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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD) No.472 of 2015

and

C.M.P. (MD) .No.2791 of 2018

and

M.P. (MD) No.1 of 2015

Rukamani Ammal

Sudalaimuthu (died) ... Plaintiffs/Appellants/ Appellants

(As per memo filed 1st appellant is the LR of the deceased appellant No.2 as per order dated 02.02.2011)

(Amended as per order in I.A.No.153 of 2011 allowed on 11.01.2012)

-Vs-

Lingan

Raju (died) ... Defendants/Respondents/Respondents

(Appeal against R2 had abated as per order dated 10.02.2012 on memo)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.39 of 2010, dated 27.11.2014 on the file of the learned Subordinate Judge, Srivilliputhur, by confirming the Judgement and Decree passed in O.S.No.924 of 2004, dated 05.02.2010 on the file of the learned Additional District Munsif, Srivilliputhur.

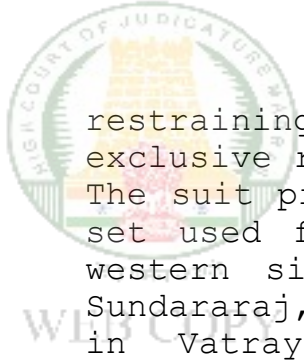
For Appellant	: Mr.S.Kadarkarai
For Respondent	: Mr.M.Jothibas

JUDGMENT

The plaintiffs in the suit in O.S.No.924 of 2004 on the file of the learned Additional District Munsif, Srivilliputhur are the appellants in this appeal. However, the first appellant is the mother of the second appellant and the wife of Late Sundararaj. Since the second appellant / second plaintiff died, this appeal is instituted by the first appellant alone.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The appellants filed the suit for permanent injunction



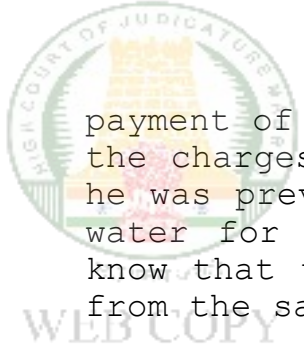
restraining the defendants from interfering with the plaintiffs' exclusive right over the suit property and to irrigate their lands. The suit property has been described as the electric motor and pump set used for drawing water from the common Well situated on the western side of the land, which was allotted to the elder son Sundararaj, out of the extent of 2 acre 78 cents in Survey No.412/1 in Vatraviruppu village along with the electricity service connection in Service Connection No.89.

3. The case of the appellants as set out in the plaint in O.S.No.924 of 2004 is as follows:

3.1. The suit property with its full extent of 2 acres 78 cents in Survey No.412/1 belonged to one Thottakara Nadar and after his death, the property was divided to his wife Gnanamani and his two sons namely, Sundararaj and Rajendran. There was a partition deed by which all the three legal heirs of the Thottakara Nadar divided the said property. As per the partition deed dated 11.06.1973, the property in Survey No.412/1 was divided into two shares. The western side 1 acre 41 cents was allotted to the elder son, Sundararaj and the remaining 1 acre and 37 cents on the eastern side was allotted to the younger son, Rajendran. The Well in Survey No.412/1 is situated in the property allotted to the share of Sundararaj. The Well including the installation found in the Well was given to the two sons of Thottakar Nadar in the partition.

3.2. The said Sundararaj, the husband of the first plaintiff in order to develop the property allotted to him as a coconut grove, obtained electricity service connection in his name, since his brother Rajendran refused to contribute for getting the electricity service connection. After getting electricity service connection for the common Well, the motor and pump set were purchased only by the husband of the first plaintiff at his cost and the shed for the motor pump set was also put up by him. Hence, the service connection was exclusively obtained in the name of the first plaintiff's husband in service connection No.1747, which was changed as Service Connection No.89 at present. At the same time, the brother of the first plaintiff's husband, Rajendran was drawing water from the common Well by using oil engine for irrigating his land. The first plaintiff's husband died about 18 years back and the plaintiffs are exclusively using the electricity service connection and motor pump sets for drawing water for irrigating the lands. Recently, the electricity service connection, which was standing in the name of the first plaintiff's husband has been changed in the name of the first plaintiff. The plaintiffs have also converted the above said land as coconut grove. Thereafter, the brother of the first plaintiff's husband, Rajendran, sold out his share and executed the sale deed in favour of one Subbu Nadar, who is none else than the sister's husband of the first plaintiff.

