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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.339 of 2009
and
M.P.Nos.1 and 2 of 2009

P.K. Jayaraman ...Appellant/Appellant/Defendant

Vs.

P.K.Venugopal ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.41 of 2007 dated 30.06.2008 passed by the learned Subordinate Judge, Gudiyattam, Vellore District, confirming the Judgment and Decree in O.S.No.927 of 1995 dated 22.02.2007 passed by the learned District Munsif, Gudiyattam, Vellore District.

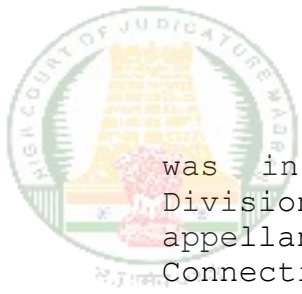
For Appellant : Mr.P. Murugan
For Respondent : Mr.D.Rajagopal

JUDGMENT

The defendant is the appellant before this Court. The Second Appeal arises against the concurrent Judgment and Decree in the suit O.S.No.927 of 1991 filed by the respondent herein on the file of the learned District Munsif, Gudiyattam, for a declaration that the Service Connection No.209 is situated in Survey No.203/3 and for a permanent injunction restraining the defendant from preventing the plaintiff from using his share of the Service Connection and for a mandatory injunction directing the defendant to restore pipeline damaged by them. The suit was decreed and confirmed by the learned Sub Judge, Gudiyattam in A.S.No.41 of 2007.

2.The brief facts of the Plaint are as follows:

The plaintiff and the defendant are siblings. They had partitioned their family properties along with the parents under a Partition Deed dated 19.07.1980 and have been enjoying their respective shares of the properties. The suit Service Connection number which was originally Service Connection No.9



was in Kottamitta Division was shifted to Dhanakondapalli Division and allotted Service Connection No. 209. Both the appellant and the respondents had an equal share in the Service Connection which was situated in the well in Survey No.203/3. It is the case of the respondent that he was taking water through an underground pipeline to his properties measuring an extent of 1 1/2 acres.

3.The appellant had originally disputed the plaintiff's right to the other properties for which the plaintiff had filed a suit O.S.No.983 of 1994 for a declaration of his title. It was only pending that suit that the respondent has come to know that the suit Service Connection which was situate in Survey No.203/3 was wrongly mentioned as Survey No.202/2. The defendant's Service Connection bearing Service Connection No.110 was the connection which is situate in Survey No.202/2 and even this had been wrongly mentioned as Survey No.202/1. This suit property is not the subject matter of O.S.No.933 of 1994. The respondent had tried to explain the mistake to the appellant who refused to permit the respondent to use the suit well and Service Connection and added to that damaged the pipeline. Hence, the suit.

4.The appellant/defendant had filed a Written Statement inter alia denying the case of the respondent/plaintiff. It is his case that the plaintiff had no right to the suit property and the earlier suit instituted by the respondent had been dismissed which fact has been suppressed. The defendant would further contend that the allegation of the respondent/plaintiff that the Survey Numbers were wrongly given is a invented to the support the false claim of the respondent.

5.The defendant would submit that to the North of the suit well, there was an Odai in the existence and the lands of the respondent is situate to the North of this Odai. The respondent was irrigating his lands from the well situate in Survey No.196 and not the suit Service Connection. That apart, the respondent has dug a bore well to irrigate his lands. Therefore, they prayed for dismissal of the suit.

6.An Additional Written Statement came to be filed by the defendant in which he would submit that the Survey No.203/3 exclusively belongs to him and the same was allotted to him in the Partition as the "C" schedule property. The defendant admitted that the Service Connection No.209 was originally bearing Service Connection No.9. He would contend that the respondent was allotted only Survey No.202/2 and the well situate therein as well as the Service Connection in the said well. His Service Connection has been wrongly mentioned as



Service Connection No.9 and taking advantage of the anomaly, the plaintiff has filed the present suit.

7.The learned District Munsif, had framed the following issues, namely,

"(a)Whether the plaintiff is entitled to the declaratory relief as prayed for?

(b)Whether the plaintiff is entitled for permanent injunction as prayed for?

(c)Whether the plaintiff is entitled for mandatory injunction as prayed for?

(d)Whether the cause of action pleaded is true?
and

(e)To what other relief?"

