

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 03.07.2019]

[JUDGMENT PRONOUNCED ON : 27.01.2020]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.1752 and 1753 of 2001

1. Nagarathinam
2. Dandapani

...Appellants in both S.As/Appellants/
Defendants

... Vs ...

P.Duraisamy Gounder ... Respondent in both S.As/Respondent/
Plaintiff

Prayer in both S.As.: Appeals are filed under Section 100 of the Civil Procedure Code against the judgment dated 24.07.2000 made in A.S.Nos.95 and 87 of 1998 respectively on the file of the Subordinate Judge, Udumalpet, confirming the judgment and decree dated 28.10.1998 made in O.S.No.390 of 1995 on the file of the District Munsif, Pollachi.

In both S.As.
For Appellants :Mr.T.R.Rajaraman
For Respondent :Mr.S.Sriram
for Mr.K.Govi Ganesan
- - - - -

COMMON JUDGMENT

The defendants are the appellants herein.

2 (a). The respondent herein has filed a suit in O.S.No.390 of 1995 on the file of the District Munsif Court, Pollachi, against the appellants herein/defendants, seeking for the relief of injunction restraining the appellants/defendants from interfering with his peaceful possession and enjoyment of the suit property and also for injunction restraining the appellants/defendants from preventing the respondent/plaintiff from taking water from ABCD pipeline which is situated in the suit property.

2 (b). Under the Sale Agreement-Ex.A.2 dated 18.07.1995, the sons and daughters of one Ramaseela Muthiah Boobathy viz., 1) Chinnadurai, 2) Sivakumar, 3) Aruchamy, 4) Velumani and 5) Mallika have executed a Consent Deed consenting, acknowledging and admitting the execution of the Sale Deed in favour of the plaintiff/Duraisamy Gounder (under Ex.A.1 dated 02.04.1992) an extent of 10 cents in the Survey No.290/2 with specified boundaries and also right to take water from the land through the remaining extent of their land and thereafter to the brother of the vendor's land thereby, the Sale Deed in favour of the plaintiff/Duraisamy Gounder originally executed by the said Ramaseela Muthiah Boobathy subsequently acknowledged and admitted by execution of the Sale Deed, the entire 10 cents of land with specified boundaries are purchased by the plaintiff.

2 (c). It is further stated in the plaint that the plaintiff has dug a well in the property purchased by him and he has also installed an oil engine and was irrigating his lands through the said well. The plaintiff has purchased 1/4th share in 90 cents from Sivakumar, who is one of the son of Ramaseela Muthiah Boobathy and he is in enjoyment of the property.

2 (d). The first defendant, who has purchased the remaining land from the said Ramaseela Muthiah Boobathy, is the adjacent owner of the suit property and she claimed that she has purchased the entire extent of 90 cents from the said Ramaseela Muthiah Boobathy and interfered with the plaintiff's peaceful possession and enjoyment of the suit property. Therefore, the plaintiff has preferred the aforesaid suit for injunction.

3. The appellants herein/defendants have resisted the said relief of injunction in favour of the respondent herein/plaintiff by filing written statement contending that the 1/4 share of Sivakumar purchased by the respondent herein/plaintiff is not valid, as the defendants have already entered into an agreement with the Kartha of the family namely, Ramaseela Muthiah Boobathy, even in the year 1993 itself and purchased the entire 90 cents of land on 25.04.1994 and they are in absolute possession and enjoyment of the suit property. The plaintiff, who purchased 10 cents earlier, has not purchased the property by metes and bounds and he has purchased the same without any specific boundary. In the written statement, the defendants have further contended that the well was not dug by the plaintiff alone and the defendants have also contributed for digging the well and they are also entitled to take water from the well. The plaintiff and defendants are being co-owners, injunction cannot be granted to one co-owner and hence, prayed

for dismissal of the said suit.

4. The learned trial Judge, after considering the evidence both oral and documentary, came to the conclusion that the plaintiff has not purchased the property with specific boundaries and he has purchased only a common 10 cents in Survey No.290/2 and therefore, he cannot claim injunction against the defendants. However, the learned trial Judge decreed suit with respect to the plaintiff's right of taking water through the pipeline ABCD to his other properties.

5. Thus, the suit in O.S.No.390 of 1995 filed before the District Munsif Court, Pollachi, was partly allowed and an order of injunction restraining the appellants herein/defendants from interfering with the plaintiff's peaceful possession and enjoyment of the well situated in 10 cents of the suit property was not granted. Further, the appellants herein/defendants were also restrained from preventing the respondent herein/plaintiff from taking water through the ABCD pipeline under the lands of the appellants/defendants. The suit was dismissed in other respects.

