant, with some mentioning of facts pleaded in the plaint, as mentioned

above. Apart from the same, the relationship between the parties is admitted. As per the partition deed, dated 15.11.1989, the plaintiff and the plaintiff's daughter are having 1/4 share and the first defendant had also 1/2 share. While denying some of the averments made in the plaint, it is further stated by the second defendant that as per the sale deeds, dated 24.06.1999 and 20.12.2000, he has a right on the suit Well along with the first defendant and also as per the sale deed, dated 10.09.2003 executed in faovur of the third defendant, the third defendant is enjoying 2/8 share. Since the plaintiff's daughter Sarojini is not a party to the present suit, the suit is not maintainable. As per the partition deed, the parties are not only governed by the averments made therein, but also for the lands to be purchased in future. The second defendant is enjoying the right on the suit Well on obtaining the right from the first defendant. Hence, the plaintiff is prohibited from claiming the relief made in the suit.

10. On consideration of the above pleadings and on an analysis of the oral and documentary evidence, the trial Court dismissed the suit in respect of the relief of declaration and permanent injunction and granted mandatory injunction as prayed for, and on appeal, the first appellate Court confirmed the said decree of the trial Court, and against the said concurrent findings of the Courts below, the present Second Appeal is filed by the third defendant.

11. The only substantial question of law that arises for consideration is as to whether the defendants, having not purchased the property, but having a right to take water from one survey number to another, is entitled to lay pipeline and take water and whether it is contrary to Ex.A-4.

12. Heard both sides and perused the materials available on record.

13. The plaintiff is the father of the first defendant A.Natarajan and the plaintiff is the brother of the second defendant-Ramasamy alias Chinna Ramasamy. The third defendant S.P.Natarajan, who is the appellant herein, has purchased his property right from the first defendant. According to the appellant/D3, there was a partition deed between the family members of the plaintiff, dated 15.11.1989 and pursuant to the partition deed, the plaintiff has got 'A' schedule property and the first defendant has been allotted 'B' schedule property and the daughter of the plaintiff, has got 'C' schedule property. Admittedly, there is no dispute with regard to the 'C' schedule property and the daughter of the plaintiff, is not a party either in the suit or in the First Appeal. However, it has been stated by the appellant/D3 that 'C' schedule property has been sold to the plaintiff after partition. Admittedly, there is a

Well in S.No.425/3B, which is common to all the parties to the partition deed and they are entitled to take water to any survey number which they possess or they are subsequently going to own. The third defendant has purchased the property from the third defendant/appellant-S.P.Natarajan, namely a share of the property belonging to the first defendant-A.Natarajan on 10.09.2003 under Ex.A-7 = Ex.B-1. Since the third defendant who is the appellant herein, drew water from the Well, has got a right over the Well in S.No.425/3B to S.Nos.214 and 215 and other survey numbers by laying a pipeline, it was objected to by the plaintiff and others. After purchase, the pipeline has been laid from the Well in S.No.425/3B to S.Nos.214 and 215, which was objected to by the plaintiff and others, which gave rise to the filing of the suit seeking the said three reliefs in O.S.No.62 of 2004 before the District Munsif Court, Sathyamangalam. The plaintiff sought for declaration that permission given by the Government to the plaintiff is absolute and inalienable, and that secondly, there shall be permanent injunction restraining the first defendant from alienating water to third parties and finally for mandatory injunction removing the pipeline laid by the third defendant mentioned supra. The trial Court, after considering various exhibits and evidence, came to the conclusion that the first two reliefs mentioned supra, cannot be granted and the accordingly, those reliefs were rejected. However, with regard to the mandatory injunction, the trial Court granted the relief taking note of Ex.A-4, dated 17.09.1987 in which it has been stated that taking water from one survey number to another survey number, was granted to one particular person and that cannot be utilised by others.

14. That apart, it has been contended by the plaintiff that the third defendant has no right with regard to the order in Ex.A-4, and he cannot claim any right with regard to taking of water mentioned in Ex.A-4, as he has not purchased the share of the same. It is submitted that according to the plaintiff, based on Ex.A-4, it is only the plaintiff and the family members who can enjoy the benefit and unless and until the land is sold along with the Well, and entitlement of taking water from S.No.425/3B, the defendants would not be entitled to any relief.

15. Aggrieved by the judgment and decree of the trial Court in O.S.No.62 of 2004, dated 06.09.2008, the third defendant preferred appeal before the Sub-Court, Sathyamangalam and the appeal suit in A.S.No.32 of 2010 was dismissed by judgment and decree dated 28.02.2011, by holding that though there are sale deeds among the defendants 1 to 3, one who obtained rights under S.Nos.214 and 215 can only enjoy the rights, but it cannot be made available to other survey numbers.

16. From the aforesaid finding of the first appellate Court, it is clear that admittedly, the third defendant who is the

appellant herein, has not purchased the property in S.Nos.214 and 215, even though Mr.Manokaran, learned counsel vehemently contended that there is no plea to that effect, regarding the purchase of the property, it has been clearly raised and answered by the first appellate Court in point No.2 in paragraph 27 of the appellate Court's judgment. The concurrent findings of both the Courts below need not be interfered with.

17. In view of the above discussion, the said substantial question of law is answered in favour of the plaintiff and against the third defendant. The Second Appeal is dismissed. No costs. The Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Copy to

1. The Subordinate Judge, Sathyamangalam.

2. The District Munsif, Sathyamangalam.

+2 cc's to Mr.M.V.Venkataseshan,advocate,sr.17386

+1 cc to Mr.N.Manokaran,advocate,sr.17572.

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