



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2021

PRONOUNCED ON : 15.04.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1560 of 2008

1. P. Natarajan
S/o. Palanisamy
2. P. Balasubramanian
S/o. Palanisamy
3. P. Muthuvel
S/o. Palanisamy

...Appellants

Vs.

1. Jayaraman (died)
S/o. Aathimoolam
2. Vetrivel
S/o. Jayaraman
3. Kandamani
W/o. Jayaraman
4. Jayarani
W/o. S. Rajavel

...Respondents

RR3 and 4 brought on record as LRs of the deceased
R1 viz., Jayaraman vide order of Court dated
09.01.2020 made in CMP No.24668/2019 in S.A.
No.1560/2008.

Prayer: Second Appeal is filed under Section 100 of CPC, 1908 against the judgment and decree dated 04.09.2008 in A.S.No.06 of 2007 passed by Principal Subordinate Judge, Villupuram reversing the judgment and decree dated 18.09.2006 in O.S.No.25 of 2005 passed by Principal District Munsif Court, Villupuram.

For Appellants : Mr. C. Uma Shankar

For Respondents

For R2 to R4 : Mr. R. Rajarajan

R1 died steps taken.



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 04.09.2008 passed in A.S.No.06 of 2007 on the file of the Principal Subordinate Court, Villupuram, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.25 of 2005 on the file of the Principal District Munsif Court, Villupuram.

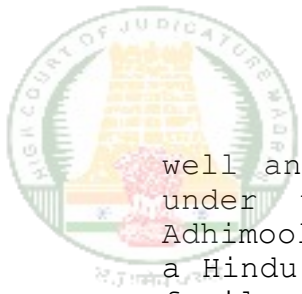
2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants in O.S.No.25 of 2005 are the appellants in the second appeal.

4. Suit for declaration, permanent injunction and mandatory injunction.

5. Briefly stated, the case of the plaintiffs is that, Adhimoolam, S/o.Subramani, by virtue of the three registered exchange deeds dated 19.08.1947, 22.11.1949 and 25.11.1949 had acquired 5/8 share in the suit well along with the channel right and taking water from the suit well through the channel on the western side of the suit 'A' schedule survey number i.e. Survey No.275/9 to his lands comprised in the plaint 'B' schedule situated on the southern side abutting the Eri vaikal to the knowledge of Natarajan as well as Muthuthandava Mudali and his brother Palanisamy and irrigating his lands through the suit well by installing an oil engine and after his demise, his son Jayaraman (the first plaintiff) succeeded to his estate and enjoying the property as abovestated and the second plaintiff Vetrivel (son of Jayaraman) is presently enjoying the properties and doing the cultivation. While so, the defendants and their father Palanisamy had obliterated the channel and prevented the plaintiffs from irrigating their lands during the month of March 2004 and hence, the plaintiffs issued a notice dated 12.06.2004 and to the same, the defendants sent a belated reply containing false allegations and the allegation of partition between Adhimoolam and Natarajan is false and as Adhimoolam has acquired 5/8 share in the suit well as abovesated and Natarajan having acquired only 3/8 share in the suit well and as the defendants have no entitlement to the suit well or the channel as described in the plaint schedule and on the other hand obliterated the channel unlawfully, hence, according to the plaintiffs, they have been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts and put forth that it is true that the suit



well and the other properties had been obtained by Adhimoolam under the various deeds and according to the defendants, Adhimoolam had a brother by name Natarajan and they constituted a Hindu Joint family for which Adhimoolam was the kartha for the family and all the purchases and the exchanges made in the name of Adhimoolam were only enjoyed by the brothers as the joint family properties and in the partition effected amongst the brothers about 50 years ago, the properties including the suit well situated on the north of the lake channel were allotted to the share of Natarajan and the properties situated on the south of the lake channel were allotted to the share of Adhimoolam and accordingly the respective sharers had been in the possession and enjoyment of the allotted shares since the date of partition and subsequent to the partition, Natarajan had renovated the suit well and irrigating his properties. The defendants are the sons of Palanisamy Mudaliar whose father is Arunachala Mudaliar and Adhimoolam is the son in law of the Arunachala Mudaliar and Adhimoolam and Natarajan had obtained loan from Arunachala Mudaliar and Natarajan and in order to discharge his share of debt, sold some of his share of properties including the suit survey number and the well to Muthuthandava Mudaliar under a registered sale deed dated 24.04.1958 and in the partition effected between the Muthuthandava Mudaliar and his brother, namely, Palanisamy, the suit survey number and the other properties fell to the share of the defendants' father and accordingly Palanisamy and the defendants had been enjoying the suit well and the other properties by installing an electric pump motor and irrigating their lands by obtaining the patta, etc., and there is no channel running to the south of the lake channel and the plaintiffs have come forward with the suit with the false cause of action and therefore, the suit is liable to be dismissed.

