

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 164 of 2018
and
C.M.P.No. 4336 of 2018

Narasiman ..Appellant/2nd Defendant

Vs.

1.K.Veeraraghavan ... 1st Respondent/Plaintiff

2.Ekambaram ..Respondents/1st Defendant

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree in A.S.No. 21 of 2015 dated 16.08.2017 on the file of the Subordinate Judge, Arakkonam, confirming the decree and judgment in O.S.No. 204 of 2009 dated 13.10.2014 on the file of the District Munsif Court, Sholinghur.

For Appellant : Mr. R.Shivakumar for
M/s.K.M.Vijayan Associates

For Respondents : Mr. C.Sathish for
Mr. M.K.Hidayatullah

J U D G M E N T

The second defendant in O.S.No. 204 of 2009 has come forward with this appeal aggrieved by the decree for declaration and mandatory injunction granted in the said suit, which was confirmed on appeal in A.S.No. 21 of 2015.

2. The said suit was instituted by the first respondent as plaintiff claiming that he has got 1/5th undivided share in the well situated in Survey No. 528/1 with a right to irrigate his lands in Survey No.517/2-A and 518 through common channel that passes through the lands of the first defendant in Survey No.527/2.

3. According to the plaintiff, the entire extent of the property belonged to one M.S.Venu Naidu and his 4 brothers. Each one of them had 1/5th share. On 12.07.1962, there was a

partition in the family, in which the well was kept in common. Somanathan @ Somu, one of the brothers of M.S.Venu Naidu had sold the property allotted to him along with 1/5th share in the Well and 5 H.P. Electric Motor Pumpset under a registered sale deed dated 15.09.1976 to one Kothandam and the said Kothandam had sold the property purchased by him under the sale deed dated 15.09.1976 to one A.Asokan under a registered sale deed dated 26.12.1997. The said A.Asokan had also purchased the land in Item No.2 of the plaint schedule property from Meenakshi, sister of Kothandam under a registered sale deed dated 27.10.1997. It is the claim of the plaintiff that he had purchased the property from Asokan under the sale deed dated 29.10.1999, claiming that the second defendant has obliterated the channel, the plaintiff had come forward with the suit.

4. The said suit was resisted by the defendants. The first defendant filed a written statement contending that he has not concerned about the claim of the plaintiff that the second defendant had obliterated the channel. The first defendant would however contend that there was no channel and the sale deed in favour of the first defendant does not show the existence of the channel.

5. The second defendant resisted the suit contending that there was no channel and the plaintiff was not entitled to any right of irrigation through the said channel. The right of the plaintiff in the well was also denied.

6. A Commissioner was appointed pending the suit and he has also filed his plan and report, which have been marked as Exs.C1 and C2. The Courts below upon a consideration of the evidence on record and the existing physical features concluded that the plaintiff being entitled to 1/5th share in the well would also get a right to irrigate his lands purchased by him under the sale deed dated 29.10.1999. The fact that there was a continuation of channel on the Southern portion of Survey No.527/2 was taken note by the Courts below to come to the conclusion that there must have been a channel in A,B,C,D portion and that the same has been obliterated by the second defendant.

7. The Courts below also concluded the very fact that the plaintiff is entitled to 1/5th share in the well would show that he has to be provided with same way to irrigate his land purchased by him from the common undivided owner. The fact that Somu @ Somanathan was entitled to 1/5th share in the well was not denied by the defendants. The defendants apparently wanted to take advantage of the absence of recitals regarding the right of the irrigation in Exs.A1 to A3. But Ex.A4, sale deed executed by Asokan in favour of the plaintiff contains a recital

regarding the right of the plaintiff to irrigate his lands through the channel A,B,C,D. The first defendant has purchased the property under Ex.B1 dated 22.04.2004. A perusal of Ex.B1 would show that the first defendant has got 14/100 shares in the common well. A combined effect of the recitals in Exs. B1 and A4 would show that the well belonged to 5 common owners. When they divided the property they had kept the well in common and they have been irrigating their lands allotted to them in the partition with the water from the well. If the common owners entitled to right of irrigation from the well, the subsequent purchasers would also obtain the same right in the property, which was purchased by them. After all right on irrigation is in respect of land and it cannot be alienated from the land.

8. Both the Courts below, as of fact, found that there was a channel in A,B,C,D portion and the same was obliterated by the second defendant. The fact that there was a continuation of the channel towards South of C,D land was also taken note of the Courts below to conclude that there should have been a channel. The said factual conclusion arrived at by the Trial Court and as well as the Appellate Court on the appreciation of the evidence appears to be just and proper. I do not think this Court can interfere with the factual conclusion sitting in a second appeal. I do not find any question of law and substantial question of law to enable me to interfere with the findings of the Courts below. Hence, this second appeal is dismissed without being admitted. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

Kkn

TO

- 1.The Subordinate Judge,Arakkonam.
- 2.District Munsif Court, Sholinghur.

+1cc to Mr.M.K.Hidayatullah, Advocate, S.R.No. 77172
+1cc to Mr.K.M.Vijayan Associates, Advocate, S.R.No. 77968

S.A.No. 164 of 2018
in
C.M.P.No. 4336 of 2018

RK(CO)
GN(06/01/2020)