

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2018

PRONOUNCED ON : 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1411 of 2003

1. Sengodan (died)
2. Amirtham
3. S.Saravanan
4. Thangamani
5. Rani

...

Appellants

(Appellants 2 to 5 are brought on record as legal representatives of the deceased sold appellant vide order of court dated 16.02.2007 made in CMP No.94 to 96/2007)

1. Chinnannan
2. Raji
3. Thangaraji

...

Respondents

सत्यमेव जयते

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.06.2003 passed in A.S.No.45 of 2002 on the file of the Sub Court, Dharmapuri, reversing the Judgment and Decree dated 21.06.2002 passed in O.S.No.76 of 1998 on the file of the District Munsif Court, Dharmapuri.

For Appellants : Mr.P. Mani

For Respondents : Mr.V.Manisekaran

JUDGMENT

Challenge in the second appeal is made to the Judgement and Decree dated 27.06.2003 passed in A.S.No.45 of 2002 on the file of the Subordinate Court, Dharmapuri, reversing the Judgment and Decree dated 21.06.2002 passed in O.S.No.76 of 1998 on the file of the District Munsif Court, Dharmapuri.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit pertains to $\frac{1}{4}$ share in the Well situated in survey No.161 and according to the plaintiff, the suit property and the other properties originally belonged to the family of Lagumanna gounder and the same had been purchased from them by Palani Goundan, Kandappa goundan, Kuppanna Goundan and Lakshuma Goundan by way of a registered sale deed dated 21.04.1943 and enjoying the same and Palani Goundan, deriving $\frac{1}{4}$ share in the properties as above stated, sold the same in favour of the plaintiffs' father Nallappa Gounder by way of a registered sale deed dated 30.01.1948 and thus, the plaintiff had acquired $\frac{1}{4}$ share in the above said properties including $\frac{1}{4}$ share in the two Wells located in the said

properties and the plaintiff's father Nallappa Goundan died leaving the plaintiff as his sole heir and in the partition effected amongst the family members of Kuppanna Goundan, his $\frac{1}{4}$ share was allotted to the share of the first defendant and while so, the other sharers did not object to the share of the plaintiff in the suit Well, however on account of enmity between the plaintiff and the defendants, the defendants interfered with the plaintiff's possession and enjoyment of the suit Well and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is false to state that the plaintiff has $\frac{1}{4}$ share in the suit Well and it is further false to state that the plaintiff is enjoying the said share along with the other sharers and the sale alleged to have been acquired by the plaintiff's father dated 30.01.1948 is not true and the Well located in survey No.161 was subsequently subdivided and suppressing the same, the plaintiff has laid the case and the plaintiff, claiming only $\frac{1}{4}$ share in the suit Well, should have impleaded the other sharers as parties to the suit and it is false to state that the defendants are interfering with the plaintiff's $\frac{1}{4}$ share in the Well and there is a dispute between the defendants and one Chinnannan's wife Devaayammal and others in respect of the Well situated in survey No.161/3 and accordingly, the

plaintiff, at the first instance of the defendants' opponents, has laid the suit falsely claiming share in the suit Well and the plaintiff has no cause of action to institute the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A3 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B4 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to accept the plaintiff's case and decreed the suit as prayed for. On appeal, the first appellate Court was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

WEB COPY

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the lower appellate court erred in law and misdirected itself in holding that the appellant is not entitled to the suit well on the basis of

Exs.A1 sale deed dated 21.04.1943 and A.2 sale deed dated 30.01.1948 merely because the suit well was not described in the said sale deeds with the present name, i.e. "Muniappan Kinaru"?

(ii) Whether the lower appellate Court erred in law and misdirected itself in holding that the respondents are entitled to the suit well on the basis of Exs.B.2 sale deed dated 20.04.1987 and B.3 sale deed dated 06.06.2001 when no such plea was raised in the written statement and when the vendors of the said sale deeds had no right to execute the said sale deeds much less with respect to the suit well?"

