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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.07.2021

Pronounced on : 27.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.78 of 2009

and

M.P.No.1 of 2009

R. Kanniah Chetty ...Appellant/3rd defendant/3rd respondent

Vs.

1.L.Balasundaram

2.L.Rajendran ...Respondents/Appellants/ Plaintiffs

3.S.Subramani Chetty

4.L.Narayana Chetty ...Respondents/Respondents1&2/ Defendants1&2

5.The Superintending Engineer,
Kancheepuram Electricity Board,
Kancheepuram.

6.The Executive Engineer (O &M),
Tamil Nadu Electricity Board,
Kancheepuram.

7.The Assistant Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Athimancherripettai.

8.The Junior Engineer (O & M),
Tamil Nadu Electricity Board,
Pudur Village.

...Respondents/Respondents 4 to 7/
Defendants 4 to 7

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 11.03.2008 made in A.S.No.44 of 2007 on the file of the Subordinate Court, Thiruvallur, reversing the Judgment and Decree dated 20.09.2006 made in O.S.No.53 of 2002 on the file of the District Munsif Court, Pallipattu District.



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For Appellants : Mr.M.V.Venkataseshan

For Respondents : Mr.J.R.K.Bhavanantham
for R1 and R2

R3 to R8 - Served - No appearance

JUDGMENT

The 3rd defendant is the appellant before this Court. The parties are referred to in the same rank and array as before the trial Court.

2.The plaintiffs herein had filed the suit O.S.No.53 of 2002 on the file of the learned District Munsif, Pallipattu, for declaring their 1/4th share each in the suit well, Service Connection No.27, motor and pumpset. etc., for granting a permanent injunction restraining the defendants 4 to 7 from shifting the suit service connection from the suit well to any other well or borewell and for a mandatory injunction directing the defendants to restore the suit service in the name of the 1st plaintiff as they put together half share in the suit service or to restore the service in the name of Valliammal. The plaintiffs have instituted the suit stating that the suit well which is situate in S.F.No.227/7 measuring 0.16 cents was a common well belonging to the plaintiffs 1 and 2, Valliammal and the 3rd defendant. The defendants 1 and 2 are the sons of Valliammal. It is their further case that the service connection, motor and pumpset, etc., were being used by all the four sharers equally to cultivate the lands. The loan had been obtained in the name of Valliammal and out of this loan, the service connection was also obtained in the name of Valliammal. The four sharers had contributed equally to discharge the above loan. In recognition of the right of each sharer to the suit well, pumpset, motor and service connection, an Agreement dated 01.05.1986 was entered into between Valliammal, the plaintiffs and the 3rd defendant. In the said Agreement, it was clearly mentioned that each of them have a 1/4th share in the well. That apart, the Agreement had also narrated the loan borrowed by Valliammal for a common purpose and that the fact that each of them held a 1/4th share in the Service connection No.27 and in the motor and pumpset. The Agreement further stipulated that the sharers can take water only to irrigate the lands falling under the schedule well and not for irrigating other lands which did not come within the suit well.

3.In the year 1990, Valliammal died and her sons defendants 1 and 2 succeeded to her interest. They had only a 1/4th share in the suit well. Thereafter, the defendants 1 to 3 colluded



together and with a view to defeat the rights of the plaintiffs had created nominal Sale Deeds.

4.The plaintiff would further contend that the 3rd defendant was moving in a great haste to have the service connection transferred in his name, though he is not the absolute owner and entitled to only a $\frac{1}{4}$ share. On 18.02.2001, the plaintiffs had issued a Lawyer's Notice to the defendants 4 to 7 not to effect the name transfer in the name of the 3rd defendant. Despite receiving the suit notice, the defendants 4 to 7 had not chosen to give any reply and the plaintiffs came to learn that the defendants 4 to 7 were taking steps to transfer the service connection in favour of the 3rd defendant and shifting the suit service connection to another place. Therefore, the plaintiffs were constrained to file the above suit.

5.The 1st defendant has been called absent and has been set ex parte. The 2nd defendant had filed the Written Statement which was adopted by the 3rd defendant. The 2nd defendant would contend that the suit well is not a common well and that the 3rd defendant had a $\frac{1}{2}$ share and Valliammal the remaining $\frac{1}{2}$ share. They would submit that Valliammal is the absolute owner of the suit properties and the service connection. That apart, they would further contend that the Agreement dated 01.05.1986 is a fabricated document and has not been signed by the parties. The loan borrowed by Valliammal had been discharged by herself and the 3rd defendant and the plaintiffs had not contributed for its discharge. After the death of Valliammal, the defendants had purchased her $\frac{1}{2}$ share by a Sale Deed dated 13.11.2000 from the 2nd defendant. This was in pursuance to an earlier Agreement entered into between Valliammal and the 3rd defendant. Therefore, they would submit that the plaintiffs have come to Court with a false case and they are not entitled to the reliefs claimed.

6.On the side of the plaintiffs, the 1st plaintiff has examined himself as PW1 and one Varadhaiah and Kothandaraman as P.W.2 and P.W.3 and marked Ex.A.1 to Ex.A.22 in support of their case. On the side of the defendants, the 3rd defendant had examined himself as DW1 and one Shanmugam as DW2 and marked Ex.B.1 to Ex.B.7 in support of their contentions.

