

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2017
PRONOUNCED ON : 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1327 of 2002

Radhamani Ammal ... Appellant/Plaintiff

Vs.

1. Ramu Udayar
2. Govindhan
3. Mechiammal
4. Lakshmi
5. Malar ... Respondents/Defendants 2 to 6

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.04.2002 in A.S.No.202 of 2001 on the file of the Principal District Court, Villupuram, reversing the Judgment and decree in O.S.No.208 of 1998 on the file of the II Additional District Munsif Court, Thirukoilur dated 21.8.2001.

For Appellant : Mr.A.R.Nixon
For Respondents: Ms.S.R. Vissalni for
M/s. V. Raghavachari

JUDGMENT

This second appeal is directed against the judgment and decree dated 29.04.2002 passed in A.S.No.202 of 2001, on the file of the Principal District Court, Villupuram, reversing the Judgment and decree dated 21.8.2001 passed in O.S.No.208 of 1998, on the file of the II Additional District Munsif Court, Thirukoilur.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff A and B schedule properties belonged to the plaintiff's husband Govindha Udaiyar and his brothers ancestrally and in the oral partition effected amongst them during the year 1991, the B

schedule properties and 1/9th share in the A schedule Well and along with the other properties were allotted to the share of Govindha Udaiyar and accordingly, Govindha Udaiyar had been irrigating the B schedule lands from the A schedule Well and also obtained electricity service connection on 05.02.1994 and had settled the plaintiff A and B schedule properties in favour of his daughters, for whom the plaintiff has been nominated as the guardian and the plaintiff accordingly accepted the settlement deed and enjoying the properties and while so, the defendants, who have no right in the A and B schedule properties, having only proportionate share in the Well described in the A schedule and not having any interest in the service connection and the electric motor situated in the said Well described in the A schedule, attempted to prevent the plaintiff from drawing water through the electric motor and hence, the need for the suit for permanent injunction.

5. The case of the defendants, in brief, is that the oral partition pleaded by the plaintiff, amongst her husband and his brothers, is not true and it is false to state that he had obtained service connection on 05.02.1994, in his name and settled his properties in favour of his children appointing the plaintiff as their guardian. The father of Govindha Udaiyar, namely, Natesa Udaiyar and the defendants 1 and 2 are brothers, of whom, Natesa Udaiyar was the eldest and they had got 3 acres of land in Survey no.85, which had been irrigated from A schedule Well and accordingly, application was presented for obtaining service connection in the name of Natesa Udaiyar and after his death, the service connection was given in the name of Govindha Udaiyar with the consent of the defendants 1 and 2 and all the three persons jointly purchased the electric motor and the same had been installed in the A schedule Well and thus, the A schedule Well with the electric motor pumpset and service connection jointly belong to Govindha Udaiyar and the defendants 1 and 2, each of them are entitled to 1/3rd share in the same and on account of misunderstanding between the parties, Govindha Udaiyar attempted to prevent the defendants from drawing the water from the Well, electric motor and the service connection and thereafter, at the intervention of the panchayatdars, Govindha Udaiyar accepted the share of the defendants 1 and 2 and accordingly, executed two Muchilikas in favour of the defendants 1 and 2 and hence, the plaintiff cannot claim any exclusive right in the A and B schedule properties based upon the settlement deed said to have been executed by Govindha Udaiyar and the suit, on the basis of the settlement deed, is not maintainable and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 4 were examined, Exs. A1 to A7 were marked. On the side of the defendants, DW1 to DW4 were examined and Exs.B1 to B5 were

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 decree the suit as prayed for. On appeal, the first appellate Court set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Assailing the same, the present second appeal has come to be laid.

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

1. Whether the lower appellate Court failed to note that Exs.B1 and B2 are inadmissible in law, since they are not registered documents?

2. Whether the lower appellate Court failed to note that service connection stands in the individual name of Govinda Udayar and hence the 1st and 2nd defendants and their legal heirs cannot claim any right over the motor pumpset?

9. The plaintiff is the wife of Govindha Udaiyar. Natesa Udaiyar is the father of Govindha Udaiyar. Natesa Udaiyar and the defendants 1 and 2 are brothers. The Well described in the A schedule is admitted to be jointly belonging to Govindha Udaiyar as well as the defendants 1 and 2. According to the plaintiff, in the partition effected amongst Govindha Udaiyar and his brothers, her husband Govindha Udaiyar had been allotted 1/9th share in the Well described in the A schedule. The fact remains that there is no dispute that the defendants 1 and 2 have each got 1/3rd share in the A schedule Well.