6. Aggrieved by the said order of injunction passed against them, the defendants/the appellants herein have preferred an appeal in A.S.No.95 of 1998 before the Sub Court, Udumalpet. The plaintiff also has preferred an appeal in A.S.No.87 of 1998 against the dismissal of the suit with reference to the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the same.

7. Both the appeals in A.S.Nos.95 and 87 of 1998 were tried together and the appeal preferred by the defendants in A.S.No.95 of 1998 was dismissed and the appeal preferred by the plaintiff in A.S.No.87 of 1998 was allowed. While allowing the appeal preferred by the plaintiff, the learned Subordinate Judge, Udumalpet, has held that the plaintiff was enjoying the suit property with specific boundaries and the same was found by the Advocate Commissioner also. Aggrieved against the judgment and decree granted in A.S.Nos.95 and 87 of 1998, the defeated defendants/appellants herein have preferred the above two second appeals before this Court.

8. Both the second appeals were admitted by this Court on 10.12.2001 by framing the following substantial questions of law:-

"1. Is the learned Subordinate Judge right in decreeing the suit for injunction against the defendants when the plaintiff has purchased the 10 cents out of 1 acre (suit property) only in common without any specific boundaries and measurement?

2. Is the learned Subordinate Judge right in granting a decree for injunction when the defendants are admittedly co-owners?

3. Is the learned Subordinate Judge right in granting a decree for injunction when the plaintiff failed to prove that he is in absolute possession of the suit property?"

9. Learned counsel for the appellants/defendants made submissions in support of the substantial questions of law and the learned counsel appearing for the respondent/plaintiff made submissions in support of the judgment of the Lower Appellate Court.

10. Before the trial Court, the plaintiff examined himself as P.W.1 and one Thirumalaisamy was examined as P.W.2 while the first defendant examined herself as D.W.1 and one Selvaraj was examined as D.W.2. On behalf of the plaintiff, documents Exs.A.1 to A.10 were marked and on behalf of the defendants, documents Exs.B.1 to B.8 were marked and Advocate Commissioner's Reports and Sketches were marked as Exs.C.1 to C.4.

11. On perusal of the evidence of P.W.1 coupled with the documentary evidence of Ex.A.1 and Ex.A.2 and the description of the property and the recital therein goes to show that the Sale Deed not only gives the plaintiff an absolute right with regard to 10 cents of land in S.F.No.290/2 but also gives him a right to lay a pipeline across the remaining extent of 90 cents in the said Survey Number so as to take water from the well which was proposed to be taken up by the plaintiff and to irrigate his own land which is located on the North Western direction of the suit property. Furthermore, from the schedule of the property under Exs.A.1 and A.2, which goes to show that an extent of 10 cents of land was purchased by the plaintiff Duraisamy Gounder, he surrounded by the lands of Ramaseela Muthiah Boobathy on the West, North and South and in view of the recitals referred thereto, rights are conferred to the plaintiff under Ex.A.1-Sale Deed and he can lay the pipeline in the land of his vendor immediately on the western side and thereafter, he has to take water through the pipeline in the lands of vendor's brother

Lakshmanaseela Muthiah Boobathy. The said recitals under Ex.A.1 has been duly admitted, acknowledged and consented by all the sons and daughters of the said Ramaseela Muthiah Boobathy under Ex.A.2.

12. It is to be stated that on perusal of Ex.A.4-Sale Deed in respect of 90 cents of land from the sons and daughters along with Ramaseela Muthiah Boobathy [Except Sivakumar], this suit property was shown as a boundary to the said schedule of the property also assumes significance and lends support to the case of the plaintiff that the 10 cents of land purchased with boundaries under Ex.A.1 has been excluded from the purview of Ex.A.3-Sale Deed in favour of the first defendant.

13. It is relevant to point out that in Ex.A.3, dated 17.02.1993, the right of the plaintiff in respect of the suit property has been conceded. On going through the description of the property, the portion purchased by the first defendant has been clearly mentioned whereby the lands owned by the plaintiff was excluded. In other words, the suit property, which was purchased by the plaintiff, stands excluded from the description of the property under Ex.A.3 and in fact the suit property viz., the schedule under Ex.A.1 is shown as a boundary to Ex.A.3 property. Even under the Sale Deed in favour of the first defendant, the right of the plaintiff to the suit property has been conceded. Therefore, it is not open to the first defendant/first appellant to dispute the absolute right of the plaintiff in respect of the suit property. Since the vendor of the defendants alone has conferred right to lay the pipeline in the extent viz., A-B in the plaint has been conveyed under Ex.A.1 which was accepted and admitted by the other sons and daughters under Ex.A.2 and thus, the subsequent sale effected by the father, sons and daughters excluding Sivakumar, the first defendant is bound by the rights conferred upon the plaintiff by the very same predecessor-in-title from whom the first defendant has derived his right and therefore, the similar finding arrived at by the Lower Appellate Court is well considered and well merited.

