

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2020

Date of Verdict : .01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 415 of 1999

1.A.Ayannan (Died)
2.Pachiammal
3.Muthusamy
4.Periyasamy
5.A.Natesan
6.Subramani

(Appellants 4 to 6 brought on record as legal heirs of the deceased 1st appellant viz., Iyyannan vide order of Court dated 06.08.2019 made in C.M.P.No. 11888/2018 to 11891/2018 in S.A.No.415/1999) ...Appellants

Vs.

1.K.V.Duraisamy
2.K.V.Chinnusamy
3.Parvathy
4.Mani
5.D.Periyasamy

(R3 to R5 brought on record as legal heirs of the deceased 1st respondent viz., K.V.Duraisamy vide Court dated 14.10.2019 made in C.M.P.No. 20351, 20353 and 20359/2019 in S.A.No. 415 of 1999) ...Respondents

(R3 to R5 set exparte vide order of Court dated 14/10/2019 made in CMP.No. 20351, 20353 and 20355/19 in SA.415/1999)

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 24.12.1998 made in A.S.No. 203 of 1995 on the file of the II-Additional District Judge, Salem confirming the judgment and decree dated 29.09.1995 made in O.S.No. 136 of 1987 on the file of the Court of Sub-Judge, Sankari.

For Appellants : Mr. R.Singaravelan, Senior Counsel
M/s.V.Ambika

For Respondent : 1st Respondent died
Mr.V.R.Rajasekaran for R2
R3 to R5 - Exparte (vide Court order dated 04.11.2019)

J U D G M E N T

This second appeal preferred as against the judgment and decree dated 24.12.1998 passed in A.S.No.203 of 1995 on the file of the II-Additional District Judge, Salem confirming the judgment and decree dated 29.09.1995 passed in O.S.No. 136 of 1987 on the file of the Sub-Court, Sankari.

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

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

3.1. The suit has been filed for partition and also for mense profits and also removal of Wall A and B and also for reconstruction of irrigation channels and mense profits.

3.2. The suit property originally belonged to one Iyyannan @ Kootha Gounder. He had three sons namely, Vellaiyan @ Kootha Gounder, Alagappa Gounder and Ponnappa Gounder @ Arumuga Gounder. He had properties in Agraharam Thalaiyur as mentioned in the schedule of the suit property at measuring 2.14 acres. He had also properties in Kannantheri Village, Sankari comprised in Survey No. 264/1 admeasuring 3.79 acres as mentioned in the Schedule 2 of the suit property admeasuring 2.14 acres. During his life time, no partition was held between his sons. After his demise, the entire properties were enjoyed jointly by his three sons. There was a talk arrangements for the purpose of enjoyment of the properties by three sons in the suit properties. Accordingly, 1.08 acres was allotted to one Alagappan and 1.06 acres was allotted to Ponappan @ Arumuga Gounder. and the said Ponappan @ Arumugam sold his share of 1.06 acres in Agraharam Thalaiyur to one Pachaiammal, wife of Iyyannan, the first defendant therein. After demise of Alagappan, his share was passed on to the defendant and his son. According to the interim order, Vellaiyan @ Kootha Gounder was not allotted any property in Agraharam Thalaiyur Village. He and father of the plaintiffs were allotted about two acres in Survey No.264/1 in Kannantheri Village, Sankari Taluk out of 3.79 acres comprised in Survey No.264/1 in Kannantheri Village.

3.3. Taking into consideration the good and bad nature of site in both Agraharam Thalaiyur and Kannantheri Village and Alagappan, Iyyannan @ Kootha Gounder and Ponnappan @ Arumuga Gounder were allotted to 1.79 acres in the said Survey No.264/1 at Kannantheri Village. Further, it is stated that 0.90 acres in Survey No.264/1 belonged to Arumugam Gounder is said to have been given to the 3rd defendant. He made arrangements to sell the said property to Iyyannan. After demise of Alagappan, 0.90 acres out of 1.79 acres passed in favour of the first defendant. The said Iyyannan owned 2.14 acres in Agraharam Thalaiyur Village and 1.79 acres in Kannantheri Village, in total 3.13

acres. The plaintiffs and the representative of the Vellaiyan @ Kootha Gounder are in possession of two acres and there is no Well in the land situated at Agraharam Thalaiyur Village. There is common Well in Survey No.264/1 and the water has to be shared between the defendants and plaintiffs in Kannantheri Village. Therefore, the plaintiffs are entitled to grant $1/2^{\text{th}}$ share, being the owners of about two acres in Survey No.264/1 at Kannantheri Village. While being so, the defendants prevented the plaintiffs from taking water to their lands from the common Well and they also removed the water channel and destroyed it. The plaintiffs were also prevented to go through the common pathway to their land and their house. The defendants have also put up a Well in the common pathway preventing plaintiffs from entering into the common pathway. Hence, the suit.

