



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.679 of 2001

1. Karuppayammal
2. Marayammal

...Appellants

/Vs/

1. Thirumalai Gounder
2. Nallasamy Gounder
3. Karuppanna Gounder
4. K.Easwaran
5. P.A.Easwaran

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and Judgment dated 19.06.2000 in A.S.No.56 of 1997 on the file of Subordinate Court, Gobichettipalayam upholding the decree and judgment dated 31.03.1997 made in O.S.No.486 of 1996 on the file of the District Munsif Court, Gobichettipalayam.

For Appellants : M/s.T.Lavanya

For Respondents: M/s.A.Veerasamy for
M.Narayanasamy

JUDGMENT

The sole plaintiff Mr.Ponnappa Gounder, filed the suit in O.S.No.486/1996 before the District Munsif, Gobichettipalayam, against the respondents herein for a permanent injunction restraining them from interfering with his peaceful possession and enjoyment over the suit properties.

2. The case of the plaintiff is briefly as follows:-

The suit properties in Survey No.733 originally belonged to one Nadar family and the plaintiff's father Chinna Marappa Gounder purchased 3/8th share from the said family through two registered sale deeds dated 16.07.28 and 19.01.33. The third defendant's father Veerakutty Gounder purchased another 3/8th share while the fifth defendant's father Rakkayya Gounder purchased 1/4th share. About 50 years back there was an oral partition in the family and all the sharers were enjoying their respective properties separately.



3. A well and its surrounding area were left for common usage and this is indicated as 'B' Schedule property in the plaint. Since the defendants 3 and 4 sold their right in 'B' Schedule property to the first defendant through a sale deed dated 28.05.1984, they do not have any right over suit 'B' Schedule property. The legal heirs of Chinna Marappa Gounder, namely the plaintiff and the defendants 1 and 2 are in possession and enjoyment of the suit 'B' Schedule property. The plaintiff has also constructed a compound wall on the eastern side of his property leaving 3 feet wide pathway on the other side of the wall. According to him, the said pathway is within his property and he has been using the same for more than 25 years. While so, the defendants 3 and 4 started preventing the plaintiff from using the said pathway which is described as suit 'A' Schedule property. He has therefore prayed for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the suit properties.

4. The defendants 1 and 5 remained absent in the trial Court and they were set exparte. The fourth defendant filed a written statement and the same was adopted by the third defendant. In the written statement the defendants 3 and 4 had admitted the oral partition in the family. However, they have denied the contention of the plaintiff that the well and its surrounding area were left for common usage for convenient enjoyment of all the sharers. It is also their contention that a compound wall with 3 feet height was constructed on the eastern side of the properties of the plaintiff and the defendants and the distance between the well and the compound wall is 32 feet. According to them, the plaintiff does not have any right beyond the compound wall on the eastern side and that on 17.04.1990 this compound wall was demolished by the plaintiff and the sons of defendants 1 and 2 for which a criminal complaint was lodged with the Inspector of Police, Kavunthanpadi Police Station for the offences under Sections 447 and 427 of IPC.

5. It is their contention that the defendants 3 and 4 did not attempt to trespass upon the western side of the compound wall and that the contention of the plaintiff that he has been using the 3 feet wide pathway for maintaining the compound wall for more than 25 years is false. Therefore, they prayed for dismissal of the suit.

6. The learned District Munsif, Gobichettipalayam, partly decreed the suit granting permanent injunction restraining the defendants from interfering with plaintiff's peaceful possession over 'A' Schedule property. However, the suit was dismissed as regards the 'B' Schedule property.

7. Aggrieved over the same, the plaintiff along with the present appellants filed an appeal in A.S.No.56/1997 before the Sub-Court, Gobichettipalayam, and the defendants 3 and 4



8. Now, the Second Appeal is filed by the two wives of Ponnappa Gounder (the plaintiff before the trial Court). The defendants 3 and 4 did not file any cross appeal.

"1) Whether the sale deed with specific boundaries executed by a co-sharer in respect of an undivided share in the property, in the absence of any partition by metes and bounds is binding on the other co-sharers?

also having found that the possession of the "B" Schedule property was with the appellant herein?"

11. The measurements of 'B' Schedule property is indicated as 82' X 87' feet in the plaint. The plaintiff as PW1 has contended that the 'B' Schedule property measures 10 cents. Ex.A3 is the sale deed executed in favour of the plaintiff Ponnappa Gounder. While the area of well is indicated as 5 cents the surrounding area of well is also indicated as 5 cents. PW1, during the course of cross examination admitted that he did not measure 'B' Schedule property before his purchase.

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the well and its surrounding area. Therefore, both the Courts below are right in holding that since the exact measurements of well and its surrounding area are not indicated in the plaint Schedule, the plaintiff is not entitled for a permanent injunction as prayed for by him as far as 'B' Schedule property is concerned. As far as 'A' Schedule property is concerned there is no quarrel in the Second Appeal and both the Courts below have in fact analysed the entire evidence on record with regard to 'A' and 'B' Schedule properties and I do not see any reason to interfere with the findings recorded by both the Courts below.

13. Accordingly, the Second Appeal fails and is therefore dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vkr/dna

To

1. The Subordinate Court, Gobichettipalayam.
2. The District Munsif Court, Gobichettipalayam.

copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. M. Naraayanaswamy, Advocate SR.61894

S.A.No.679 of 2001

RJI (CO)
EU 30/10/2018)