

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2020

Date of Verdict : 27.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 1361 of 1997

- 1.Vediraj (Died)
- 2.Sarada
- 3.Senguttuvan
- 4.Sekar
- 5.Pazhani
- 6.Sudha
- 7.Ilangovan
- 8.Anbazzhagan

(Appellants 2 to 8 are brought on record as legal heirs of the deceased sole appellant vide order of Court dated 11.02.2011 made in C.M.P.No.1490/2010 to 1492/2010)

..Appellants/ Defendants

Vs.

- 1.Mani
- 2.Bagiammal

...Respondents/Plaintiff

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 31.07.1997 made in A.S.No.25 of 1996 on the file of the Sub-Ordinate Court, Tiruvannamalai, reversing the judgment and decree dated 21.08.1996 made in O.S.No.30 of 1986 on the file of the Additional District Munsif, Tiruvannamalai.

For Appellants : Mr. S.T.Bharath Gowthaman for
Mr.T.R.Rajaraman

For Respondents : Notice served
None appeared.

J U D G M E N T

This appeal has been filed as against the judgment and decree dated 31.07.1997 passed in A.S.No.25 of 1996 on the file of the Sub-Court, Tiruvannamalai, reversing the judgment and decree dated 21.08.1996 passed in O.S.No.30 of 1996 on the file of the Additional District Munsif Court, Tiruvannamalai.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The case of the plaintiffs in brief is as follows:-

3.1. The suit is filed for declaration and injunction. The case of the plaintiffs in brief is that the suit property along with other property originally belonged to one Chinnasamy Gounder. On 09.08.1932, he mortgaged suit property and other properties with one Aali Gounder for the borrowal of Rs.250. Again, the same property was mortgaged with one Muthusamy Gounder on 31.01.1935 and settled the loan borrowed from the said Aali Gounder. The first plaintiff and one Vedi Gounder are the sons of the Chinnasamy Gounder. The said Chinnasamy Gounder died 35 years ago and the first plaintiff and one Vedi Gounder alone were in possession and enjoyment of those property. Both have partitioned the suit property along with other properties by oral partition. The second plaintiff is the son of the first plaintiff and as such both are entitled to derive entire right and title over the property. In the suit Well, the defendant has 3/4th share. According to their right and enjoyment, the joint Patta was issued in the name of the second plaintiff and the defendant. The Old Survey number of the suit property is 469/8 and the Re-survey number is 469/8B. From the said Well, the plaintiffs are drawing water to irrigate their other property comprised in Survey No.470/5 to the extent of 60 cents. In and around the suit Well, the plaintiffs have 1/4th share in which they are also enjoying the same by grassing their cattle. In these circumstances, the defendant disturbed their possession and enjoyment and as such they also caused legal notice to the defendant. Further, the defendant also cancelled the joint Patta issued in favour of the second plaintiff and the defendant and tried to take other property in his favour. Pending the suit, the first plaintiff died and as such, the third plaintiff was impleaded as legal heir of the first plaintiff. Hence, they filed a suit for declaration and injunction.

4. Resisting the same, the defendant claimed that there was no partition between the first plaintiff and his brother. The plaintiffs have absolutely no right or title over the suit property and they have no right in the suit Well comprised in Survey No.469/8. The defendant, on 06.01.1958, purchased the suit property from one Chinna Kulandhai Gounder, son of Chinnavedi Gounder and Pachaiammal, wife of Chinnavedi Gounder for a valid sale consideration and the property comprised in 467/12.0.12, 468/8.0.36 and 469/6.0.38 and also 1/4th share in the Well situated in Survey No.587/2.0.23. All the properties originally belonged to one Chinnavedi Gounder. After his demise, his wife and his son derived title over the property. In fact, the said Chinna Kulanthai Gounder pledged his property

by mortgage deed dated 31.12.1957 in which also there was no mentioning about the Well situated in Survey No.469/8. After the sale, the defendant dug out a new Well in Survey No.469/8 as such in the said Well, the plaintiffs have absolutely no right or easement from the said Well. Further contended that no joint Patta was issued in favour of the plaintiffs as well as the defendant. In fact, the said joint Patta was challenged by the defendant before the revenue officials and by an order dated 02.11.1985, the name of the second plaintiff was removed and as such they have no right over the suit property. Thereafter, the defendant installed a 5 Horse Power motor pumpset and drawing water from the Well to irrigate their property.

