

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.561 of 2018

and

C.M.P.No.16754 of 2018

A. Mathiazhagan

... Appellant/Defendant

Vs.

Pachiammal

... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 13.04.2018 in A.S.No.6 of 2018 on the file of the learned Subordinate Judge, Rasipuram, confirming the Judgment and Decree dated 08.06.2015 in O.S.No.49 of 2012 on the file of the learned District Munsif, Rasipuram.

For Appellant : Mr.N. Manokaran

JUDGMENT

The defendant is the appellant in the above Second Appeal. This Appeal arises against the Judgment and Decree of the learned Subordinate Judge, Rasipuram, in A.S.No.6 of 2018 confirming the Judgment and Decree in O.S.No.49 of 2012 passed by the learned District Munsif, Rasipuram.

2.The respondent/plaintiff has filed a suit O.S.No.49 of 2012 on the file of the learned District Munsif, Rasipuram, for a declaration that she is entitled to draw water through the underground pipeline laid in S.Nos.349/2 and 349/3 from the common well situate in S.No.349/3 measuring an extent of 0.09 cents to her lands measuring an extent of 0.54 cents situate in S.No.340/5B and for consequential injunction restraining the respondent from enjoying the suit properties.

Plaintiff's case:

3.It is the case of the plaintiff that the suit property originally belonged to her late husband, father and brother and under a Partition Deed dated 14.12.1981, the property were divided amongst the three of them and in the said Deed, the "A" Schedule of property was allotted to her father Vaidhyalingam and the "B" Schedule of property was allotted to her husband's brother Natarajan and the "C" schedule was allotted to her husband.

4. Under the said Partition Deed, there was a schedule which detailed all the properties and the rights which were kept in common amongst the sharerers which included the right to draw water, to lay pipeline from a common well.

5. It is her further case that on 17.11.1994, she had purchased an extent of 0.54 cents in S.No.340/5 from her brother-in-law Natarajan, from out of nine items of properties that was allotted to him under the partition and the extent of 267 sq.ft. in S.No.336/1A2. These two properties had been described as Item Nos.1 and 9 in the Partition Deed dated 14.12.1981. Therefore, the plaintiff had purchased the two items from out of 9 items of the properties that was allotted to her brother-in-law.

6. The plaintiff would further submit that the defendant had purchased the properties from the said Natarajan and his daughter under the Sale Deed dated 31.10.2008. The defendant who had purchased the remaining property started obstructing the plaintiffs' use of the pipelines and drawing water from the well. Hence, the plaintiff was constrained to file the suit.

Defendant's case:

7. The defendant had admitted the Partition Deed, but however, denied that the plaintiff was entitled to draw water from the well and also to lay pipelines through the common pathway under the Sale Deed dated 17.11.1994.

Trial Court:

8. The learned District Munsif, Rasipuram, after a detailed enquiry and on perusal of the documents decreed the suit in favour of the appellant.

Appellate Court:

9. Challenging this Judgment and Decree, the defendant had filed A.S.No.6 of 2018 on the file of the learned Subordinate Judge, Rasipuram. The Appellate Court relying upon the Partition Deed as well as the Sale Deed in favour of the plaintiff has held that the plaintiff was entitled to draw water from the well through the underground pipeline under the Partition Deed itself since her husband was allotted $\frac{1}{2}$ share and even under the Sale Deed in favour of the plaintiff, her brother-in-law had the common rights as well as the easementary rights in the properties.

Second Appeal:

10. Challenging the concurrent Judgment and Decree of the Courts below, the defendant had filed the Second Appeal.

11. When the matter came up for admission on 19.11.2018 Mr.N.Manokaran, learned counsel appearing for the appellant would contend that the recitals of Ex.A.1 does not in anyway

give her rights in the well to the plaintiff. Since the word “சகல பாத்தியம்” has not been spelt out to include the right to draw water from the common well situate in S.No.349/3. This was the sum and substance of the arguments of the learned counsel for the appellant.

12.A perusal of Ex.A.2 - Partition Deed dated 14.12.1981 would clearly spell out the right to draw water through the underground pipeline as well as from the well situate in S.No.349/3 which has been given to the plaintiff's husband under the said Deed. Therefore, the defendant who has purchased the property from the brother of the plaintiff's husband, who is the second party in the Sale Deed, is bound by the terms and conditions of the Partition Deed. Therefore, the defendant cannot deny this right to the plaintiff.

13.That apart under Ex.A.1 - Sale Deed, the vendor namely, the plaintiff's brother-in-law, had conveyed all the common rights that had been given under Ex.A.2 - Partition Deed. Therefore, the contention of the learned counsel for the appellant cannot be countenanced. It is also worth commenting that even under Ex.A.7 - Sale Deed under which the defendant had purchased the property, he has been granting all the common rights provided under the Partition Deed. In fact, the recitals in Ex.A.1 and Ex.A.7 are more or less similar. There is no question of law much less the Substantial Questions of Law involved in the Second Appeal.

In these circumstances, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mps

To

1.The Subordinate Judge,
Rasipuram.

2.The District Munsif,
Rasipuram.

+1 CC to Mr.N.Manokaran, Advocate sr 78922.

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VGII (CO)

SP(06/05/2019)