

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2018

PRONOUNCED ON : 19.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1350 of 2004

Kannan

...

Appellant

Vs.

1.Chengalvaraya Pillai

2.Subramani

3.Ramamoorthi

4.Krishnamoorthi

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 23.10.2003 passed in A.S.No.18 of 2003 on the file of the Subordinate Court, Ranipet, reversing the Judgment and Decree dated 26.11.2002 passed in O.S.No.91 of 1998 on the file of the District Munsif cum Judicial Magistrate No.I, Walajah.

For Appellant : Mr.V.L.Akshai Sajin Kumar
for M/s.N.S.Sivakumar

For Respondents : Mr.T.Dhanyakumar

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 23.10.2003 passed in A.S.No.18 of 2003 on the file of the Subordinate Court, Ranipet, reversing the Judgment and Decree dated 26.11.2002 passed in O.S.No.91 of 1998 on the file of the District Munsif cum Judicial Magistrate Court No.I, Walajah.

2. The second appeal has been admitted and the following substantial questions of law were formulated for consideration:

" (i). Whether the Lower Appellate Court is correct in law in holding that alteration made in Ex.P1 Koorchit and thereby holding that the first respondent/first defendant is entitled to 1/6th share in the Well in survey No.48/4 at Mutharasikuppam Village, Walajah Taluk, Vellore District?

(ii). Whether the Lower Appellate Court is correct in law in not taking into consideration the admission made by the fourth defendant/DW1 regarding the ownership of the suit Well of the appellant/plaintiff?

(iii). Whether the Lower Appellate Court is correct in law in holding that even after the sale of 1/6th right in the suit well by the first respondent/ first defendant in favour of third party under Ex.A7 after the suit, the first respondent/first defendant is entitled to contest the suit?."

3. The plaintiff, who is the appellant, has laid the suit for permanent injunction.

4. The suit property is a Well situated in Punja Survey No.48/4, 3 HP motor pumpset, S.C.No.71 and the usual channel rights. Thus, it is found that the suit having been laid by the plaintiff in respect of the Well alone, claiming that he is entitled to the same and accordingly, alleging that the defendants are attempting to interfere with his possession and enjoyment of the suit Well, has come forward with the suit seeking the relief of permanent injunction. Briefly stated, the plaintiff claims title to the suit Well mainly upon the unregistered koorchit said to have been executed in the year 1962 amongst the plaintiff, the first defendant and their two brothers viz., Govindan and Ramachandran. Further, it is also found that as per the case of the plaintiff, in the alleged partition effected under the Koorchit, he had been allotted $\frac{1}{2}$ share in the said Well. Further, according to the plaintiff, by way of the subsequent sale transactions as detailed in the plaint, he had acquired the other shares in the said Well and thus, he is the owner of the said Well in entirety. It is the case of the plaintiff that by way of the abovesaid Koorchit, the first defendant has not been allotted any share in the said Well and on the other hand, allotted only another Well in Survey No.41/7 and accordingly, the first defendant is not entitled to lay any claim of title, right or interest

in the said Well.

5. Per contra, it is the specific case of the defendants that as per the Koorchit entered into between the parties concerned in the year 1962, the first defendant has been allotted 1/6 share in the suit Well and hence, the plaintiff cannot lay any exclusive claim of right in the said Well as such and further, according to them, the plaintiff insisted the defendants to give their share in the suit property and as the same had been refused by the defendants, according to them, the present suit has come to be laid falsely by the plaintiff.

6. Thus, on the abovesaid pleadings putforth by the respective parties, it is found that basically, the plaintiff has laid the claim of title, right and interest in the suit Well only on the basis of the Koorchit said to have been executed amongst the four brothers in the year 1962 and the said document has come to be marked as Ex.A6 on the side of the plaintiff and it is seen that the same document, another set has come to be marked by the defendants as Ex.B1 and on a perusal of Exs.A6 & B1, it is found that both are written in Telugu language and the plaintiff has not marked any translation copy of the same. However, the defendants have marked the translation copy of the koorchit, which has come to be marked as Ex.B5. On a reading of Ex.B5 the Tamil version of Koorchit, it is found that only by way of the abovesaid document, the parties had