3.3. On account of the close relationship, the said Subbu Nadar was allowed to use the motor pump set belonged to the plaintiffs on



payment of rental charges. Since the said Subbu Nadar refused to pay the charges, which he had agreed at the time of deepening the Well, he was prevented from using the electric motor and pump set to draw water for irrigating his land. Thereafter, the plaintiffs came to know that the defendants/respondents herein have purchased the land from the said Subbu Nadar.

3.4. The defendants know very well that the said Subbu Nadar has no right in the electricity installation namely, motor pump set and the electricity service connection stands in the name of the plaintiffs. Since the defendants tried to use the motor pumpset as if they have right, which was never in existence, the plaintiffs are constrained to file the suit. The suit was contested by the first defendant. It is the specific case of the first defendant that the Well in question is the common Well belonged to the brothers, Sundararaj and Rajendran. Both the brothers jointly spent money for getting electricity service connection and for purchasing motor and pump set. Since Sundararaj was the elder brother, the electricity service connection was obtained in his name. The other averments in the plaint was specifically denied. It is also the case of the defendants that his vendor by name, Rajendran executed a mortgage deed on 08.10.1986 to one Shanmuga Thevar and in that mortgage deed, the half right of the said Rajendran in respect of the motor pump set and the electricity service connection was specifically admitted. Similarly, it is also stated by the first defendant that the said Subbu Nadar has purchased the half share in Survey No.412/1 along with the half right in the Well as well as the electric installation including the service connection from the said Rajendran by a sale deed, dated 19.02.1992. Thereafter, it is stated that the first defendant purchased the property from the said Subbu Nadar by a registered sale deed dated 20.01.2003.

3.5. The sum and substance of the case of the first defendant by referring to various documents is that the suit filed for permanent injunction is not maintainable as the defendants have equal right in the electric installation including the motor pump set as well as the service connection and that it is not the exclusive property of the plaintiffs. The trial court after framing necessary issues found that the electricity service connection and installation are not the exclusive property of Sundararaj, namely, the husband of the first plaintiff. Since the first plaintiff's husband Sundararaj himself admitted that he has only half right in the motor pump set and service connection in a mortgage deed executed by him on 07.10.1982, under Ex.B1, the trial Court came to the conclusion that both the parties are co-owners not only in respect of the Well but also in respect of the electric installation namely motor pump set and service connections obtained in the name of Sundararaj. Having regard to the specific findings, the trial Court ultimately dismissed the suit stating that the plaintiffs are not having exclusive right over the service connection as well as the motor pump set. Aggrieved by the judgment and decree of the trial Court dismissing the suit filed by the plaintiffs, the



plaintiffs preferred an appeal in A.S.No.39 of 2010 on the file of the learned Sub Judge, Srivilliputtur. The lower Appellate Court also dismissed the appeal confirming the findings of the trial Court. Aggrieved by the same, the plaintiffs are before this Court with the above second appeal.

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4. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials.

5. At the time of admission, this Court has framed the following substantial questions of law:

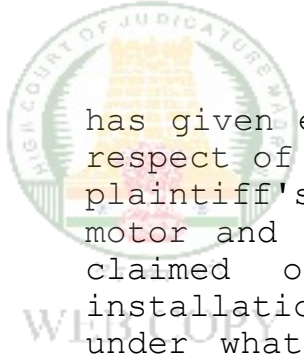
"1) When the plaintiff claim right only in respect of the service connection that was obtained by the plaintiff in her name in the common Well belong to the plaintiff and defendants are not the Courts below right in refusing the relief only on the ground that both plaintiff and defendant are the co-owner in respect of the Well?

