



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.774 OF 2008

1. Shanmugam
2. Ramadoss
3. Jansirani

... Appellants/Respondents 2 to 4/
Plaintiffs 2 to 4

.Vs.

1. Ranganathan
2. Dhandapani

... Respondents/Appellants/
Defendants

PRAYER:-

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Principal Subordinate Judge, Tiruvannamalai in A.S.No.45 of 2006 dated 04.02.2008 in reversing the well considered Judgement and Decree of the Court of the Additional District Munsif, Tiruvannamalai in O.S.No.302 of 2003 dated 14.02.2006.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.R.Rajarajan

JUDGMENT

The plaintiffs 2 to 4 are the appellants before this Court since the 1st plaintiff had expired pending the First Appeal. The Second Appeal arises against the Judgement and Decree in A.S.No.45 of 2006 on the file of the Principal Subordinate Judge, Tiruvannamalai in and by which the learned Judge had reversed the Judgement and Decree of the Additional District Munsif, Tiruvannamalai in O.S.No.302 of 2003. The parties for the ease of understanding are being referred in the same ranking as in the suit. The facts in brief stated in the plaint are as follows.



2. The plaintiffs had filed the suit O.S.No.302 of 2003 for a declaration in their half share in the suit well and to direct the 1st defendant to deliver possession of the suit well to the plaintiffs. The well in question is situate in S.No.390/2B2 originally S.No.390/2 of Vedanthavadi Village, Tiruvannamalai District.

3. It is the case of the plaintiffs that the suit well and lands measuring a total extent of 6.38 acres in S.No.390/2 belonged to one Rama Gounder. Rama Gounder had four sons, Kuppa Gounder, Narayanasamy Gounder, Chinnasamy Gounder and Ponnusamy Gounder. The four sons of Rama Gounder partitioned these properties amongst themselves after the death of Rama Gounder. Kuppa Gounder was enjoying an extent of 1.56 acres and Narayanasamy Gounder and Chinnasamy Gounder each were enjoying an extent of 1.35 acres. Ponnusamy Gounder got 2.12 acres along with the well.

4. Ponnusamy Gounder had died intestate and his 2.12 acres devolved on his sons Chinnasamy and Raja. They had divided the suit property equally. Chinnakulandai Ammal, the paternal grand mother of plaintiffs 2 to 4 and mother-in-law of the 1st plaintiff purchased the share of Chinnasamy. Chinnakulandai Ammal had purchased the share of Chinnasamy under a sale deed dated 26.12.1951 and therefore she become entitled to 1.06 acres of land in the survey number along with half share in the well. After the death of Chinnakulandai Ammal her property was divided between her sons Gopal Gounder and Arumuga Gounder and the suit property was allotted to the share of Gopal Gounder. Gopal Gounder is the husband of the 1st plaintiff and father of the other plaintiffs.

5. The plaintiffs 1 to 3 sold the 1.06 acres inherited by them in favour of the 2nd defendant under a registered sale deed dated 07.09.1990. However, they had retained a half share in the well for themselves with the sole intent of irrigating their other lands with the water from this well. The 4th plaintiff was not a party to this document and she would reserve her right to file a separate suit challenging the sale deed.

6. Govindasamy, the father of the 2nd defendant had purchased 60 cents of land from Raja Gounder son of Ponnusamy Gounder. By reason of this purchase the 2nd defendant was the absolute owner of an extent of 1.66 acres and a half share in the well situated in S.No.390/2. Though the 2nd defendant was only an owner of an extent of 1.66 acres he had sold an extent of 2.41 acres and the entire right in the suit well in favour of the 1st defendant under a sale deed dated 21.07.2000. The 2nd defendant had no right to sell the excess extent of 75 cents as well as the half share in the well.



7. The plaintiffs would submit that they are not bound by the sale. The 1st defendant after obtaining the sale deed had tampered with the channels of irrigation and prevented the plaintiffs from drawing of water from the Well alleging that he was the owner of the entire well. Therefore, the plaintiffs have been constrained to approach the Court.

8. The defendants 1 and 2 had filed a written statement inter alia disputing the claim of the plaintiffs to the suit well. They would further deny the extent allotted to the sons of Rama Gounder as being false. The defendants would further submit that the extent of 1.06 acres and the half share in the Well was purchased by Chinnakulandai Ammal. On her death it was being enjoyed by her son Gopal Gounder. Gopal Gounder had alienated 53 cents in favour of one Jayaraman son of Pachayappa Gounder. After the death of Gopal Gounder the plaintiffs and the said Jayaraman had alienated the property purchased by Chinnakulandai Ammal to the 2nd defendant under the sale deed dated 07.09.1990. The entire property which is purchased by the Chinnakulandai Ammal was conveyed to the 2nd defendant which included the half share in the Well.

9. It is the further case of the defendants that the plaintiffs have never enjoyed the suit well and on the contrary it was only the 2nd defendant who enjoyed the well and had therefore prescribed title to the same. The defendants had also denied the contention of the plaintiffs that the 2nd defendant had sold an extent of 75 cents in excess of the property owned by the 2nd defendant. The 1st defendant having purchased the same under a registered sale deed he had become the absolute owner of the suit well. The defendant had raised the issue of limitation as well.

10. The Trial Court, namely, the Additional District Munsif, Tiruvannamalai had framed the following issues:

(i) Whether the plaintiffs are entitled to a half share in the suit well?

