

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.670 of 2008
and M.P.No.1 of 2008

Komarasamy Gounder ... Appellant/ Appellant/Plaintiff

Vs.

1. Nallappa Gounder
2. Saravanan
3. Gopal ... Respondents/ Respondents/ defendants

PRAYER: The Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.11.2007 made in A.S.No.20 of 2007 on the file of the I Additional Subordinate Judge, Erode, confirming the judgment and decree dated 29.01.2007 made in O.S.No.333 of 2006 on the file of the Principal District Munsif, Erode.

For Appellant : Ms.V.Ponmani
for Mr.V.Rajesh

For Respondents : Mr.N.Manoharan

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J U D G M E N T

The present Second Appeal has been filed against the concurrent findings dismissing the suit filed for permanent injunction restraining the defendants from interfering with the possession of the plaintiff in using the common pathway and pipeline drawing water from his own land.

Brief facts leading to the instant Appeal are as follows:-

2. The plaintiff has purchased an extent of 1.51 acres of land under two registered sale deeds dated 09.11.1981 and 31.03.1983 along with full right in the well situated thereon. Adjacent to the above land, there is an ancestral property of the plaintiff which is shown as 'B' schedule suit property. In the above 'B' schedule property, one well is available. The plaintiff is entitled to 1/4 share in the common well in Old S.F.No.545 new S.F.No.237. The plaintiff

has laid the pipeline from the well and he purchased the property in Old S.No.555 new S.No.238 and he is drawing water from his individual well and letting out in the common well and using it to his property, which has been objected by the defendants. Hence, the suit has been filed.

3. The defendants denied the contention of the plaintiff and stated that the plaintiff has no right to draw water from the common pipeline and in fact, the plaintiff has a separate well and has connection with the common well and many co-owners are entitled to draw water from the common well. According to them, if the water is drawn by the plaintiff from the common well, the same will lead to serious consequences and affect the rights of other co-owners.

4. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A9 were marked and on the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D1 and D2 were marked.

5. The trial Court ultimately on appreciation of the entire evidence, has found that the plaintiff is not entitled to use the common well. The first appellate Court has also confirmed the findings of the trial Court. The appeal was heard at the admission stage. The learned counsel appearing for the appellant would submit that the appellant is drawing water once in six days from the common well, and further, he is entitled to draw water from his separate well and store the same in the common well and use the same through the pipeline laid underneath the common pathway. The trial Court and the first appellate Court have not considered these aspects. Hence, he prayed to allow this appeal.

6. The learned counsel appearing for the respondents would contend that the contention of the appellant that he is drawing water from the common well once in six days is false and there was no such arrangements. There are many co-owners and all the co-owners are equally entitled to draw the water from the common well. When the water is drawn from the separate well and stored the same in the common well, the rights of other owners to use their rest of shares is seriously affected. He further contended that there is no evidence that on rotation basis, water is drawn from the common well.

7. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

8. The main contention of the plaintiff is that he is entitled to draw water from the common well situated in S.No.237, whereas he has purchased 1.51 acres in S.No.238

adjacent to the area with the well. According to him, there is sufficient water in the above well, he has obtained an electricity connection and installed 5 HP motors and is drawing water from the well and storing the same in the common well and using the same through pipeline underneath.

9. It is to be noted that admittedly S.No.237 belongs to various co-owners, wherein the appellant is entitled to 1/4 share in the well. Whether there is any arrangement between the co-owners to draw water from the well on rotation basis, absolutely, there is no evidence on record. In the absence of evidence to prove that on rotation basis, the appellant has been drawing water once in six days, he cannot contend that he is entitled to draw water from his own well and store the same in the common well and use the same through pipeline. When there was no arrangement to draw water on rotation agreed between the parties, one cannot use the common well as absolute owner. In the absence of arrangements between the plaintiff and defendants as far as drawing of water from the common well there cannot be a blanket injunction. Such a situation in fact, will lead to serious consequences and affect the rights of other co-owners also.

Therefore, I do not find any substantial question of law and accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge, Erode.

2.The Principal District Munsif, Erode.

+1cc to Mr.N.Manoharan , Advocate SR.No. 20654

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A.SK(02/08/2019)