



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
SECOND APPEAL (MD) No.326 of 2017

WEB COPY

Velammal ... Appellant / Appellant/ Defendant

Vs.

1.Sethuraj (died) ... 1st respondent/ Respondent / Plaintiff

2.S.Sivakumar

3.S.Anbarivu

4.Anusuya

5.Sivaneethi

6.Sivakani ... Respondents 2 to 6/ LR's of 1st respondent
(Respondents 2 to 6 brought as LR's of
deceased sole respondent vide Court order
dated 16.03.2016 made in M.P.(MD)Nos. 1 to 3
of 2016 in S.A.Sr.No.43348 of 2008)

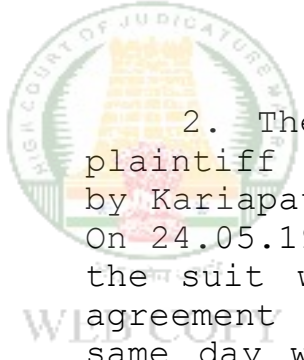
PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 06.01.2003, made in A.S.No.18 of 1998 on the file of the Subordinate Court, Periakulam, confirming the judgment and decree, dated 01.09.1997, made in O.S.No.20 of 1997 on the file of the District Munsif cum Judicial Magistrate, Andipatty.

For appellant ... Mr.A.Arumugam for
M/s.Ajmal Associates

For respondents 2 to 6 ... Mr.M.Pounraj

JUDGMENT

The unsuccessful defendant in both the Courts below has filed the above second appeal. The suit was filed for a declaration that the plaintiff is entitled to 1/3rd right in the suit 'A' schedule Well and for an injunction restraining the defendant from in any way interfering with the plaintiff's 1/3rd right in 'A' schedule Well and for permanent injunction restraining the defendant from taking water from the suit 'A' schedule Well to any other lands other than B Schedule property.

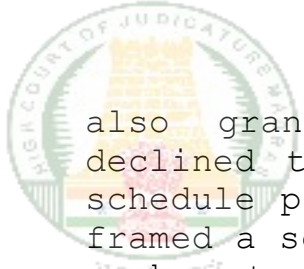


2. The suit 'A' schedule property is a Well in which the plaintiff claims $1/3^{\text{rd}}$ right. The suit Well was originally owned by Kariapatta Gounder, his wife Koppiammal and one Gopala Gounder. On 24.05.1967, the above said three of them had sold $1/3^{\text{rd}}$ right in the suit well to the plaintiff by a registered sale deed. An agreement was also entered into between all the co-owners on the same day with respect to the lands to which the suit Well water can be utilised for irrigation. As per the agreement, dated 24.05.1967, the plaintiff is entitled to irrigate 21 cents in Survey No.193/1 and 94 cents in Survey No.193/2A. Similarly, Kariapatta Gounder and his wife Koppiammal can irrigate 90 cents in Survey No.197/3 and the other co-owner viz., Gopala Gounder can irrigate 90 cents in Survey No.197/3 and 47 cents in Survey No.193/2A. The defendant claimed to have purchased 90 cents from Kariapatta Gounder. As Kariapatta Gounder and Koppiammal jointly owned 90 cents, the defendant could have purchased only half of the same. The other co-owners Gopala Gounder also sold his lands to one Pavadaisamy, who in turn sold the property to the plaintiff on 31.05.1989. As the plaintiff is entitled to $1/3^{\text{rd}}$ share in the suit 'A' schedule Well, he is entitled to irrigate the above said lands. As there is paucity of water in the suit 'A' schedule, the plaintiff could not irrigate his lands as per the agreement dated 24.05.1967. While so, the defendant was making attempts to take water for the other lands deviating from the agreement. If the defendant is permitted to irrigate the other lands by drawing water from the suit Well, it would jeopardise the interest of the plaintiff. Hence, the suit has been filed.

