

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

PRONOUNCED ON : 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.243 of 2018

1. S.Navaneetham
2. S.Kumaresan
3. P.Vasantha
4. P.Kirija
5. S.Suki

...
Vs.
...

Appellants

Nalini

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 26.04.2016 passed in A.S.No.17 of 2014 on the file of the Sub Court, Vaniyambadi, partly modifying the Judgment and Decree dated 29.04.2014 passed in O.S.No.129 of 2013 on the file of the District Munsif Court, Ambur.

For Appellants : Mr.V.Jeevagiridharan
For Caveator : Mr.D.Venkateswara Rao

JUDGMENT

This second appeal is directed against the Judgment and Decree dated 26.04.2016 passed in A.S.No.17 of 2014 on the file of the Subordinate Court, Vaniyambadi, partly modifying the Judgment and Decree dated 29.04.2014 passed in O.S.No.129 of 2013 on the file of the District Munsif Court, Ambur.

2. The appellants are the plaintiffs in O.S.No.129 of 2013. The above suit has been laid for declaration of the appellants' right of 1/4th share in the suit property and for permanent injunctions.

3. It is also found that the defendant viz., Nalini has laid the suit in O.S.No.27 of 2013 against the appellants 1 & 2 for the relief of declaration of title and the consequential relief of permanent injunction in respect of the suit property. It is found that considering the subject matter involved in both the suits being the same and the parties are also one and the same in both the suits and the issues involved in both the suits are found to be common, both the suits were jointly tried by the trial Court and it is found that the common evidence was recorded in O.S.No.27 of 2013 and the plaintiff in O.S.No.27 of 2003 has been examined as PW1 and Exs.A1 to A9 were marked on her behalf and on the side of the (appellants) defendants, DWs1 to 4 were examined and Exs.B1 to B5 were marked. Ex.X1 was also marked.

4. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, it is found that the trial Court decreed the suit preferred by the appellants in O.S.No.129 of 2013 and also partly decreed the suit laid by the defendant Nalini in O.S.No.27 of 2013.

5. Aggrieved over the same, it is found that the defendant Nalini preferred A.S.No.17 of 2014, challenging the judgement and decree passed in O.S.No.129 of 2013 and also preferred A.S.No.22 of 2014, challenging the judgement and decree passed in O.S.No.27 of 2013, insofar as the same went against her and the first appellate Court, on an appreciation of the materials placed on record, partly allowed the appeal in A.S.No.17 of 2014 by declaring the appellants $1/4^{\text{th}}$ share in the suit property and granted permanent injunction as against the defendant Nalini from interfering with the appellants' $1/4^{\text{th}}$ share in the suit property i.e. once in 4 days for irrigation and negatived the relief of permanent injunction sought for by the appellants restraining Nalini from irrigating her other lands using the suit property and accordingly, disposed of the above said appeal and also partly allowed A.S.No.22 of 2014 and declared that the defendant Nalini is entitled to $3/4^{\text{th}}$ share in the suit property and also restrained the appellants from interfering with the defendant Nalini's, $3/4^{\text{th}}$ right in the suit property including the pumpset and EB service connection and accordingly, disposed of the above said appeal.

6. Impugning the judgment and decree passed by the first appellate Court in A.S.No.17 of 2014, the present second appeal has come to be laid.

7. As per the judgment and decree passed in A.S.No.17 of 2014, it is found that the appellants' right to $\frac{1}{4}$ share in the suit property has been declared and that, the appellant had also been granted the relief of permanent injunction restraining the defendant Nalini from interfering with $\frac{1}{4}^{\text{th}}$ right of the appellant in the suit property i.e once in 4 days for irrigation, however, it is found that the first appellate Court has dismissed the relief of permanent injunction sought for by the appellants restraining the defendant, Nalini from irrigating her other lands using the suit property.

8. The suit property is described as situated in Koothampakkam Village, Vellore Taluk in survey No.10/3, measuring 5 cents and the Well located therein with 5 HP motor pumpset and the electricity service connection No.68 and $\frac{1}{4}^{\text{th}}$ share of the appellants therein. As regards the determination of the first appellate Court that the appellants are entitled to $\frac{1}{4}^{\text{th}}$ share in the suit property and the defendant Nalini is entitled to $\frac{3}{4}$ share in the suit property, no dispute is raised in this second appeal.