proceeded to partition the properties belonging to them and in such view of the matter, while the Koorchit projected in the matter intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the properties divided thereunder amongst the parties thereto, the said document requires compulsory registration as per Section 17 (1) (b) of the Registration Act and when it is found that the koorchit projected by the parties is not a registered document and further only by way of the said document, the parties thereto had intended to effect partition of their properties as recited therein and thereby, have separate possession and enjoyment of the allotted shares as divided, accordingly, sans registration of the said document as per law, it is found that based upon the said document, no title could be conferred on the plaintiff as well as the defendants in respect of the suit Well as put forth by them. It is thus found that the basic title deed, upon which, both the parties claim title to the said Well, being an unregistered document, which requires compulsorily registration as per law as above stated, on that score alone, it is found that the plaintiff being the suitor and accordingly, it is found that the suit laid by the plaintiff should fail. When it is found that the main document, upon which, the parties claim title to the said Well is not admissible in evidence for want of registration as per law, the subsequent sale transactions effected in respect of the others shares in the said Well by itself would not confer a valid title to the said Well to the plaintiff as

claimed by him. When it is found that even the vendors of the various shares in the said Well had also endeavoured to alienate their shares only based upon the koorchit concerned, it is found that the plaintiff's suit cannot be sustained.

7. Further, when it is found that according to the plaintiff, the first defendant had not been allotted any share in the suit Well and on the other hand, he had been given only the Well situated in survey No.41/7 and on the other hand, when according to the first defendant or the defendants as the case may be, 1/6 share has been allotted to them in the suit Well and when from the evidence of PW1, examined on behalf of the plaintiff, there is no Well located in Survey No.41/7, accordingly, it is seen that the reasonings of the plaintiff that the first defendant has not been given any share in the suit Well as he had been allotted the Well in Survey No.41/7 falls to the ground and accordingly, it is seen that as all the four brothers have equal right in the suit Well, to which, they are entitled to, as rightly put forth, the first defendant also would have been conferred a share in the suit Well and accordingly, it is found that in the Koorchit projected by the defendants marked as Ex.B1, they had been shown to be allotted 1/6th share in the suit Well. However, the said document is being impugned by the plaintiff contending that the survey has been altered by the defendants in the said document. However, the first appellate Court on the footing that the plaintiff having failed to

establish as regards the existence of any Well in survey No.41/7 and that being only reason offered by the plaintiff for not allotting a share to the first defendant in the suit Well and further, when the plaintiff has not established the alleged correction in Ex.B1 by producing the other Koorchits available with the other brothers, accordingly, did not place reliance upon the plaintiff's case and proceed to hold that the first defendant also has a share in the suit Well and the abovesaid reasonings given by the first appellate Court for declining the plaintiff's exclusive claim of title of the said Well cannot be easily brushed aside and in such view of the matter, it has to be held that the plaintiff has miserably failed to establish his claim of exclusive title to the said Well as put forth by him.

8.As regards the other sale transactions by way of which the plaintiff claims to have purchased the other shares in the said Well, the defendants have not raised any defence. Still, the defendants would contend that they have 1/6th share in the suit Well and accordingly, the plaintiff cannot lay any exclusive title to the said Well as such. The documents projected by the plaintiff marked as Exs.A1 to A5 and A7 by themselves do not point out that the plaintiff has exclusive title to the suit Well. Further, when the said documents are found to be based upon the unregistered koorchit and accordingly, on the basis of such sale transactions, the plaintiff cannot be allowed to seek exclusive claim of

title to the said Well. Further as regards the possession and enjoyment of the said Well in entirety by the plaintiff, there is no material worth acceptance placed by the plaintiff. No doubt, the service connection fitted in the said Well belongs to the plaintiff, but, as far as this suit is concerned, the dispute is only with reference to the Well right described in the plaint schedule property. Such being the position, it is seen that the suit laid by the plaintiff, for the reasons aforesaid, should fail and accordingly, the reasonings and conclusions of the first appellate Court for declining the relief sought for by the plaintiff as such do not warrant any interference.

9. In the light of the above discussions, though the first appellate Court is found to be not justified in upholding Ex.B1 Koorchit, an unregistered document, considering the oral and documentary evidence adduced in the matter, particularly, the defendants' case disputing the claim of exclusive ownership of the suit Well by the plaintiff and the plaintiff not entitled to claim ownership as regards the suit Well based on an unregistered document, as above discussed, the plaintiff's suit should fail and accordingly, the substantial questions of law formulated in the second appeal are answered.

