

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.12.2018

Coram

The Honourable Ms. Justice P.T.ASHA

**S.A.No.43 of 2016
in
CMP.No.1288 of 2016**

1. S.M.Subramaniam
2. M. Logasamy
3. M. Venkatachalam

...Appellants/ Appellants/
Plaintiffs

Versus

Palanisamy

...Respondent/Respondent/
Defendant

Prayer: This Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908, against the Judgment and Decree, dated 26.10.2015 made in A.S.No.3 of 2015 on the file of the Sub Court, Perundurai confirming the Judgment and Decree dated 22.12.2014 made in O.S.No.296 of 2011 on the file of the learned District Munsif Cum Judicial Magistrate, Perundurai.

For Appellants	:	Mr. R. Vinoth Raja for Mr.N.Manokaran
For Respondent	:	Mr. M. Guruprasad

J U D G M E N T

The plaintiffs are the appellants before this Court. The parties are arrayed in the same litigative status as in the Trial Court.

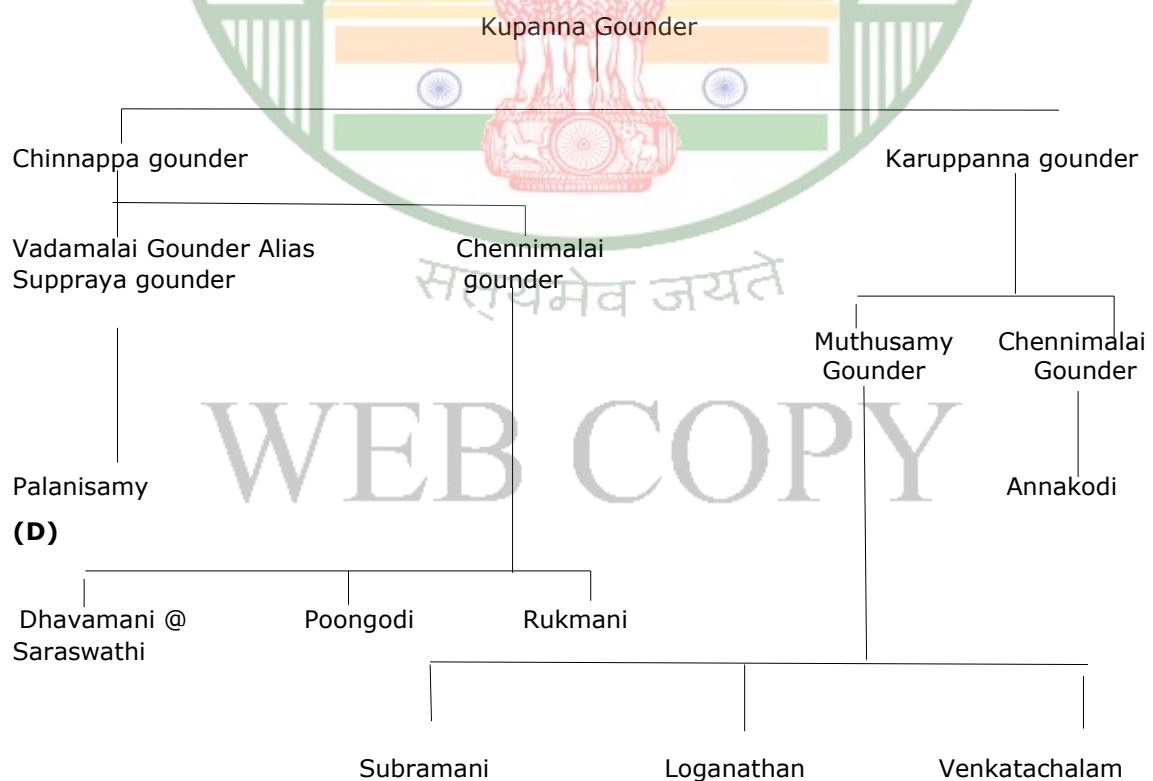
The Second Appeal emanates from a suit for a bare injunction filed by the plaintiffs in O.S.No.296 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai which was originally decreed by learned Judicial Magistrate and on challenge, it is partly decreed by the learned District Magistrate and it has been taken up on appeal before the Sub Court, Perundurai by the plaintiffs in A.S.3 of 2015, which ended in a dismissal.