2) Whether the Courts below are correct in dismissing the suit when the plaintiff/appellant had established her entitlement to the prayer for the grant of injunction by adducing proper evidence?

3) Is it not an error apparent in law by the Courts below in not appreciating and understanding the LIS between the parties while delivering the Judgments?"

6. The findings of the Courts below in this case appears on the basis of both oral and documentary evidence. The lower Appellate Court has relied upon the mortgage deed, Ex.B1 dated 07.10.1982. The schedule of the property found in the said document clearly indicate that the plaintiff, Soundararaj namely, the husband of the first plaintiff has clearly admitted that he has only half share in the land as well as the 3 HP electric motor and pump set along with the Well in Survey No.412/1. The plaintiff has miserably failed to explain why the plaintiff has claimed only half right in the suit property, particularly, the electric motor pump set and the service connection. Having regard to the nature of evidence that was considered by the lower Appellate Court, this Court do not find any question of law in favour of the appellants.

7. The appellants have filed the suit only for the relief of permanent injunction. Based on the pleadings as well as the evidence, the Courts below have concurrently found that the plaintiffs have not established their exclusive right over the electric installation and the service connection in the common Well. The suit is only for injunction and of course incidentally, this Court can go in to the rights of the plaintiffs. Though the plaintiffs claim exclusive ownership over the electrical installation, namely, the electric motor and pump set, no documents were produced to show that those items were purchased by using their own funds. The lower Appellate Court found that the first plaintiff



has given evidence even denying the right of the first defendant in respect of the common Well. From the mortgage deed, Ex.B1, the first plaintiff's husband, who is stated to have purchased the electric motor and pump set and obtained electricity service connection has claimed only a half right in the service connection and installation. In such circumstances, the plaintiff has to explain under what circumstances, the husband of the first plaintiff has admitted in the mortgage deed under Ex.B1. Merely on the basis that the electricity service connection stands in the name of the first plaintiff's husband, it cannot be presumed that the husband of the first plaintiff obtained it exclusively for himself. Especially, in this case, it is admitted that the first plaintiff's husband and the predecessors in the interest of the defendant by name, Rajendran are brothers.

8. The learned counsel for the appellant submitted that there was no service connection at the time when the partition was effected between the first plaintiff's husband and his brother Rajendran. He further submitted that the electricity service connection has been obtained in the name of the first plaintiff's husband exclusively for the use of the husband of the first plaintiff. In the absence of any explanations, for the recitals of Ex.B1, the contention of the learned counsel for the appellant cannot be sustained. There was several documents which were produced by the defendants namely, Ex.B2, B3, B4 and B5 to show that the defendant and his predecessors were using the property, specifically mentioning the half right as well as the service connection and the electrical installation namely, motor and pump set in the common Well.

9. Having regard to the concurrent findings of the Courts below which are supported by material documents, this Court is unable to interfere with the same and entertain this second appeal. The questions of law framed by this Court are answered against the appellant having regard to the facts narrated above. Hence, the second appeal is liable to be dismissed.

10. In the result, the second appeal is dismissed. No Costs. The judgment and decree of the lower Appellate Court, passed in A.S.No.39 of 2010, dated 27.11.2014 on the file of the learned Subordinate Judge, Srivilliputhur, by confirming the Judgement and Decree passed in O.S.No.924 of 2004, dated 05.02.2010 on the file of the learned Additional District Munsif, Srivilliputhur is affirmed. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



1. The Subordinate Judge,
Srivilliputhur.
2. The Additional District Munsif,
Srivilliputhur.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr.S.Kadarkarai, Advocate in SR.No.73452.
+1CC to M/s.G.M.Law Office, Advocate in SR.No.73354.

PJL
DS/RSK/SKN/SAR-2 :24.08.2018: 6P/7C

S.A. (MD) No.472 of 2015
17.07.2018