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

19.04.2018

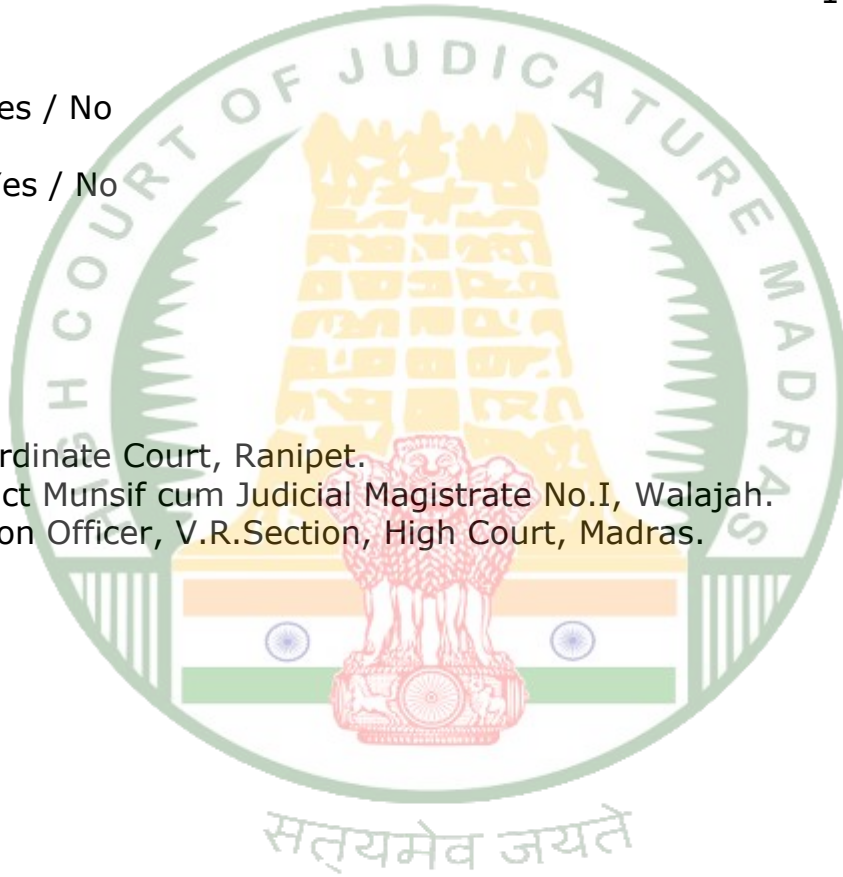
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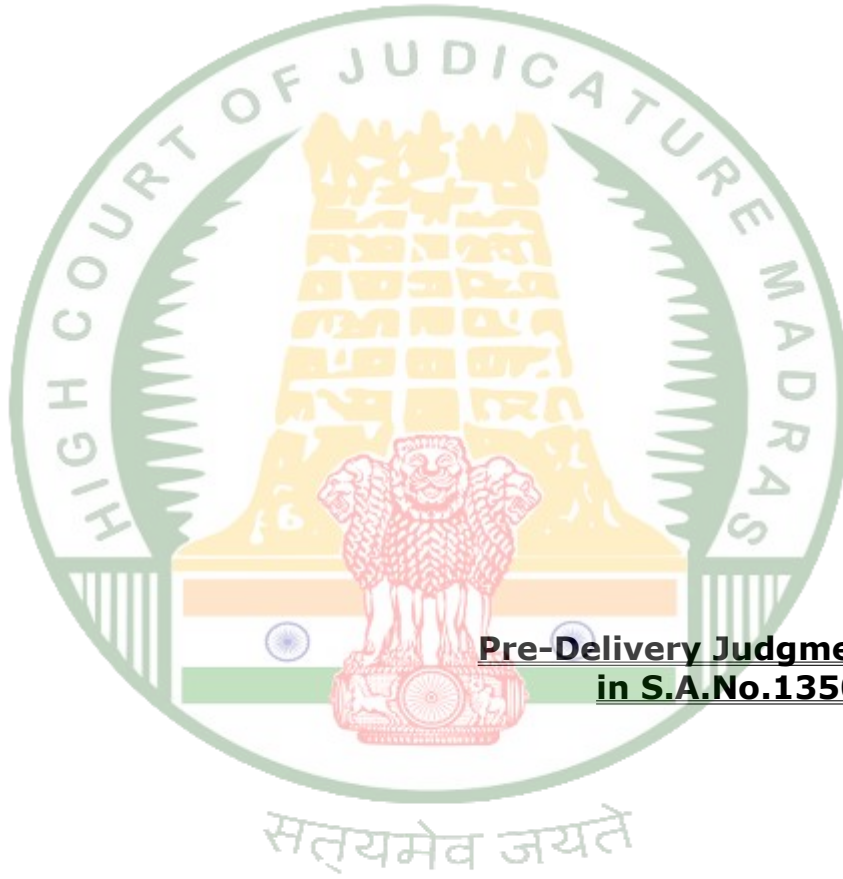
- 1.The Subordinate Court, Ranipet.
- 2.The District Munsif cum Judicial Magistrate No.I, Walajah.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1350 of 2004**

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