9. The only grievance of the appellants is that the defendant Nalini cannot be allowed to irrigate her other lands by using the suit property i.e. the suit Well, Motor pump set and service connection, as the original owners of the suit property viz., Kandasamy Mudaliyar and Pachaiammal

had agreed to irrigate only the lands comprised in the suit survey number by using the suit Well, motor pumpset and service connection and not endeavoured to use the water from the suit Well for other properties and as according to the appellants, the defendant Nalini is now seeking to irrigate her other lands by using the suit property i.e. the suit Well, motor pumpset, service connection, she has to be restrained with reference to the same and inasmuch as the said relief is negated by the first appellate Court, according to the appellants, they had been necessitated to challenge the same by way of the present second appeal. However, as rightly determined by the first appellate Court, though the appellants would rely upon the agreement entered into between Kandasamy Mudaliar and Pachaiaammal in respect of the usage of the suit property for irrigating the lands comprised in the same survey number, however, it is found that in reality, the suit property had changed various hands, which could be evidenced from the documents marked as Exs.A2 to A4, A6 and A7 in different moieties and when such rights had been conveyed, no restriction had been placed in the above said transactions restricting the purchasers from using the suit property to irrigate their other lands and particularly, when it is noted that Pachaiaammal, while conveying 1/2th share to the defendant Nalini had not reiterated the said covenant in the sale transactions and equally, the appellants, while conveying their share in the suit property to Bharathi, did not place any such restriction, it is thus found that as rightly determined by the first appellate Court, the

parties, who own different shares in the suit property and endeavour to draw water from the suit property in their turns, cannot be restricted to irrigate their other lands not comprised in the suit survey number. The abovesaid restriction is not considered by the original owners as inviolable, accordingly, the necessary covenant pertaining to the same had not been incorporated in the subsequent sale conveyances made by them, while alienating their shares to the third parties. When such is the position and no such restriction has been made in the subsequent sale conveyances either by the original owner or even by the appellants as such, while conveying their moiety of shares to Bharathi and Bharathi had also not placed any such restriction, while conveying the same to the defendant, as rightly determined by the first appellate Court, the defendant Nalini cannot be enjoined from using the water of the suit Well for irrigating her other lands and in such view of the matter, it is found that as rightly determined by the first appellate Court, when the original covenants contained in Ex.A1 are not found to be reiterated by the parties concerned including the appellants, while effecting the sales in respect of their moiety of shares in the suit property, the appellants would not be entitled to injunct the defendant Nalini from using the suit property to irrigate her other lands, particularly, when it is found that the first appellate Court has determined as to the turns of their right to draw water from the suit Well, considering the quantum of shares, to which, the parties are entitled to.

10. Such being the position, I do not find any substantial question of law to be involved in this second appeal and accordingly, the second appeal is found to be not meriting acceptance.

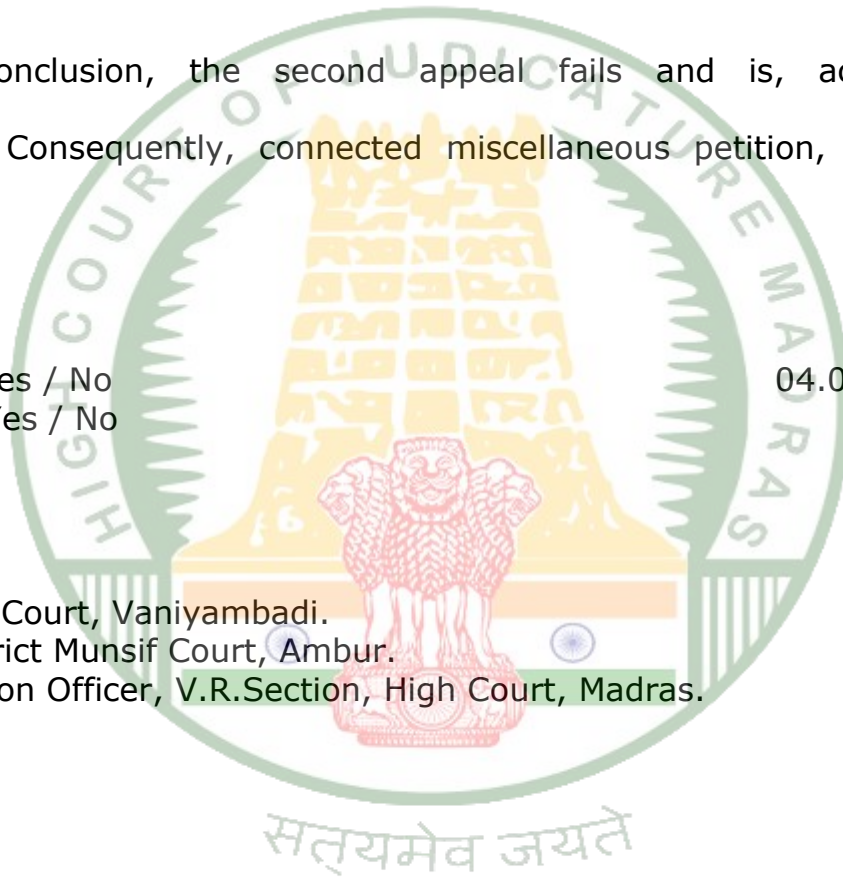
In conclusion, the second appeal fails and is, accordingly, dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

04.04.2018

To

1. The Sub Court, Vaniyambadi.
2. The District Munsif Court, Ambur.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.243 of 2018**

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