5. On the side of the plaintiffs, they examined P.W.1 and they were marked as Exs.B1 to B5. Based on the materials available on record, both oral and documentary evidence adduced by the respective parties and the submissions made by the learned counsel, the Trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiffs filed an appeal suit in A.S.No.25 of 1996 and the first Appellate Court allowed the appeal and decreed the suit as prayed for in favour of the plaintiff. Aggrieved by the same, the defendant filed this appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:-

- "i) In the absence of any evidence to prove that the plaintiff has got right to the suit property has not the sub-ordinate judge erred in decreeing the suit?
- ii) After he found possession in favour of the defendant has not the sub-ordinate judge erred in granting relief to the plaintiff?"

7. Heard Mr. S.T.Bharath Gowthaman for Mr.T.R.Rajaraman, learned counsel appearing for the appellants. Though notice served to the respondents, no one appeared on behalf of the respondents by person or through counsel.

8. The learned counsel appearing for the appellants / defendant submitted that the first Appellate Court failed to see that though the plaintiffs marked Ex.A1 and A2 of the year 1932 and 1937 in the name of his grand father, there was no evidence to show that there was partition between his father and his paternal uncle allotting to the plaintiff's father. The plaintiff also failed to prove their possession and enjoyment of the suit Well by any piece of evidence before the Trial Court. By the Ex.B2 and B3 of the year 1950 and 1958 which assigns the rights in Survey No.469/8 absolutely in favour of the defendant without any reservation of any right or any easement over the

suit Well. Therefore, the first Appellate Court erroneously reversing the well considered and detailed judgment and decree passed by the Trial Court and decreed the suit in favour of the plaintiff.

9. According to the plaintiffs, the suit schedule property along with other properties originally belonged to one Chinnasamy gounder. The suit property was mortgaged with one Aali Gounder for a sum of Rs.250 on 09.08.1932. Thereafter, to settle the said mortgaged, again on 31.01.1935, mortgaged the suit property with one Muthusamy Gounder. Thereafter, the property devolved to his legal heirs Chinnavedi Gounder and one Chinna Kulanthai Gounder and they partitioned the suit property along with other properties by oral partition. Therefore, the first plaintiff and the second plaintiff are alone absolute owner of the suit property and other properties. The second plaintiff was examined as P.W.1 and he deposed that through the mortgage deed of the year 1932 and 1935, mentioned about their 1/4th right over the suit Well situated in 469/8 and joint Patta was issued in their favour in Patta No.654 and in fact they were drawing water from the suit Well for irrigation purpose to the land comprised in Survey No.470/5 admeasuring 60 cents, but in his cross-examination he do not know about the mortgage deed which was executed by his grand father and in the joint Patta, his father name only appeared and his grand father name not appeared. Further, he deposed that after 1958 namely, after the purchase by the defendant, the defendant only is paying all revenue dues and he did not take any steps to implead his name in the old Patta. Patta was marked as Ex.A10 in which the survey number corrected as 8B instead of 5B issued in favour of the second plaintiff. The relevant portion of his deposition as follows:-

“எண். 469/5பி என்பது 8பி என்று திருத்தப்பட்டுள்ளது என்றால் அலுவலகத்தில் திருத்தியிருப்பார்கள் என்றும், 460/8பி அல்ல என்றும் 469/5பி தான் வா.சா.10ல் உள்ளது என ஒத்துக் கொண்டுள்ளார். சர்வே எண். 469/8பில் தான் கிணறு உள்ளதாகவும், 469/8பி கூட்டு பட்டா ரத்து செய்யப்பட்டது என்றால் சரி.””

10. He categorically admitted the case of the defendant and on perusal of the Ex.A1 and A2, the mortgage deed mentioned about the suit Well in which 1/4th share is also mentioned. Whereas, it is seen from the Ex.A10, the joint Patta they mentioned the Survey number as 469/5B. It was corrected by pen as 469/8B and it was also categorically admitted by the P.W.1. Further, the said joint Patta also subsequently cancelled and the name of the plaintiff's father removed from the joint Patta. After purchase of the suit property by the defendant in the year 1958, the defendant obtained an electricity connection for the Well comprised in Survey No.467/8 and he is drawing water for

irrigation purpose. In fact, to prove his possession, the defendant marked all the revenue tax receipts. On perusal of the above evidence of P.W.1, he is claiming right over the suit Well only on the basis of Exs.A1 and A2, the mortgage documents of the year 1932 and 1935 in both the documents in Survey No.469/8. There was a Well and in which 1/4th of irrigation right to prove the same Ex.A3 to A5 were marked for the Patta issued in favour of the second plaintiff in Patta No.654. The said Patta, the survey number also overwritten and also the Ex.A10, the Survey No.469/5B was corrected as 8B and the Patta number mentioned as 382 issued in the name of the first plaintiff. Further, the said joint Patta was challenged before the concerned Tahsildhar and it was cancelled by the proceedings of the Tahsildhar, which was marked as Ex.P1 dated 02.11.1985.