2.The brief facts necessary for disposing of the above Second Appeal are as follows:-

[a] It is the case of the plaintiffs that on 18.09.1996 (Ex.A1), the plaintiffs had purchased the suit property from one Samiathal and Annakkodi. It is the case of the plaintiffs that the property was the ancestral property of the aforesaid persons and from the date of purchase the plaintiffs had been in possession and enjoyment of the same. (it is their case that the defendant also knew about the possession and enjoyment of the property by the plaintiffs). The suit property i.e., the property in respect of which injunction has been negated, is a land with a Well situated in RS.No.526/6,7 and 566/12 in Vadamugam Vellode Village, Perundurai Taluk and Erode District, and the defendant, tried to obstruct the plaintiffs from ploughing the said land on 31.09.2011 by bringing men along with him into the

property. Therefore fearing interference in their peaceful possession and enjoyment of the suit property, the plaintiffs have come forward with the above suit.

[b] The above suit was resisted by the defendant by denying the allegations raised by the plaintiffs in their plaint. The defendant would contend that originally the suit property and the adjacent lands which were comprised in RS.No.525/5,6,7,10,11,12 and 14 belonged to one Kuppanna Gounder of Chemmandampalayam, Vadamugam Vellode, Perundurai Taluk. He had two sons Chinnappa Gounder and Karuppanna Gounder. The defendant had given a genealogical tree which is here under:-



(P-1)

(P-2)

(P-3)

[c] The defendant would contend that his grandfathers Chinnappa gounder and Karuppanna Gounder had orally partitioned their ancestral properties and under the partition, Chinnappa Gounder was allotted RS.No.526/6,7,10 and 12 with ½ Well in RS.No.526/8 with oil engine. Karuppanna Gounder in turn was allotted the properties comprised in RS.No.526/5,8,11 and 14 with the remaining ½ share of the Well in R.S.No.526/8 together with the oil engine. The defendant who traced his title through his father, the elder son of Chinnappa Gounder, had purchased ¼ share of his paternal uncle Chennimalai gounder. The plaintiffs are the grand sons of Karuppanna gounder and are the sons of Muthusamy Gounder and they had purchased ¼ share from their Paternal Uncle (Chenniamalai Gounder) and by the reason of the aforesaid purchase, the plaintiffs were having ½ share in R.S.No.526/8 and the defendant is having ½ share. The defendant would contend that he has developed the land by spending huge sums of money and by putting up a PVC pipeline in the east-west panchayat road to the lands in the north from the Well in R.S.No.526/8. In the first week of November 2007, the plaintiffs requested permission to lay underground pipeline in R.S.No.526/8 to their land in R.S.No.526/5 which was refused by the defendant and

aggrieved by this refusal, the plaintiffs had tried to trespass into land of the defendant which was warded off by the defendant with the help of his neighbours. The Defendant would further extend that the plaintiffs are guilty of suppression since they had omitted to mention the east-west pipe line which reaches the North side of defendant's land and the present suit of the plaintiffs claiming an exclusive right, title and interest to the Well in R.S.No.526/8 is totally incorrect. The well, as already stated, belongs to both the plaintiffs as well the defendant and therefore, had a issue only with reference to the plaintiffs' claim to exclusive title to the suit Well situated in R.S.No.526/8.