7. In support of the plaintiffs' case P.Ws.1 and 2 were examined and Exs. A1 to A12 were marked. On the side of the defendants D.W.1 was examined and Exs.B1 to B5 were marked.

8. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial court was pleased to dismiss the plaintiffs' suit. Impugning the same, the plaintiffs preferred the first appeal and the first appellate court, on a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiffs, decreed the suit in favour of the plaintiffs as prayed for. Challenging the same, the second appeal has been preferred by the defendants.

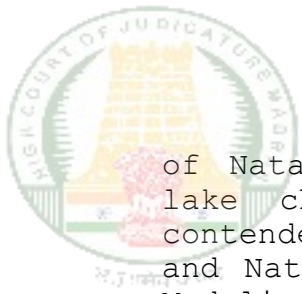


9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the court below has properly appreciated the scope and nature of Exhibits A1 to A5 with Exhibits B1 to B5?
- 2) Whether the court below is right in interpreting the admissions of D.W.1 in part but not in full and neglected the admission of P.Ws.1 and 2 while rendering findings, which is ex facie perverse and illegal?
- 3) Whether the court below is right and lawful in giving credence to a panchayat allegedly held between the parties while the case was pending and placing reliance on the same to come to a conclusion?
- 4) Whether the lower court is right in giving a relief to the plaintiffs when there was no pleading and evidence on that prayer?

10. The suit has been laid by the plaintiffs for the declaration of their title of 5/8 share in the suit well with channel rights in the vaikal on the west and other reliefs. The suit well is stated to be located in survey number 275/9 in an extent of 20 cents. The property in dispute is described in the plaint 'A' schedule and the plaintiffs' lands are described in the plaint 'B' schedule. Now according to the plaintiffs, they had been irrigating their lands described in the plaint 'B' schedule from the suit well described in the plaint 'A' schedule through the vaikal lying on the west of survey number 275/9. The plaintiffs claim right to the plaint 'A' schedule property through Adhimoolam and according to the plaintiffs, Adhimoolam had acquired 5/8 share in the suit well along with channel right by way of three exchange deeds marked as Exs.A1, A4 and A5. Putting forth the case that the defendants, without any entitlement, had interfered with their possession and enjoyment of the suit properties and also obliterated the suit channel, hence, according to the plaintiffs, they had been necessitated to lay the suit against the defendants for appropriate reliefs.

11. Per contra, the defendants would put forth the case that Adhimoolam had a brother by name Natarajan and all the properties acquired in the name of Adhimoolam were only for the benefit of the family consisting of his brother and accordingly they had been enjoying the properties jointly and in the oral partition effected between Adhimoolam and Natarajan about 50 years ago, the properties situated on the north of the lake channel including the suit well had been allotted to the share



of Natarajan and the properties situated on the south of the lake channel had been allotted to Adhimoolam and thereby contended that the suit well belonged to Natarajan exclusively and Natarajan in order to discharge his debt to one Arunachala Mudaliar alienated his share of the properties including the suit well to one Muthuthandava Mudaliar under the registered sale deed dated 24.04.1958 and further according to the defendants, in the oral partition effected between Muthuthandava Mudaliar and his brother Palanisamy Mudaliar, the father of the defendants, the suit well and the other properties had been allotted to the share of Palanisamy Mudaliar and thereby the defendants claim right over the suit well and put forth that the plaintiffs predecessors in interest and the plaintiffs have never enjoyed the suit well as well as the alleged channel right for irrigating their lands described in the plaint 'B' schedule and accordingly prayed for the dismissal of the plaintiffs' suit.

