

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.148 of 2008

T.M.Annamalai

...

Appellant

Vs.

1.T.S.Padmanaban (died)

2.P.Thirumaran

3.Malini

...

Respondents

(RR2 and 3 brought on record as LR's of the deceased sole respondent viz., T.S.Padmanaban vide order of Court dated 18.11.2019 made in CMP.No.15662 to 15664/2016 in S.A.No.148 of 2008)

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 20.11.2007 passed in A.S.No.75 of 2006 on the file of the Subordinate Court, Vellore, confirming the judgment and decree dated 30.06.2005 passed in O.S.No.878 of 1997 on the file of the Additional District Munsif Court, Vellore.

For Appellant

: Ms.R.T.Sundari

for Mr.M.P.Jayaprakash

Respondent No.1

: Died

For Respondent
Nos.2 & 3

: Mr.M.Balasubramanian

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 20.11.2007 passed in A.S.No.75 of 2006 on the file of the Subordinate Court, Vellore, confirming the judgment and decree dated 30.06.2005 passed in O.S.No.878 of 1997 on the file of the Additional District Munsif Court, Vellore.

2.The defendant, who has lost in both the Courts below, is the appellant in the second appeal.

3.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4.The suit has been laid by the plaintiff/respondent for declaring that he has half Well right in the suit Well and the water channel emanating from the suit Well to the plaintiff's divided land lying in the north 110 feet away from the suit Well for taking water to his lands and for consequential relief of permanent injunction.

5.Considering the pleas and the materials placed on record, as put forth by the respective parties, it is found that the suit Well in survey No.343/1 and Kavalabari in survey No.341/1 along with the other properties originally belonged to Chinnappa Reddiar and after his demise, his three sons inherited the abovesaid properties and were enjoying the same. Thereafter, the legal heirs of Chinnappa Reddiar viz., Srinivasa Reddy, Jagannatha Reddy and Rangasamy Reddy partitioned the properties by allotting one share to each branch. The plaintiff is the son of Srinivasa Reddy and thus, according to the plaintiff, he was allotted half right in the suit Well and Kavalabari in the partition deed dated 12.09.1983 marked as Ex.A1 and further put forth the case that in the abovesaid partition deed, the survey number has been wrongly mentioned as 341/1 instead of 343/1 qua the suit Well and thus, according to the plaintiff, he has been taking water to his other divided lands from the suit Well through the water channel in issue and further, it is put forth by the plaintiff that the defendant, who claims to have purchased the lands allotted to the other sharers, endeavoured to disturb and obstruct the plaintiff's right of taking water from the suit Well through his lands and thus, according to the plaintiff, he has been

necessitated to institute the suit for appropriate reliefs.

6.The defendant resisted the plaintiff's suit and put forth the case that the suit Well and the other properties originally belonged to Chinnappa Reddy and subsequently, his legal heirs had effected partition with regard to the abovesaid properties by way of the partition deed dated 12.09.1983 marked as Ex.A1 and further put forth the case that the defendant purchased the share of the suit Well from Govindan and Chinnappa vide the registered sale deed dated 16.03.1990 marked as Ex.B3 and according to the defendant, there is no Well in the survey No.341/1B as stated in the abovesaid partition deed and it is the case of the defendant that the plaintiff having sold his entire land in survey No.341/1 and further having plotted his lands in survey No.343/1 and 341/2, there is no necessity on the part of the plaintiff to take water from the suit Well and denied that the survey number has been wrongly mentioned in the partition deed and therefore, according to the defendant, the suit Well in survey No.341/1 is no longer a common Well and hence, the plaintiff's claim of the alleged right of taking water from the Well to irrigate his divided lands is not maintainable and sought for the

dismissal of the plaintiff's suit.

7.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendant, DWs 1 & 2 were examined and Exs.B1 to B5 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Challenging the same, the second appeal has been laid by the defendant.