10. As regards the B schedule properties are concerned, they have been described in the plaint only as undivided share in the total extent and accordingly, the plaintiff claims right and title to the A and B schedule properties, based upon the settlement deed said to have been executed by Govindha Udaiyar in favour of the children. It is thus found that in the total extent of the land described in the B schedule, admittedly the defendants 1 and 2 also have got undivided share and it is thus found that as regards the total extent of the B schedule properties are concerned, it is seen that both the plaintiff as well as the defendants 1 and 2 are co-owners and as above seen, in respect of the Well described in the A schedule, admittedly, the defendants 1 and 2 have each got 1/3rd share.

11. The dispute centres around the electric motor pumpset

and the service connection described in the A schedule properties. Now according to the plaintiff, her husband Govindha Udaiyar had obtained the electric motor and the service connection individually in his name and hence, the defendants 1 and 2 cannot claim any right in respect of the same. Per contra, it is the case of the defendants 1 and 2 that they had also contributed for the purchase of the motor pumpset and the obtainment of the service connection and according to them, inasmuch as Natesa Udaiyar was the eldest member of the family, the application of the service connection was presented in his name and after his demise, the service connection was obtained in the name of his son Govindha Udaiyar and it is further stated that for the same, the defendants 1 and 2 had given their consent and therefore, it is the case of the defendants 1 and 2 that they also have equal share in the electric motor pumpset and the service connection described in the A schedule.

12. With reference to the above said case of the parties, the evidence of Junior Engineer, examined as DW4 and the documents produced by him, which were marked as Exs.B3 to B5, have to be carefully scrutinised. It is seen that Ex.B3 application has been presented in the name of Natesa Udaiyar for obtaining service connection and if really, the defendants 1 and 2 have no connection whatsoever, with the same, their consent would not have been secured at that point of time for the said purpose. However, it is seen that under Ex.B3, the defendants 1 and 2 have expressed their consent for obtaining service connection in the name of Natesa Udaiyar by signing the said document and further, it is also seen that on the demise of Natesa Udaiyar, his son Govindha Udaiyar had represented the said application in his name, for which also the defendants 1 and 2 had given their consent, which is clearly spoken to by DW4 and also buttressed by the document marked as Ex.B4. Accordingly, it is seen that the Electricity Board had issued the service connection in the name of Govindha Udaiyar and if really, Govindha Udaiyar or his father had, in their individual capacity and right, sought for the electricity connection in the Well, there is no need for obtaining the consent of the defendants 1 and 2 with reference to the same. On the other hand, it is seen that inasmuch as the defendants 1 and 2 had also contributed towards the purchase of the motor pumpset and also in the obtainment of the service connection, it is seen that their consent has also been secured with reference to the same.

13. As seen from the materials, it is found that after the dispute arose between the parties and thereby, taking advantage of the service connection standing in the name of Govindha Udaiyar, it is found that he had started questioning the right of the defendants 1 and 2 in the service connection and electric

motor pumpset, described in the A schedule. It is the case of the defendants 1 and 2 that at the intervention of the mediators in the panchayat held, Govindha Udaiyar had accepted the entitlement of the defendants 1 and 2 in the electric motor pumpset and the service connection, described in the A schedule and accordingly, executed two Muchilikas marked as Ex.B1 and B2, wherein, he had received Rs.6,500/- each from the defendants 1 and 2 towards the purchase of electric motor pumpset and the obtainment of the service connection and accordingly, it is the case of the defendants 1 and 2 that their entitlement to the same had been accepted by Govindha Udaiyar, by way of Exs.B1 and B2. No doubt, Exs.B1 and B2 had been repudiated by the plaintiff and her husband Govindha Udaiyar examined as PW3, has also disowned Exs.B1 and B2. However, the defendants have examined the mediators as DWs 2 and 3 and it is found that DWs 2 and 3 have clearly deposed that in the panchayat convened to resolve the dispute between the parties concerned, Govindha Udaiyar had demanded the price incurred for the instalment of the electric motor pumpset and the service connection and accordingly, at the intervention of the panchayat members, he had accepted the entitlement of the defendants 1 and 2 with reference to the same and accordingly, received a sum of Rs.6,500/- from each of them and thereby, executed the muchilikas marked as Exs.B1 and B2 and from the same, it is found that Govindha Udaiyar had acknowledged the right/entitlement of the defendants 1 and 2 in the electric motor pumpset and the service connection described in the A schedule property. With reference to the above case of the defendants, the mediators examined as DWs 2 and 3 had clearly deposed with reference to the same and as rightly determined by the first appellate Court, nothing had been culled out from them to discredit their evidence and it is also found that DWs 2 and 3 have no personal motive for testifying in support of the defendants case and against the plaintiff and accordingly, their evidence being natural, cogent and convincing and also buttressed by the documents Exs.B1 and B2, the first appellate Court has rightly accepted their evidence for upholding the defence version. The first appellate Court has also accepted the case of the defendants holding that the signatures found in Exs.B1 and B2 tally with the admitted signatures of Govindha Udaiyar in Ex.A1, but, on that comparison alone, the first appellate Court had not accepted the defence version. On the other hand, the same had been taken as an additional factor and the first appellate Court had mainly relied upon the documents Exs.B1 and B2 and finding that they are true, trustworthy and natural, accordingly, held that the right and entitlement of the defendants 1 and 2 in the electric motor pumpset and the service connection of the A schedule property had been duly accepted and acknowledged by Govindha Udaiyar, the plaintiff's husband. Such being the position, I do not find any infirmity or defect in the