12. The plaintiffs having claimed right over the suit well based on Exs.A1, A4 and A5 exchange deeds, however, during the course of evidence would project one panchayat agreement for claiming the right over the suit well and the abovesaid agreement has been marked Ex.A12. Ex.A12 is found to have come into existence after the institution of the suit. As rightly concluded by the trial court, when the plaintiffs have not pleaded about the panchayat arrangement marked as Ex.A12 in the plaint and also not claimed right to the suit well based on the said panchayat agreement, in such view of the matter, no relief could be granted to the plaintiffs based on Ex.A12 panchayat agreement. Merely because D.W.1, the second defendant has admitted his signature in Ex.A12, that by itself, would not lead to the conclusion that the parties had entered into the panchayat agreement Ex.A12 qua the dispute over the suit well. Though D.W.1 has admitted his signature in Ex.A12, however, would plead ignorance about the contents found in Ex.A12 and when the plaintiffs have not based their case relying upon Ex.A12, as rightly contended by the defendants' counsel, no amount of evidence could be adduced by the plaintiffs over the alleged panchayat agreement in the absence of pleadings and in such view of the matter, the plaintiffs cannot be allowed to claim right over the suit well based on Ex.A12 panchayat agreement.

13. Considering the materials available on record, when according to the defendants, the properties acquired by Adhimoolam and Natarajan had been treated as the joint family properties and in the oral partition, the properties lying on the north of the lake channel had been allotted to Natarajan, which includes the suit well and the properties lying to the south of the lake channel had been allotted to the share of Adhimoolam and however when the same had been disputed by the



plaintiffs, it is for the defendants to establish the abovesaid partition effected between Adhimoolam and Natarajan. The abovesaid case of the defendants qua the partition had been admitted by the second plaintiff examined as P.W.1 and P.W.1 during the course of cross examination has clearly admitted that Adhimoolam had two brothers namely Kuppusamy and Natarajan and Kuppusamy had died and Adhimoolam is the elder brother of Natarajan and further admitted that the lake channel is running in between the properties belonging to Adhimoolam and Natarajan and also admitted that the properties lying to the south of the lake channel are the properties of Adhimoolam and the properties lying to the north of the lake channel are the properties of Natarajan and further admitted that the suit survey number 275/9 in which the well is located lies to the north of the lake channel and also admitted that in the abovesaid suit survey number 275/9, his father is entitled to only 3 cents out of 20 cents and the abovesaid right is derived through Exs.A1, A4 and A5 and also admitted that the patta does not stand either in the name of his father or in the name of his grand father Adhimoolam and the evidence of P.W.1 being above, when P.W.1 has clearly admitted that Adhimoolam's properties are only located to the south of the lake channel and Natarajan's properties are located to the north of the lake channel, the abovesaid arrangement should have been only effected by way of the oral partition as put forth by the defendants and accordingly, it is found that the plaintiffs are unable to place any document worth acceptance evidencing their claim of possession and enjoyment of the suit well in survey No.275/9 at any point of time either during the period of Adhimoolam or by the plaintiffs subsequent to the demise of Adhimoolam and on the other hand, considering the materials placed on record by the defendants particularly Exs.B1 and B2, it is found that the suit properties and the other properties had been acquired by Muthuthandava Mudaliar and his wife Gnanambal from Natarajan and inasmuch as they had been enjoying the suit properties and subsequent to the same the patta had also come to be issued in the name of Muthuthandava Mudaliar and Gnanambal marked as Ex.B4 and therefore, it is found that the materials available on record would only go to indicate that the suit properties i.e. the suit well lying in survey No.275/9 had been allotted to the share of Natarajan and accordingly it is Natarajan who had been enjoying the same and subsequently alienated his share of properties under Exs.B1 and B2 and accordingly, it is found that in the partition effected between Muthuthandava Mudaliar and his brother Palanisamy Mudaliar, the suit well and the other properties had come to be allotted to Palanisamy Mudaliar, the father of the defendants.