14. Furthermore, on perusal of Exs.C.1, C.2, C.3 and C.4, it is seen that the measurement and the properties even duly demarked as per Exs.A.1 and A.2, Sale Deed in favour of the plaintiff also lends support to the case of the plaintiff and thus, the finding rendered by the Lower Appellate Court that pursuant to Exs.A.1 and A.2, the plaintiff has acquired the property with specified boundaries to an extent of 10 cents and the well was dugged by the plaintiff and all the vendors of the defendants have conferred right upon the plaintiff to take water

through the A-B pipeline in the plaint even before the sale in favour of the defendants and hence, the same is binding upon the defendants.

15. In this view of the matter, all the substantial questions of law are answered in negation against the appellants/defendants. The order of the Lower Appellate Court is well considered and well merited which do not warrant any interference by this Court. Further, the agreement between the parties will not confer any right over the suit property and hence, this Court is of the considered view that the Second Appeals are devoid of merits and the same are liable to be dismissed.

16. In the result,

[i] Both the Second Appeals are dismissed and the common judgment and decree dated 24.07.2000 passed by the learned Subordinate Judge, Udumalpet, in A.S.Nos.95 and 87 of 1998 respectively, confirming the judgment and decree dated 28.10.1998 passed by the learned District Munsif, Pollachi, in O.S.No.390 of 1995, are confirmed.

[ii] Consequently, the suit in O.S.No.390 of 1995 shall stand decreed.

[iii] However, there shall be no order as to costs.

-s/d-
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Sub-Assistant Registrar

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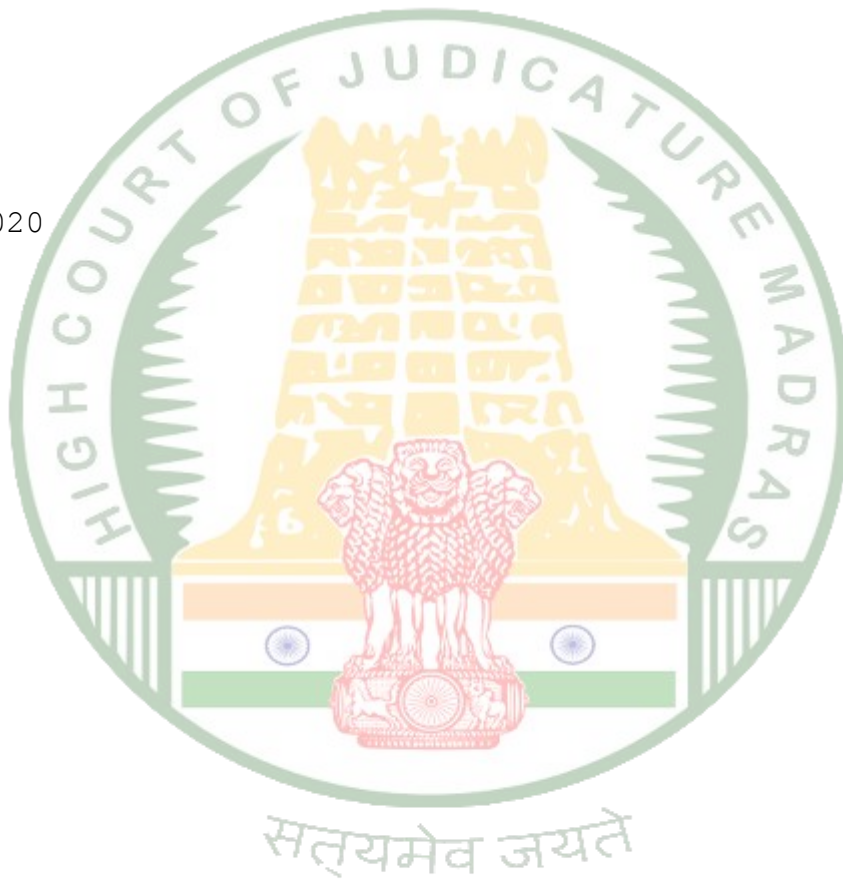
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2. The District Munsif,
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