11. The plaintiff also categorically admitted in his deposition that the defendant, 20 or 25 years before dug up a well and had obtained electricity connection for which he had no objection and also he did not take any steps to cancel the electricity connection issued in favour of the defendant. At the same time, the plaintiff also failed to prove that the Well is situated in the land acted by the defendant and he also did not produce any piece of evidence to produce their title over the suit property. Even assuming that 1/4th share of the suit Well mentioned in the mortgage document of the 1932 and 1935 namely, Ex.A1 and A2, subsequently, it was not reflected in the deed executed in the year 1957 and 1958. It is also pertinent to mention here that the suit of the year 1986. Those days, normally, the depth of the Well not more than 30 feet, since the water was drawing from the Well by instrument which is used by bull(Vj;jk;) and due to natural calamity automatically it was closed. Therefore, the defendant dug up a new well and fixed pumpset to draw water from the Well. Further, the defendant also proved by producing Ex.B4 joint Patta No.654, his title over the suit property and he also proved his possession and enjoyment of the suit property. Therefore, the Trial Court rightly dismissed the suit filed by the plaintiff.

12. Whereas, the first Appellate Court without any proof of evidence and on the basis of the oral evidence of the P.W.1, that too without considering the documents produced by the defendants decreed the suit in favour of the plaintiff. It is nothing but, against the material evidence and the findings of the first Appellate Court are perverse and it is liable to be interfered with. Accordingly, the questions of law framed by this Court are answered in favour of the defendants and as against the plaintiffs.

13. In fine, this second appeal is allowed and the judgment and decree passed in A.S.No.25 of 1996 on the file of the Sub-Court, Tiruvannamalai are set aside and restored the judgment and decree passed in O.S.No.30 of 1996 on the file of the Additional District Munsif Court, Tiruvannamalai. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkn
To:-

1.The Judge,
Subordinate Court, Tiruvannamalai

2.The Additional District Munsif, Tiruvannamalai.

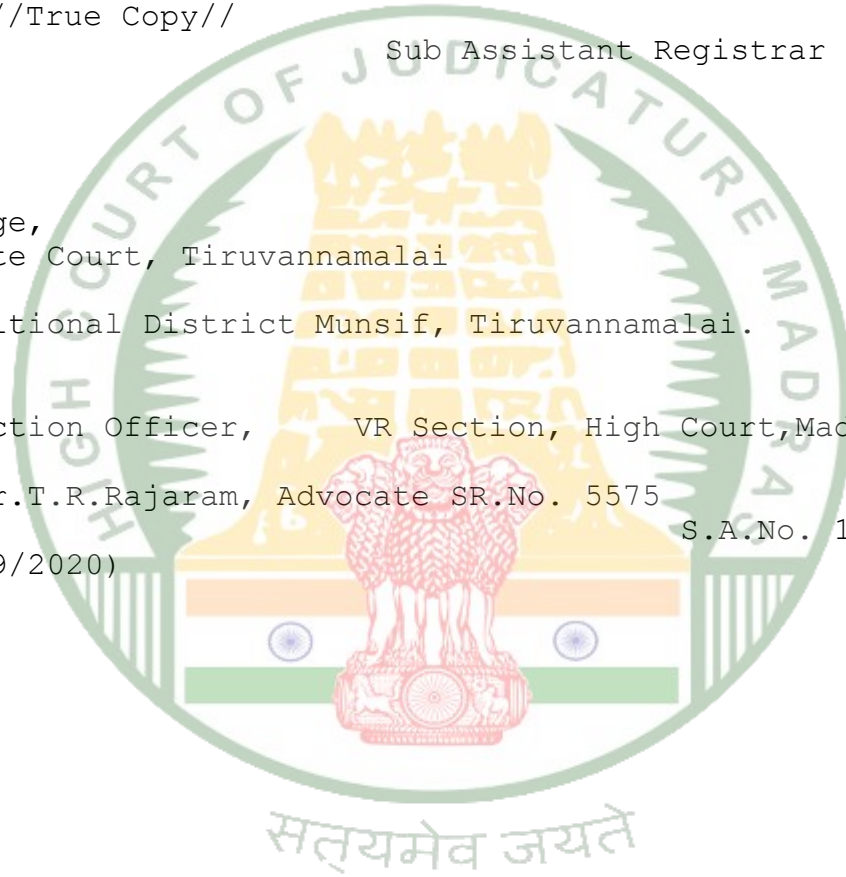
Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.R.Rajaram, Advocate SR.No. 5575

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A.SK(22/09/2020)



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