above approach of the first appellate Court for accepting Exs.B1 and B2 in respect of the defendants case.

14. The argument has been projected by the plaintiff's counsel that Exs.B1 and B2 cannot be accepted for want of registration. However, as rightly determined by the first appellate Court, when under Exs.B1 and B2 the parties had not endeavoured to make division of any properties belonging to them, they cannot be termed as partition deeds and hence, the question of the registration of the documents on that score does not arise. Similarly, the same could not also be treated as sale deeds when no right in the immovable property has been transferred under the said documents and on the other hand, the price incurred by Govindha udaiyar for the purchase of the electric motor pumpset and the charges incurred by him for the obtainment of the service connection had been shared by the defendants 1 and 2 by way of the above said documents and accordingly, Govindha udaiyar had also acknowledged the same by way of the same. In such view of the matter, the first appellate Court had rightly held that the documents marked as Exs.B1 and B2 would not attract the provisions of the Registration Act and I do not find any valid reason to interfere with the same.

15. In the light of the above position, when it is found that the defendants 1 and 2 have admittedly equal share in the A schedule Well and found to be entitled to equal share in the electric motor pumpset and also the service connection, described in the A schedule properties, it is seen that as regards the A schedule properties are concerned, both the plaintiff and the defendants 1 and 2 are only co-owners. Similarly, as far as the B schedule properties are concerned, in the total extent of the survey numbers mentioned thereunder, it is seen that admittedly, the defendants are also co-owners of the same and in such view of the matter, as rightly putforth by the defendants' counsel, when in respect of both the A and B schedule properties, the defendants are the co-owners, the present suit laid by the plaintiff for permanent injunction against the co-owners is not maintainable, particularly, when the plaintiff seeks the relief above stated, on the basis of the settlement deed Ex.A1, executed by her husband, Govindha Udaiyar. In this connection, it is argued by the defendants' counsel that when the plaintiff schedule properties A and B are belonging to both the plaintiff and the defendants as co-owners, it is contended that the plaintiff's husband Govindha Udaiyar would not be, as per law, entitled to settle the properties in favour of his children, by way of Ex.A1, as the law governing the parties does not permit him to effect the settlement deed of the undivided share, in favour of the strangers or other co-parceners, unless the same had been given consent by the other

co-parceners. In this connection, the defendants' counsel placed reliance upon the decision of the Apex Court in AIR 1987 SC 1775 (Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Ors.) In the above said decision, the above position of law is stated as follows:

Issues: Whether a gift by a coparcener of his undivided corparcenary interest to another coparcener was void? Holding: According to the Mitakshara law, no coparcener can dispose of his undivided interest in coparcenary property by gift. There was no estoppel or other kind of personal bar which preclude the donor from asserting his right to recover the transferred property. The legislature did not provide for any gift by a coparcenary of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara school of Hindu law, a coparcener could not make a gift of interest. Under the proviso to Section 6 of the Hindu Succession Act, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through female relative then the interest of the deceased in the Mitaksara coparcenary property shall devolve by testamentary or intestate succession. The devolution of interest in coparcenary property by survivorship had been altered to testamentary or intestate succession. Therefore, a coparcener can make gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid. Hence appeal is dismissed.