9. Materials placed in the matter go to disclose that originally the properties described in the plaint schedule and the other properties belonged to the family of the Lagumanna Gounder and it is found that by way of a sale transaction dated 21.04.1943 marked as Ex.A1, four persons had purchased the same from the family of Lagumanna Gounder, viz., Palani Goundan, Kandappa Goundan, Kuppanna Goundan and Lakshuma Goundan. It is thus found that by way of Ex.A1, four persons derived equal share in the properties purchased and thus each have ¼ share in the properties purchased. The defendants have not thrown any

challenge to the above said sale transaction marked as Ex.A1. It is found that the first defendant is the son of one of the above said purchasers viz., Kuppana Goundan and it is also admitted by the plaintiff that in the partition effected in the family of Kuppanna Goundan, $\frac{1}{4}$ share acquired by Kuppana Goundan in the said properties was allotted to the share of the first defendant. Now, it is the case of the plaintiff that his father Nallappa Gounder had purchased $\frac{1}{4}$ share in the aforesaid properties from Palani Goundan by way of a sale transaction dated 30.01.1948, which document has come to be marked as Ex.A2. By way of Ex.A2, it is found that the plaintiff's father had acquired $\frac{1}{4}$ share in the properties involved in the subject matter and it is found from Exs.A1 & A2 that there are two Wells in the properties concerned. It is thus found that the plaintiff's father by way of Ex.A2 had acquired $\frac{1}{4}$ share in the said two Wells. Materials placed also go to disclose that the plaintiff's father had sold his $\frac{1}{4}$ share in one of the Wells in the above said property to one Rajagounder by way of a sale deed dated 11.04.1952, which document has come to be marked as Ex.A3/B1. It is found that out of the two wells in the properties concerned, in which, the plaintiff's father had acquired $\frac{1}{4}$ share, the $\frac{1}{4}$ share in one of the Wells had been alienated by the plaintiff's father to Rajagounder by way of Ex.A3/B1 and it is thus found that as far as the remaining $\frac{1}{4}$ share in the other Well, the same had been retained by the plaintiff's father and accordingly, the plaintiff had acquired title to the same. Now, according to the plaintiff, developing

enmity, the defendants attempted to interfere with the possession and enjoyment of his right and enjoyment to the above said $\frac{1}{4}$ share in the Well and hence, he has been necessitated to lay the suit for appropriate reliefs.

10. The suit Well is stated to be located in survey No.161 and the lie of the Well in Survey No.161 is not in dispute as such. The plaintiff in the plaint schedule has also described that the suit Well is locally known as "Muniappan Temple Well". No doubt, in the sale deeds projected by the plaintiff, the local name has not been mentioned. Be that as it may, it is found that from the document marked as Ex.A3/B1 in toto, the plaintiff's father had retained his $\frac{1}{4}$ share in one of the Wells purchased by him by way of Ex.A2 and accordingly, it is seen that the plaintiff would be entitled to lay a claim over the said right of his father in the suit Well.

11. The only defence projected by the defendants is that they had acquired right in the Well situated in Survey No.161/3 by way of Exs.B2 & B3 and therefore, the plaintiff cannot lay any claim over the suit Well as such. As earlier noted, the suit Well is stated to be located only in survey No.161 locally known as "Muniappan Temple Well". Now, according to the defendants, the plaintiff, suppressing the sub division of the Wells located in survey No.161, has laid a false claim in the suit Well.

However, there is no material placed by the defendants as such to show

that the two Wells located in survey No.161 later got subdivided and located in survey No.161/3. In the absence of any material pointing to the above said subdivisions as such and when according to the defendants, they lay a claim of right only to the Well located in survey No.161/3 and when according to the plaintiff, the suit Well is located in survey No.161 and when the suit Well is not shown to be located in survey No.161/3 and when it is found that the plaintiff's father had not alienated his $\frac{1}{4}$ share in one of the Wells purchased by him by way of Ex.A2, it is found that the first appellate Court has misconstrued the evidence placed on record in the wrong perspective and proceeded to hold that the plaintiff has failed to establish his right over the suit Well as such.