3. Resisting the suit, the defendant had filed a written statement contending that in Survey No.197/3 there is one acre and 80 cents of lands of which 90 cents of land and the half share in the Well and one pumpset belonged to one Kariapatta Gounder. When there is no water in the Well, the plaintiff offered to deepen the Well at his own expenses for which Kariapatta Gounder and Gopala Gounder agreed and based on the same, an agreement was entered into and the same was also registered. On 30.01.1968, Kariapatta Gounder and Koppiammal had sold an extent of 90 cents in S.No.197/3 in favour of one Seeniammal. The said Kariapatta Gounder and Seeniammal had sold the suit property in favour of the defendant on 15.08.1972. The other co-owner viz., Gopala Gounder also sold his $1/3^{\text{rd}}$ share to one Aavalakkam Ammal. On 29.06.1977, the said Aavalakkam Ammal sold the property in favour of the defendant. Thus, the defendant has become the owner of $2/3^{\text{rd}}$ share of the suit property. The defendant further stated that the plaintiff is not entitled to the relief sought for as the defendant has got the service connection in his name to the knowledge of the plaintiff. Hence, he prayed for dismissal of the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The trial Court had decreed the suit so far as the relief for declaration of $1/3^{\text{rd}}$ share of the plaintiff is concerned and



also granted the decree for permanent injunction, however, declined the relief of permanent injunction with respect to 'B' schedule property. While decreeing the suit, the trial Court had framed a scheme based on which the plaintiff and the defendant can work out their remedies for irrigating their respective lands. Aggrieved by the same, the defendant had preferred an appeal in A.S.No.18 of 1998 on the file of the Subordinate Court, Periyakulam, which had confirmed the decree of the trial Court. Aggrieved by the same, the above appeal has been filed by the defendant.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

7. The learned counsel appearing for the appellant submitted that as per Ex.A2 viz., the agreement between the plaintiff and Kariapatta Gounder, Koppiammal and Gopala Gounder, the plaintiff had to deepen the Well, when the water level goes down. If the plaintiff fails to do so, he would lose his right to take water from the suit Well. As the plaintiff has not acted as per the agreement, it is argued that the plaintiff has lost his right. It was further contended that when the plaintiff was not doing any cultivation, he was not entitled to take water from the well. As stated in the written statement, the defendant claimed separate right since the service connection is taken in the defendant's individual name. The learned counsel further contended that when the plaintiff had not pleaded for the right of irrigation in rotation, the trial Court had devised a scheme for irrigating the lands and the same is unacceptable.

8. Now, the question that has to be considered in the second appeal is whether the plaintiff is entitled to irrigate his lands as per the sale deeds and Ex.A2 - agreement.

9. It is not in dispute that the defendant is entitled for 2/3rd share and the plaintiff is entitled for 1/3rd share in the suit property having purchased the same from the common vendors. On the date of sale itself, the plaintiff had entered into an agreement, as per which there were certain clauses which mandated the plaintiff to act when there is no water in the Well. If the plaintiff did not deepen the Well, as per the agreement, it will not take away the right that has been given to him under Ex.A1 sale deed. Ex.A2 is between the Kariapatta Gounder and his wife Koppiammal and Gopala Gounder. It is only an agreement between the vendor and vendee. Admittedly, the defendant is not a party to the agreement. The plaintiff has purchased the property as per Ex.A1 sale deed and title that flow from the documents cannot be taken away by a subsequent agreement between the parties. Even presuming that the agreement is enforceable, the defendant is not



a party to the same and the defendant has got no right to challenge the said agreement. In such situation, the defendant cannot raise any objection with respect to Ex.A2.

10. There is one another agreement between the defendant and the plaintiff under Ex.B7, as per which the defendant has to deepen the southern side of the Well and the plaintiff has to deepen the northern side of the Well and thereafter, it is open to them to irrigate the lands according to their convenience. But, the said Ex.B7 is denied and disputed by the plaintiff. However, the Courts below have held that Ex.B7 is valid and binding on both the parties. Only to arrive at a workable solution, the trial Court has devised a mode to enable both the parties to irrigate their respective lands smoothly. In such situation, the defendant cannot have any grievance as the Courts below have only granted lesser relief, when the larger relief was sought for by the plaintiff.

11. It is seen from the records that the suit was filed in the year 1997 and the appellate judgment was delivered on 06.01.2003. However, this Second appeal has been brought for admission only in the year 2017 ie., after 14 years. The parties will be working as per the decree of the Courts below. There is no question of law arising for consideration in the appeal much less to disturb the arrangement devised by the Courts below after this length of time. As there is no merit in the appeal, this second appeal is liable to be dismissed.

12. In the result, this Second Appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree of the Courts below. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge, Periakulam.

2.The District Munsif cum Judicial Magistrate, Andipatty.

+1cc to M/S.M.POUN RAJ, Advocate SR.No.72183

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No.72538

gcg

MAS/SKN-RSK/SAR2:13.10.2017:4P-5C

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