16. The above position of law is also reiterated in the decision reported in CDJ 2003 MHC 060 (Kanna Gounder & Another Vs. Arjuna Gounder)

17. From the above said decisions, it is seen that the coparcener is precluded by law to effect the gift of the interest of the undivided share and in such view of the matter, when it is found that the plaintiff has laid the suit seeking the relief of permanent injunction based upon Ex.A1 settlement deed, which cannot be validly accepted as per the above said decision of the Apex Court, it is seen that the present suit laid by the

plaintiff as against the other co-owners of the properties concerned, is found to be not maintainable. The defendants' counsel for the proposition that the co-owner is not entitled to maintain the suit for permanent injunction as against the other co-owners, relied upon the decisions reported in 1997 SCC Online Bom 473 (Bhaguji Bayaji Pokale and others Vs. Kantilal Baban Gunjawate and others), CDJ 2003 MHC 060 (Kanna Gounder & Another Vs. Arjuna Gounder), 2010-3-L.W.33 (S.Venkatesh Babu Vs. Ms. Swetha) and (2002) 9 SCC 608 (Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karahale). From the above said decisions, it could be seen that the plaintiff is prohibited from maintaining the suit against the co-owners for permanent injunction and as possession by one co-owner shall be on behalf of the other co-owners also, it is seen that the present suit laid by the plaintiff without demarcating the share in respect of the plaint schedule of properties, to which she is actually entitled to, particularly, when it is seen that the B schedule properties are not described by giving any specific boundaries and only described as undivided share and when it is found that the parties to the lis are jointly entitled to the plaint schedule properties having undivided share in the same, it is seen that the suit laid by the plaintiff, on the above ground is found to be not maintainable.

18. In the light of the above discussions, the first appellate Court, on a proper appreciation of the matter, rightly found that Exs.B1 and B2 are admissible in law as the said documents are not required to be compulsorily registered and it is further seen that the first appellate Court, on the basis of the materials placed on record, rightly determined that though the service connection stands in the name of Govindha Udaiyar, the defendants 1 and 2 also have equal right and share in the same, along with the electric motor pumpset fitted in the A schedule Well. The substantial questions of law formulated for consideration in this second appeal are accordingly answered in favour of the defendants and against the plaintiff.

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

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Villupuram.

2.The II Additional District Munsif, Thirukoilur.

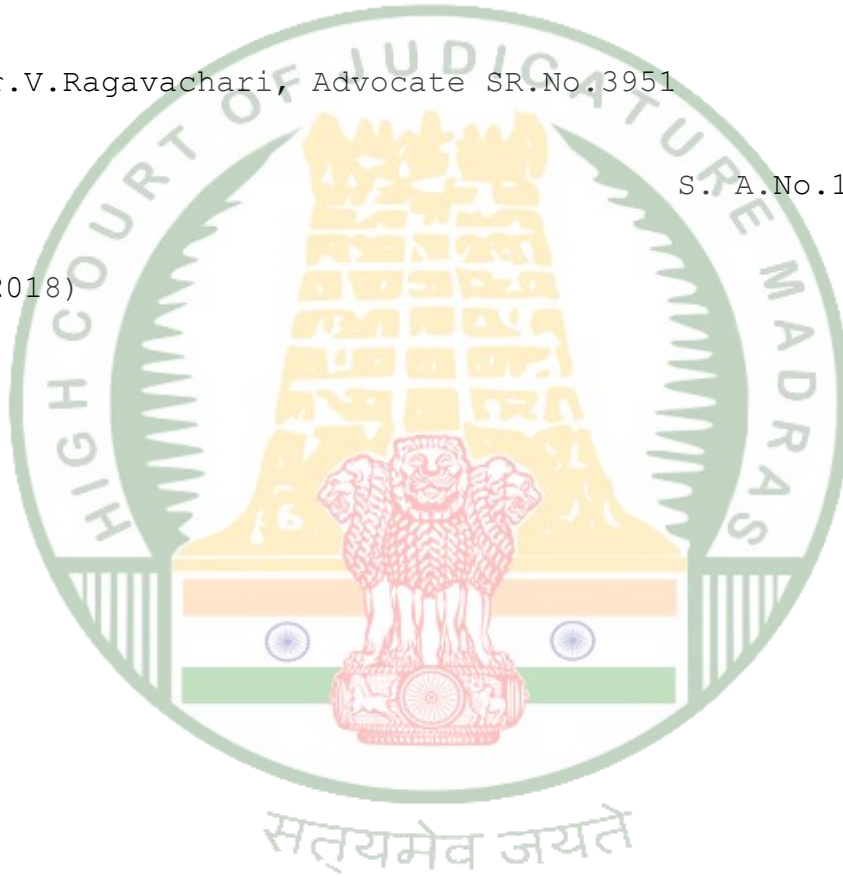
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The Section Officer,
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+1cc to Mr.V.Ragavachari, Advocate SR.No.3951

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