

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.570 of 2008

1. Sengodan
2. Vellachi

... Appellants/Defendants 1 and 2

versus

1. Sengodan
2. Rajathi
3. Arumugam

... Respondents/Plaintiff/Defendants 3 and 4

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 15.12.2005 passed in A.S.No.31 of 2005 on the file of the Sub-Court, Mettur in confirming the judgment and decree dated 16.12.2004 passed in O.S.No.302 of 2000 on the file of the District Munsif Court, Mettur.

For Appellants : Mr.P.Mani

For 1st Respondents : Mrs.Zeenath Begum
for Mr.V.Rajesh

For Respondents 2 & 3 : No Appearance

JUDGMENT

1.1 The defendants 1 and 2 in O.S.No.302 of 2000 on the file of the District Munsif Court, Mettur has come forward with this second appeal before this Court.

1.2 The plaintiff/1st respondent had filed the suit for declaration of title over three items of suit properties before District Munsif Court, Mettur. On 16.12.2004, the suit was decreed. Challenging the said decree, the defendants 1 and 2 have preferred A.S.No.31 of 2005 before the Sub-Court, Mettur and the said first appeal came to be dismissed on 15.12.2005.

2. The three items of properties in the plaint schedule are: 1st item is an agricultural land measuring 50 cents in S.No.154/15, the 2nd item is 1/4th share in the well in S.No.154/16 and the 3rd item is right over a cart track in S.No.154/17. There is no dispute here as to the item 1 and the entire dispute is confined to items 2 and 3.

3.1 This suit features three prime characters all of who go by the name Sengodan. The plaintiff and the 1st defendant both have the same name Sengodan, and they will be termed as per their ranks before the trial Court. The third Sengodan is the one from whom both the plaintiff and the 1st defendant had purchased separate parcels of property. This apart, the 1st defendant also claims independent right over some properties.

3.2 The entire dispute is limited to the extent of share the plaintiff herein has over the well in S.No.154/16. The defendants 1 and 2 deny the same and disputed plaintiff's claim of 1/4th share on the ground that whatever right Sengodan, the vendor had in the property had been parted in their favour.

4. This appeal is yet to be admitted and this Court heard both sides. The only substantial question of law involved is, if the first Appellate Court has failed to read the evidence correctly in the matter of ascertaining the right of the plaintiff over the well.

5.1 The facts to the extent now required are that: The vendor Sengodan, (who was examined in the suit as PW4) claims that he had an ancestral property in S.No.154/16 along with 1/4th share in a well. PW4 Sengodan's wife, thereafter purchased few items of properties under Ext.A-7 sale deed dated 02.03.1979, and the 3rd item in the sale deed is 1/4th share in the well in S.No.154/17. It is an admitted case that during UDR in 1980s, the well was included in S.No.154/16.

5.2 In this background, on 30.11.1988, the 2nd defendant (wife of 1st defendant) had purchased 17 cents out of 34 cents of lands in S.No.154/19 from P.W.4 Sengodan and his wife. Ext.A-4 also is conveyed to the 2nd defendant, 1/12th share in the well in S.No.154/16. Subsequently, on 30.03.1998, Vide Ext.A-1, sale deed, both Sengodan (vendor) and his wife have sold 1st item of the suit property to the plaintiff along with the items 2 and 3.

6. While the plaintiff claims 1/4th share in the well, in item 2, the defendants 1 and 2 would deny and dispute the said right. On appreciation of evidence, the trial Court has decreed the suit, which the first Appellate Court has confirmed.

7. On hearing both sides, this Court finds that the 2nd defendant has purchased 1/12th share in the well in S.No.154/16. The learned counsel for the appellants would contend that the 1st defendant, the husband of the 2nd defendant had ancestral properties in S.No.154/16 and he has independent share of right in the well. Accordingly, when Ext.A-1 sale deed was executed some 10 years after the execution of Ext.A-4 sale deed in favour of the 2nd defendant, the vendor thereof (Ext.A-1) did not have any subsisting interest over the well for him to grant any right. In this regard, while P.W.4 claims that de-hors the 1/4th share right obtained by his wife under Ext.A7, he has 1/4th share in the well ancestrally but his independent 1/4th share in the well was not established. He further added that since the suit is for declaration of plaintiff's title, it is the duty of the plaintiff to establish that he has absolute 1/4th share in the property.

8. Per contra, the learned counsel for the 1st respondent/plaintiff would argue that in order to deny the plaintiffs' right, the 1st defendant claims that he has 1/4th ancestral right in the property, but he has not proved it either.

9. After hearing both sides, it must be held that neither Sengodan(PW4) nor the 1st defendant could establish that the former was entitled to 1/4th share in the well ancestrally. Therefore, all that is now available before this Court is the right traceable to Ext.A-7. For both plaintiff and the 1st defendant, the source of their respective title is conferred essentially by Ext.A-7 and therefore, they cannot claim any right contrary to Ext.A7.

10. Under Ext.A7, P.W.4, Sengodan's wife had obtained 1/4th share in the well and this 1/4th share has been divided into 1/12th share in favour of the 2nd defendant under Ext.A-4, but still sold another 1/4th share in favour of the plaintiff under Ext.A1. If 1/12th share has already been parted in favour of the 2nd defendant, what remains to be conveyed to the plaintiff under Ext.A1 is only 1/6th share. Necessarily, the plaintiff can have only 1/6th share in the well. Having stated thus, since ancestral right claimed by Sengodan or the 1st defendant in the above said survey numbers is not the primary issue in this case, that point left open. To the extent indicated above, the decree of the Courts below is required to be interfered with to the extent indicated.

11. So far as the 3rd item is concerned, P.W.4, Sengodan had admittedly sold this property comprised in S.No.154/17 and it is a total extent of 68 cents. This property too belonged to P.W.4. Admittedly, he had sold 33 cents to the 2nd defendant and another 33 cents to the 3rd defendant. The remaining 2 cents had been

sold to the plaintiff under Ext.A1.

12. The learned counsel for the appellants submitted that there is no such 2 cents on lie and therefore, the plaintiff should not disturb their title to 66 cents. Since the plaintiff claims only 2 cents after the sale to the defendants 2 and 3, the plaintiff cannot disturb their right. But that aspect need not require any interference by this Court with the decree already passed by the trial court.

13. This second appeal is partly allowed and the plaintiff is held entitled to 1/6 share in the well in the suit property. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ssn

To

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

+1cc to Mr.P.Mani, Advocate SR.No.84573

+1cc to Mr.V.Rajesh, Advocate SR.No.84954

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