12. As rightly put forth by the plaintiff's counsel, when the first appellate Court has not even determined that the Well purchased by the defendants by way of Exs.B2 & B3 is the suit Well and when it is found that the said Well is located only in Survey No.161/3 and when the suit Well is found to be located in survey No.161 and there is no material that the suit Well had come to be subdivided and located in the other sub division as such, particularly, in Survey No.161/3 and in addition to that, when it is found that the defendants claim title to the suit Well by way of purchase from Chinnannan's wife Devaayammal and others and when they are not shown to be having any right as such in the suit Well as

having purchased the same from the vendees described in Ex.A1, it is seen that by way of Ex.B2 & B3, the defendants cannot be allowed to lay any claim of right to the suit Well located in Survey No.161. It is thus found that as rightly argued by the plaintiff's counsel, when the defendants have failed to establish that the Well described in Exs.B2 & B3 pertains to the suit Well in Survey No.161 and the defendants have also not established to have acquired any right in the said Well acquired by the plaintiff's father by way of Ex.A2 and when it is further seen that the plaintiff's father had purchased $\frac{1}{4}$ share in the two Wells by way of Ex.A2 and by way of Ex.A3 sold $\frac{1}{4}$ share in one Well and retained his $\frac{1}{4}$ share right in the other Well and when the suit Well is stated to be only the said Well retained by the plaintiff's father, it is found that the plaintiff has established his claim of right to the suit Well and in such view of the matter, it is found that the defendants, under the guise of Exs.B2 & B3, particularly, having failed to establish that the same has any nexus with the Well located in survey No.161 as such, cannot be allowed to interfere with the plaintiff's right to use and enjoy the suit Well and in such view of the matter, it is seen that the first appellate Court has erred in non suiting the plaintiff on the footing that the plaintiff has failed to establish or co-relate the local name of i.e. "Muniappan Temple Well" with that of the suit Well. The first appellate Court has failed to appreciate the Commissioner's report and plan marked in this case and the same also advance the plaintiff's case that he is having $\frac{1}{4}$ share right by way of

Ex.A2 sale transaction and it is found that the first appellate Court has erred in dismissing the plaintiff's suit on the footing that the plaintiff has failed to identify the suit Well as such.

13. In the light of the above discussions, the first appellate Court has misdirected itself by not properly appreciating the materials placed on record in coming to the conclusion that the plaintiff has no title to the suit Well ignoring the sale deeds marked as Exs.A1 & A2, merely on the footing that there is no reference about the local name of the suit Well in the above said documents. It is further seen that the first appellate Court has misdirected itself in holding that the Wells described in Exs.B2 & B3 pertain to the suit Well. No such plea has been raised by the defendants themselves in the written statement claiming that they had acquired right in the suit Well by way of Exs.B2 & B3 and further, when it is seen that the Wells described in Exs.B2 & B3 are not located in Survey No.161 and lying in a different survey Number and in such view of the matter, it is found that as rightly determined by the trial Court, the plaintiff has established his title to the suit Well as described in the plaint and thus, it is found that the defendants are not entitled to dispute the plaintiff's title to the suit Well and his usage and enjoyment in respect of the same. The substantial questions of law formulated in this second appeal, are accordingly answered in favour of the plaintiff and against the defendants.

In conclusion, the Judgement and Decree dated 27.06.2003 passed in A.S.No.45 of 2002 on the file of the Subordinate Court, Dharmapuri are set aside and the Judgment and Decree dated 21.06.2002 passed in O.S.No.76 of 1998 on the file of the District Munsif Court, Dharmapuri, are confirmed. Accordingly, the second appeal allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