4. Resisting the same, the defendants filed written statement and it is stated that the Iyyannan @ Kootha Gounder died and after his death, there was a partition between his sons and the Pachaiammal. The land in Agraharam Thalaiyur was divided into two shares and one was allotted to Alagappa Gounder and other share allotted to Ponnappan @ Arumuga Gounder. In lieu of this, Vellaiyan @ Kootha Gounder was given $\frac{1}{2}$ share in the land situated at Kannantheri Village comprised in Survey No.264/1. The other $\frac{1}{2}$ share was divided equally between other two brothers namely, Alagappa Gounder and Ponnappan @ Arumuga Gounder. The $\frac{1}{2}$ share in the western side was set apart and exclusive possession was handed over to the plaintiff's father in the Eastern $\frac{1}{2}$ Alagappa Gounder and Ponappan were given equal specific shares. Thus, each of the three brothers had their equal shares namely, Vellaiyan @ Kootha Gounder was allotted to 1.90 acres, Alagappa Gounder was allotted 1.08 + 0.95 in total 2.03 acres and Ponnappan @ Arumuga Gounder was allotted 1.06 + 0.95 equally to 2.01 acres. The land situated in Kannantheri Village was allotted to Vellaiyan which was more than the land situated in Agraharam Thalaiyur Village.

5. The said Ponnappan @ Arumugam executed Will in favour of his son-in-law, the defendant herein. All the lands in Agraharam Thalaiyur Village are in possession and enjoyment of the defendant herein and Ponnappan @ Arumuga Gounder has sold his share to the wife of the first defendant on 17.05.1972. In the Eastern of $\frac{1}{2}$ in Survey No.264/1 in Kannantheri Village is enjoying by the first defendant ad measuring 1.90 acres in which by the plaintiffs comprised in Survey No.264/1 situated at Kannantheri Village. Already, the family arrangement was fully acted upon. The parties have constructed their house only in their respective and they are in possession and enjoyment of their respective shares. The said arrangement is binding on all the parties including the plaintiffs. Thereafter, the first defendant had dug a Well in his own share of his land about 30

years ago and he was drawing water by installing the Oil Engine. Thereafter, he has obtained electricity connection from the Tamilnadu Electricity Board in his own name and set up a motor pumpset to draw the water. There is no water channel starting from the Well to reach the plaintiffs land and no point of time, the plaintiffs and the defendant were in joint enjoyment of the common Well. Further, it is stated that the share of the Ponnappan @ Arumugam had bequeathed in favour of one Muthusamy, son of Pachaiaima by the deed dated 18.07.1975 and as such he is the necessary party to the proceedings. Further, the Well situated in land comprised in Survey No.264/1 in Kannantheri Village has exclusively belongs to the first defendant and therefore, brought for dismissal of the suit.

6. On the side of the plaintiff examined P.W.1 to P.W.5 and marked Exs.A1 to A24. On the side of the defendants examined D.W.1 were marked Exs.D1 to D6. The witness summons were marked as Ex.C1. Based on the materials available on record and the submissions made by the learned counsel on both the sides, the Trial Court decreed the suit in so far as the first relief is concerned and in so far as the other reliefs are concerned, dismissed the suit. Aggrieved by the same, the defendants filed an appeal suit in A.S.No.203 of 1995 and the same was also dismissed. Aggrieved by the same, the defendants preferred this appeal.

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

"1) Whether the Courts below are correct in granting a decree for partition even though family arrangement is admitted by the parties to the litigation ?

2) Whether the Courts below are correct in law in granting a decree for partition as prayed for even though the respondent plaintiffs had given up their claim in respect of schedule of the suit property?

3) Whether the findings of the Courts below are correct in law regarding pathway?"

8. Heard Mr.R.Singaravelan, learned Senior Counsel appearing for the appellants and Mr.V.R.Rajasekaran, learned counsel appearing for the second respondent.

9. The learned counsel appearing for both the parties submitted that according to their family arrangements they are enjoying their respective shares as mentioned in the plaint along with right to draw water from the common Well. Further, the learned Senior Counsel submitted that the suit itself

unnecessary since in view of the family arrangements the respective parties are in possession and enjoyment of their respective shares. In so far as the other prayer for claiming mense profit and construction of water channel, both the Courts held against the plaintiffs.

10. In view of the submissions, this Court finds no reason to interfere with the judgment and decree passed by the Courts below. Therefore, this Court is of the considered opinion that no substantial questions of law are involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal are answered against the defendants and in favour of the plaintiffs. In fine, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. The II Additional District Judge,
Salem.
2. The Sub Judge,
Sankari.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Ambika, Advocate, S.R.No. 7425

+1cc to Mr.V.R.Rajasekaran, Advocate, S.R.No. 7289

S.A.No. 415 of 1999

SPD(CO)
GN(03/09/2020)