8.The respondent had examined himself as P.W.1 and one Subbammal as P.W.2 and marked Ex.A.1 to Ex.A.4. The appellant/defendant on his side had not only examined himself but had examined 4 witnesses and marked Ex.B.1 to Ex.B.23. The learned District Munsif, relying upon the documents filed on the side of the respondent and taking into consideration the oral evidence adduced on both sides had decreed the suit in respect of declaration and permanent injunction and dismissed the suit in respect to mandatory injunction. The respondent had not challenged the portion of the Decree that against him, however, the appellant/defendant has filed A.S.No.41 of 2007 on the file of the learned Sub Judge, Gudiyattam. The learned Appellate Court relying on the recitals in Ex.A.1 came to the conclusion that the Electricity Service Connection bearing No.9 (now Service Connection No.209) was stated to be installed in Survey No.202/2 of Modikuppam Village. However, Survey No.9 is in Survey No.203/3 as per the cross examination of D.W.1. The learned Judge therefore concluded that the Service Connection Number had been wrongly mentioned in Ex.A.1 - Partition Deed i.e., instead of Survey No.203/3, the same has been described as Survey No.202/2, however, even according to D.W.1, Service Connection No.9 (New Service Connection No.209) is situate only in Survey No.203/3. Therefore, the right which has been conferred upon the respondent has his right to Service Connection No.209 situate at Survey No.203/3. The Appellate Court dismissed the Appeal and confirmed the Judgment and Decree of the trial Court.

9.The Second Appeal has been admitted on the following Substantial Questions of Law:

1.Whether the Courts below had rightly rejected the oral and documentary evidence produced by the appellant herein?

2.Whether the Courts below had right in rejecting



the Revenue Records in respect of the suit property stands in the name of the appellant?"

10.Mr.P. Murugan, learned counsel for the appellant would submit that the respondent/plaintiff has clearly admitted that it is the appellant who is in possession and enjoyment of Survey No.203/3 and P.W.1 has admitted that the appellant is in possession and enjoyment of the property allotted to him as per Ex.A.1 - Partition Deed. Once the respondent has admitted the appellant's possession of the said Survey No.203/3, the Courts below have totally erred in decreeing the suit. He would therefore seek to have the same be dismissed.

11.Heard the learned counsels appearing on either side and perused the records.

12.The case of the plaintiff is that he has been allotted a right to Survey No.9 (now Service Connection No.209) under the Partition Deed and the Partition Deed has expressly provided this right to the plaintiff to draw water through the well in which the Service Connection has been installed. It is an admitted fact that the Service Connection No.209 is situate in the well in Survey No.203/3. The defendant has also admitted the same. Therefore, the reference to Survey No.202/2 in Ex.A.1-Partition Deed is purely a mistake.

13.Considering the fact that the respondent/plaintiff had been using the said Service Connection since the partition it can be safely presumed that the defendant was also fully aware that the plaintiff had been allotted the right to Service Connection No.9 (now Service Connection No.209) situate in the well in Survey No.203/3. D.W.1 in his cross examination has stated as follows:

"மீன் இணைப்பு, எண்.9 (209) S.No.203/3-ல் தான் உள்ளது."

14.Having accepted the right of the plaintiff to Service Connection No.209 and the said right having been exercised by the plaintiff since the date of partition in the year 1980, the appellant/defendant cannot now take advantage of the mistake in the description of the Survey Number of the property. The Courts below have rightly appreciated the evidence on record. The plaintiff has claimed only a declaration that he is entitled to the use of the Service Connection No.209 and that the same is situated in Survey No.203/3 and for an injunction that the appellant/defendant should not obstruct the respondent from drawing his share of the water. The appellants have misinterpreted the claim of the plaintiff as a claim over the land situate in Survey No.203/3. It is also not the case of the appellant in his grounds that the Courts below have not



appreciated the evidence filed on his side. Therefore, the Substantial Questions of Law are answered against the appellant.

The Second Appeal stands dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Subordinate Judge,
Gudiyattam,
Vellore District.
2. The District Munsif,
Gudiyattam,
Vellore District.
3. The Section Officer,
V.R.Section,
High Court, Madras

S.A.No.339 of 2009
and
M.P.Nos.1 and 2 of 2009

PL (CO)
K.RK. (12.11.2021)