(ii) Whether the plaintiffs are entitled to the relief of declaration and recovery of possession?

(iii) To what other relief the plaintiffs are entitled to?

11. The plaintiffs have examined P.W.1 and P.W.2 and marked Ex.A.1 to Ex.A.4 in support of their case. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.4 were marked. The learned Additional District Munsif, Tiruvannamalai on perusing the oral and documentary evidence had decreed the suit as prayed for and aggrieved by this Judgement



and Decree the defendants had filed A.S.No.45 of 2006 on the file of the Principal Subordinate Judge, Tiruvannamalai.

12. Pending the appeal, the 1st plaintiff had died and plaintiffs 2 to 4 were recognized as her legal representatives. The learned Principal Subordinate Judge proceeded to reverse the Judgement and Decree of the Trial Court and allowed the First Appeal. It is challenging this Judgement and Decree that the plaintiffs are before this Court.

13. The above Second Appeal was admitted on the following Substantial Question of Law:

"1.Whether the lower Appellate Court ought not to have declared the plaintiffs right to the Well based upon their holdings and irrigational facilities that they enjoy from it?

2.Whether the Lower Appellate Court ought not to have held that the defendant No.1 had purchased a fraction of the rights in the land and cannot usurp the rights of the plaintiffs to irrigate the lands from the suit Well?"

14. Mr.V.Ragavachari, learned counsel for the plaintiffs would submit that a mere perusal of Ex.A.1 sale deed would clearly show that the plaintiffs have not conveyed their right to the suit Well as the same does not find reference in the schedule of properties. He would further submit that the plaintiffs have clearly stated as to why they had retained their interest in the Well despite selling the entire land. The plaintiffs have stated that they have lands adjoining the suit property and water from the suit well was being used for its irrigation.

15. He would further submit that a perusal of boundaries given in Ex.A.1 would clearly show that the plaintiffs owned the property adjoining the suit property. The defendants have not been able to substantiate the defense that the sale deed dated 21.07.2000 also covered the suit well. He would therefore submit that in the absence of the defendants being able to prove their defense, which was contrary to the documents, the Appellate Court had totally erred in reversing the Judgement of the Trial Court. The learned Subordinate Judge has proceeded on the basis of presumptions and inferences to come to the conclusion that the suit well was also conveyed by the plaintiffs. He would argue that the Appellate Court had also erred in placing burden of proving the sale of the Well upon the plaintiffs when it is the defendants who have to prove the same. He would therefore prayed for setting aside the Judgement and Decree of the lower Appellate Court.



16. Per contra Mr.R.Rajarajan appearing on behalf of the defendants/respondents would seek to support the Judgement of the Appellate Court on the following grounds:

(i) There is evidence to show that it is only the defendants who were drawing water from the well.

(ii) The plaintiffs have not proved the existence of the channel and the drawing of water.

(iii) The conduct of the plaintiffs was not bonafide as they had suppressed the fact that one Jayaraman had also joined the execution of Ex.A.3 sale deed and that they have not been using the water from the well.

(iv) That apart the 4th plaintiff had filed a suit against the defendants and other plaintiffs for partition. He would argue that the plaintiffs were colluding together to deprive the defendants of their right to the suit well.

(v) The sale deed Ex.A.1 does not contain a reference that the plaintiffs were retaining the share in the well.

17. For these reasons he would submit that the Appellate Court was justified in allowing the appeal. He would vehemently argue that if the plaintiffs have decided to retain their share in the suit Well the same would have found mention in the recitals in the sale deed. However, such a recital is not found. He would further submit that the obliteration of the irrigation channel as alleged by the plaintiffs have not been proved by them.

18. Heard the counsels and perused the records.

19. The issue involved in the above Second Appeal is whether under Ex.A.1 sale deed the plaintiffs have conveyed their interest in the suit Well to the 2nd defendant. A perusal of Ex.A.1 sale deed would indicate that what was conveyed by the plaintiffs and Jayaraman was only an extent of 1.06 acres which constituted the share purchased by Chinnakulandai Ammal. The valuation attached to the sale deed Ex.A.1 only shows the value for the land and no value has been fixed for the Well. This omission is glaring when Ex.B.1 is perused. In the said sale deed the half share in the Well has been valued at Rs.25,000/- and the motor pump sets and the service connection at Rs.6,000/-.

20. Further the plaintiffs have given reasons for not alienating the well. It is their case that they have lands adjoining the suit Well which they are irrigating from the suit



well. This is evident from a perusal of Ex.A.1 sale deed where the eastern boundaries is shown as the lands of the plaintiffs. Ex.A.4, adangal extract would also indicate that the plaintiffs own lands in S.No.390/2B1B in which they are also carrying on agricultural operations.

21. Therefore, considering the fact that the sale deed does not mention the sale of the well and also taking note of the fact that the plaintiffs have proved the reasons for not alienating the same the Appellate Court erred in presuming the sale deed Ex.A.1 included the sale of the well. Therefore, the Substantial Question of Law Nos.1 and 2 are answered in favour of the plaintiffs. The Second Appeal is allowed and the Judgement and Decree of the Appellate Court is set aside. No costs.

Sd/-

Assistant Registrar(T & P)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Tiruvannamalai.
2. The Additional District Munsif,
Tiruvannamalai.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.31840

+1cc to Mr.R.Rajaraman, Advocate, S.R.No.32166

S.A.NO.774 OF 2008

SPD(CO)
PBS/09/11/2021