[d] The parties had gone to trial and the plaintiffs had examined the 1st respondent and their vendor-Annakodi as PW1 and 2 respectively and marked as Exhibits A1 to A10. The defendant on the other hand, had examined himself as DW1 and one Rajathi @ Rajathiammal as DW2. The learned District Munsif-cum-Judicial Magistrate, Perundurai, had partly allowed the suit by granting an injunction with reference to the properties situated in R.S.Nos.526/8 and 11, with reference to 58 cents of land situation in R.S.Nos.526/8-11 and with reference to the Well in R.S.No.526/8, the Court below dismissed the suit.

[e] Aggrieved by disallowed portion of the relief, the plaintiffs had filed an appeal in A.S.No.3/2015 on the file of the Sub-Court, Perundurai. The learned Sub-Judge, after considering the evidence both documentary as well as oral, in particular, the evidence of PW2 Annakodi who is the vendor of the plaintiffs, had dismissed the appeal. Challenging this concurrent Judgments, the plaintiffs are before this court.

3.This Court has admitted the Second Appeal on the following substantial question of law:

"When the Courts below have accepted the title of the plaintiffs over the suit property in R.S.No.526/8 conveyed under Ex.A1 dated 18.09.1996, whether it is proper to exclude the right of enjoyment of the plaintiffs over the well therein?"

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4.This Court heard Mr. R. Vinoth Raja, learned counsel appearing for Mr.N. Manokaran, learned counsel for the appellants and Mr.M. Guruprasad, learned counsel for respondent.

5. Learned counsel for the appellant would contend that under Ex.A1, the plaintiffs had purchased the entire extent of land in R.S.No.526/8 including the Well, as is evident from a reading of the Schedule to the said sale deed dated 18.09.1996. He would further contend that they have have been in enjoyment of the said Well exclusively since their purchase. He would further argue that the defendant, therefore has no right to the suit Well and the Courts below have erred in dismissing the case with reference to the suit Well and therefore, the same deserves to be set aside.

6. Mr.M.Guruprasad, learned counsel appearing on behalf of the defendant would contend that the plaintiffs vendor had only 1/4th share in the Well and therefore, they could have sold only their 1/4th share and any sale over and above the said extent, is not valid. He would further argue that under Ex.B1 which is a Sale Deed a month prior to Ex.A1, the defendant had purchased the 1/4th share of his paternal uncle, Chennimalai Gounder. A reading of the schedule clearly indicates that out of 1/2 share which fell to the share of Chennimalai Gounder under an oral partition between him and his brother i.e., a 1/4th share in the Well was being sold to the defendant-Nephew. The learned counsel would further argue that a perusal of the Sale Deed would prove the fact that the two branches of the family are jointly

enjoying the suit Well and the plaintiffs cannot claim an exclusive right over the Well.

7. The Court heard the rival submissions and perused the papers.

8. The Appellate Court has clearly relied upon the evidence of PW2-Annakodi, vendor and the plaintiffs who has clearly stated that she was entitled only to 1/4th share and her paternal uncle had 1/4th share to which, the plaintiffs are entitled to. She has also deposed that she was not aware that she had sold the entire Well in R.S.No.526/8 to the plaintiffs. The fact that the plaintiffs had purchased a share in the Well from their vendor who is the daughter of the other son of Karuppanna Gounder, clearly proves that the plaintiffs are not entitled to the ownership of the well in question in its entirety. In addition to the above oral evidence, a perusal of the Sale Deed - Ex.B1 which is the sale effected by Chennimalai Gounder in favour of his Nephew would clearly indicate that the legal heirs of Kuppanna Gounder are jointly enjoying the suit Well in R.S.No.526/8. The sale in favour of the defendant coupled with the oral evidence of PW2-Annakodi, clearly shows that the plaintiffs did not have an exclusive right to the Suit Well. I find no infirmity in the Judgment and Decree of the Courts below.

9. In the result, the substantial question of law is answered against the appellants and the Second Appeal is dismissed. However there shall be no order as to costs. Consequently, connected Civil Miscellaneous petition is closed.

26.12.2018

Index : Yes/No

Internet: Yes/No

jrs

To

The Sub Court,
Perundurai



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P.T.ASHA, J.,

jrs



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