14. As rightly pointed out by the trial court, if really the suit well had been in the possession and enjoyment of Adhimoolam and the plaintiffs as claimed by them based on Exs.A1, A4 and



A5, the plaintiffs would have endeavoured to examine the neighbouring land owners to evidence their claim of enjoying the suit well as put forth by them. Furthermore, when the defendants are not owning any properties to the west of the suit well and when the plaintiffs' lands described in the plaint 'B' schedule are found to be lying to the south of the lake channel, the case of the plaintiffs that the channel exists from the suit well to the lands described in the 'B' schedule, as such, cannot at all be countenanced particularly in the absence of any materials or plan projected by the plaintiffs pointing to the same. As rightly held by the trial court, when the defendants are not owning the properties to the west of the suit well, the case of the plaintiffs that the defendants had obliterated the channel lying to the west of the suit well, as such, cannot at all be believed and accepted. The plaintiffs have only examined P.W.2 and considering the close relationship between the plaintiffs and P.W.2 and when it is found that P.W.2 also having admitted that no channel exists between the lake channel and the plaintiffs lands described in the plaint 'B' schedule, the case of the plaintiffs that the defendants have obliterated the alleged channel, cannot at all be believed and accepted in any manner. If really, the defendants had obliterated the channel, as rightly held by the trial court, the plaintiffs would have endeavoured to lodge a police complaint against the defendants. Considering the evidence of P.W.1, as adduced during the course of cross examination, it is found that the suit well is only in the possession and the enjoyment of Palanisamy Mudaliar and his sons, the defendants, and it is the defendants who had been irrigating their lands from the suit well by installing an electric motor and therefore, the case of the plaintiffs that they had been drawing water from the suit well through oil engine for irrigating their lands described in the plaint 'B' schedule, as such, cannot be believed and accepted particularly in the absence of any reliable proof pointing to the same.

15. As rightly contended by the defendants' counsel, when the plaintiffs claim 5/8 share in the suit well and when with reference to their abovesaid claim, the plaintiffs have not placed reliable materials other than Exs.A1, A4 and A5, further when subsequent to Exs.A1, A4 and A5, the properties having come to be divided between Adhimoolam and his brother Natarajan and in the partition so effected, Natarajan having been allotted the suit well lying to the north of the lake channel and Adhimoolam having been allotted the properties lying to the south of the lake channel and when the existence of any connecting channel between the suit well and the plaint 'B' schedule lands had not been established by the plaintiffs in any manner, the trial court is found to be fully justified in holding that the plaintiffs have miserably failed to establish



their alleged claim of right over the suit well as well as the channel right said to be existing on the western side and thereby rightly dismissed the plaintiffs' suit.

WEB COPY

16. On the other hand, the first appellate court, without any basis or materials, is found to have upheld the plaintiffs' case by failing to consider the import of the materials placed on record and also the evidence of P.Ws.1 and 2 and on the other hand, based its findings on an incorrect appreciation of the evidence of D.W.1 and when the panchayat agreement put forth by the plaintiffs cannot at all be countenanced in any manner, as above pointed out, and when the plaintiffs have miserably failed to establish their claim of right over the suit well and on the other hand, when it is found that the suit well has been in the possession and the enjoyment of Natarajan exclusively following the partition effected with his brother and thereafter Natarajan having also sold the right over the suit well under Exs.B1 and B2 and subsequent thereto, it is only the defendants and their father Palanisamy Mudaliar who had been enjoying the suit well and the other properties by obtaining the patta, etc., in such view of the matter, the reasonings and conclusions of the first appellate court for upholding the plaintiffs' case can only be described as the outcome of improper and incorrect appreciation of the oral and documentary evidence adduced in the matter and resultantly, they could only be described as illogical, irrational and perverse and therefore, liable to be set aside. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendants and against the plaintiffs.

17. In conclusion, the judgment and decree dated 04.09.2008 passed in A.S.No.06 of 2007 on the file of the Principal Subordinate Court, Villupuram, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.25 of 2005 on the file of the Principal District Munsif Court, Villupuram, are set aside and resultantly, the judgment and decree of the trial court are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga



To

1. The Principal Subordinate Court, Villupuram
2. The Principal District Munsif Court, Villupuram
3. The Section Officer, VR Section, High Court, Madras

+1 CC to Mr.C. Uma Shankar, Advocate sr 22846

+1 CC to Mr.D. Rajasekaran, Advocate sr 22719.

S.A.No.1560 of 2008

SSV(CO)

SP(02/11/2021)