9.The plaintiff claims right over the suit Well and Kavalaibari by way of the partition deed dated 12.09.1983 and the rectification deed dated 27.04.1989 marked as Exs.A1 and A6 respectively. The partition deed dated 27.07.1931 marked as Ex.A2 has been effected among Chinnappa Reddy and his three sons, whereunder, the "A", "B" & "C" schedule described therein had been allotted to Srinavasa Reddy, Jagannatha Reddy and Ramasamy Reddy and Chinnappa Reddy respectively. Subsequent

thereto, the "C" schedule property allotted to Chinnappa Reddy vide Ex.A2 partition deed had been partitioned amongst his sons viz., Srinivasa Reddy, Jagannatha Reddy and Rangasamy Reddy equally under Ex.A1 partition deed dated 12.09.1983 by way of which according to the plaintiff, he had been allotted the half right in the suit Well and the right over the Kavalabari and therefore, according to him, he is entitled to take water from the suit Well to irrigate his divided lands. Inasmuch as according to the plaintiff, the survey number has been wrongly mentioned in Ex.A2 partition deed, the rectification deed had come to be effected and marked as Ex.A6. Considering the shares allotted to the various parties under Ex.A2 partition deed, it is evident that the plaintiff has been allotted the share in the suit Well as put forth by him. As the survey number had been wrongly mentioned in Ex.A1 partition deed, the rectification deed has come to be executed between the parties concerned.

10.The defendant would object to the reliance placed on Ex.A6 rectification deed as according to the defendant, the same is neither stamped nor registered. However, as rightly concluded by the Courts below, by way

of the abovesaid rectification deed, the parties had endeavoured to rectify the survey number, which has been wrongly mentioned in Ex.A1 partition deed and by way of the rectification deed, the parties had not derived any right whatsoever over the shares already allotted to them under Ex.A1 partition deed, accordingly, the Courts below are found to be justified in upholding the truth and validity of Ex.A6 deed of rectification.

11. In view of the abovesaid factors, as rightly concluded by the Courts below based on Ex.A5, the plaintiff is found to have acquired title to the suit property. The same has also been spoken to clearly even by the vendors of the defendant examined as PW2 and DW2 and, it is only from the abovesaid vendor, the defendant claims to have acquired right over the suit property vide Ex.B3 sale deed. However, as rightly concluded by the Courts below, when considering the evidence of PW2 & DW2 and when it is found that it is only the plaintiff, who had been allotted the suit property i.e. the right in the Well and Kavalabari under Ex.A1 partition deed coupled with Ex.A6 rectification deed and when the defendant's vendors are not shown to have been allotted any exclusive right over the suit Well and Kavalabari under

Ex.A1 partition deed, the claim of the defendant that he had purchased the right over the suit Well exclusively by way of Ex.B3 sale deed from his vendors, as such, cannot be countenanced and the same had been rightly disbelieved and rejected by the Courts below. Without the establishment of his vendors right over the suit Well in entirety, the case projected by the defendant that he has acquired absolute right over the suit Well and therefore, the contention of the defendant that the plaintiff is not entitled to take water from the suit Well to irrigate his other lands, as such, cannot be accepted and rightly rejected by the Courts below.

12.As rightly held by the Courts below, when the Well is found to be alleged only in survey No.343/1, it is evident that the survey number of the Well has been wrongly mentioned as 341/1 in the partition deed Ex.A1 and accordingly, the same has come to be rectified vide Ex.A6 document.

13.When the plaintiff has established his claim of right over the suit property i.e. his entitlement to take water from the suit Well to his divided lands through the Kavalabari. The contention of the defendant that the

plaintiff is not using the said Well, as such, cannot be countenanced and as held by the Courts below, when the right has been granted over the suit property under the partition deed to the plaintiff unless and until the abovesaid right is divested by the plaintiff in the manner known to law, the right of the plaintiff over the suit Well and the Kavalabari cannot be disturbed by the defendant by claiming any exclusive right over the same.

14. In the light of the abovesaid factors, it is found that the plaintiff has established his right over the suit Well and Kavalabari and accordingly, the reasonings and conclusions of the Courts below for upholding the plaintiff's case being founded on a proper appreciation of the oral and documentary evidence adduced in the matter and when they are not shown to be in any manner perverse, illogical and irrational, in my considered opinion, there is no reason warranting to disturb the same. Thus it is noted that no substantial questions of law is involved in the second appeal.

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In conclusion, the judgment and decree dated 20.11.2007 passed in A.S.No.75 of 2006 on the file of the Subordinate Court, Vellore, confirming the judgment and decree dated 30.06.2005 passed in O.S.No.878 of 1997 on the file of the Additional District Munsif Court, Vellore, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes/No
Internet: Yes/No
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- 1.The Subordinate Court, Vellore.
- 2.The Additional District Munsif Court, Vellore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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T. RAVINDRAN, J.

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