08.03.2018

To

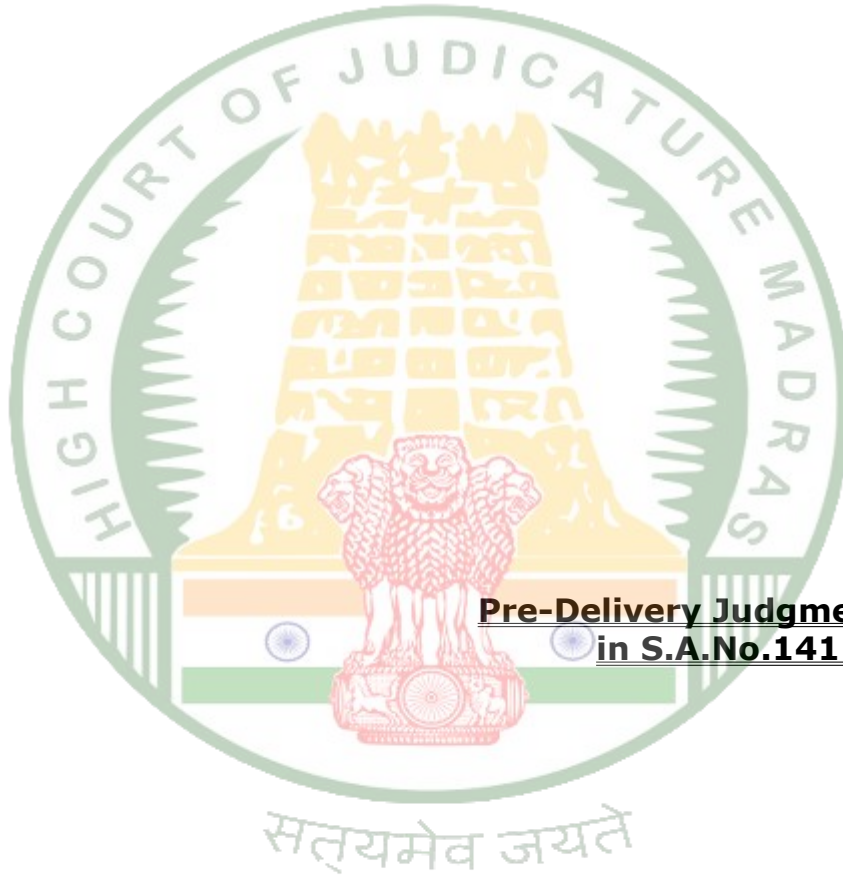
1. The Sub Court, Dharmapuri.
2. The District Munsif Court, Dharmapuri,
3. The Section Officer, V.R.Section, High Court, Madras.

सत्यमेव जयते

WEB COPY

T.RAVINDRAN, J.

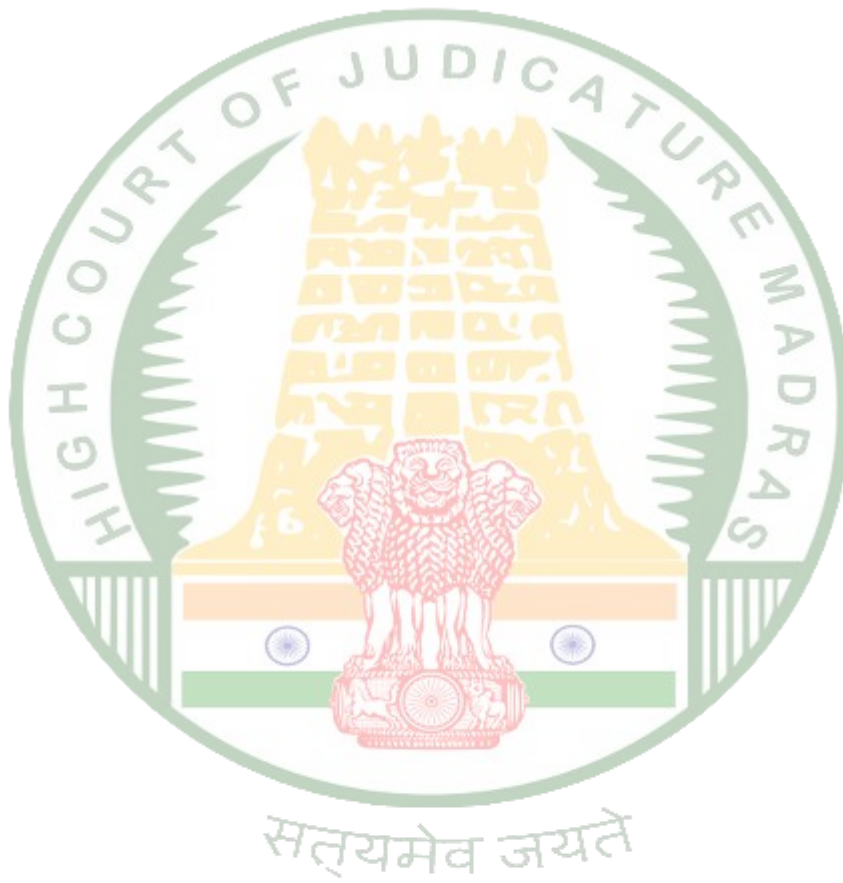
sms



**Pre-Delivery Judgment made
in S.A.No.1411 of 2003**

WEB COPY

08.03.2018



WEB COPY