7.The learned District Munsif, Pallipattu, dismissed the suit on the ground that the plaintiffs have failed to establish their right to the suit properties and also that the plaintiffs were not in possession and enjoyment of the suit property. The plaintiffs aggrieved by the Judgment and Decree had filed A.S.No.44 of 2007 on the file of the learned Subordinate Judge, Thiruvallur. The learned Subordinate Judge, taking note of the



interpolation in Ex.B.1 - Sale Deed and also taking into account the fact that the plaintiffs had a right as a Co-parcener to the suit property, allowed the appeal to the extent of declaring the plaintiffs' right for 1/4th share in the well, Service connection, motor, pumpsets, etc., and granting permanent injunction with reference to 1/4th share and mandatory injunction against the defendants 4 to 7 in respect of this 1/4th share. Aggrieved by this Judgment and Decree, the 3rd defendant had filed the above Second Appeal.

8.The Second Appeal was admitted on the following Substantial Questions of Law by orders of this Court dated 27.01.2009:

"(1)Whether the Lower Appellate Court is right in holding that the respondents 1 and 2 are entitled for ¼ share in the suit well when that right has been sold under Ex.B.1 Sale Deed by the original owner as early as 2000?

(2)Whether the Lower Appellate Court is right in holding that the appellant/3rd defendant has not proved his case when the respondents 1 and 2 had not even established their prima facie case?"

9.Mr.M.V.Venkataseshan, learned counsel appearing on behalf of the 3rd defendant would submit that the plaintiff has not come to Court with a clear pleading as to how they are entitled to a share in the suit property. The document put forward by them as an Agreement between the parties had been disbelieved by the trial Court and the trial Court had held that the said document cannot be relied upon as it required registration. That apart, he would submit that the plaintiffs have not filed any document whatsoever to show their possession nor shown any ground for setting aside the Judgment and Decree of the trial Court and the Lower Appellate Court without forming proper points for consideration has proceeded to allow the Appeal.

10.Per contra, Mr.J.R.K.Bhavananthan, learned counsel appearing on behalf of the plaintiffs would submit that it is an admitted case that the original owners of the suit properties are related and the plaintiffs and the defendants derive their rights from their respective predecessors in title/predecessors in interest. He would submit that the defendants themselves have conceded that the plaintiffs together were entitled to a 1/4th share in the suit property. The Appellate Court had discussed how under Ex.B.1 only a 1/4th share have been conveyed, however, that has been erased and interpolated with the word "entire" (பூரா பாகம்).



11.The learned counsel would fairly concede that the plaintiffs have not properly pleaded their rights to the suit well. However, considering the fact that the plaintiffs had an inherent right as a successor interest to a 1/4th share in the properties, the Appellate Court has rightly set aside the Judgment and Decree of the trial Court and granted a lesser relief to the plaintiffs.

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

13.The admitted case of the plaintiffs and the defendants are that the suit properties are their ancestral properties to the suit and the parties share a common ancestorsy' ½ share in the suit property belonged to Erama Chetty and his brother Kumara Chetty and the other ½ share fell to the share of Sanjeevi Chetty. Erama Chetty's daughter was Valliammal and her children are the defendants 1 and 2 herein. Kumara Chetty had a wife Mangammal and they had two daughters Govindammal and Lakshmiammal. Govindammal is the mother of the 1st plaintiff and Lakshmiammal is the mother of the 2nd plaintiff. Therefore, Kumara Chetty's ¼th share fell to the share of the plaintiffs herein, Erama Chetty's share came to the defendants 1 and 2 and Sanjeevi Chetty's share came to devolved on the 3rd defendant. Though the plaintiffs had pleaded a right to a ½ share, however, from the admitted facts, it is clear that they are entitled to ¼ share in the suit property with its well, service connection, motor and pumpsets, etc., The plaintiffs have filed Ex.A.1 which is styled as an Agreement between the sharer of the electric pumpsets (மின்சார பம்புசெட் பாகஸ்தர்கள் ஆக்கிரமிப்பை) dated 01.05.1986. The Agreement has been entered into between Valliammal, wife of Sanjeevi Chetty, L.Balasundaram, son of Gangaiah Chetty (1st plaintiff) and R.Kanniah Chetty, son of Sanjeevi Chetty (3rd defendant). Under this Agreement, the parties had described their respective shares and the Agreement has been entered into primarily for placing on record the manner in which the well has to be utilised and that apart, how the charges for the consumption of electricity, the maintenance of the service connection, motor and pumpset, etc. had to be shared. This Agreement would show that the 1st plaintiff and 2nd plaintiff were entitled to 2/8th share each and Valliammal to a 1/4th share. The trial Court rejected this Agreement on the ground that it created an interest in an immovable properties and therefore, required to be registered. However, a perusal of the documents does not indicate the same but only sets out how parties have to enjoy and utilise the water from the common well and how the payment of current consumption and maintenance charges had to be dealt with. There is no right in immovable property being



created under this Deed and it is only the usage of the water from the Well which forms the subject matter of the Agreement.

14. The trial Court has rejected the said Agreement stating that the document created a right over the suit lands in present time and therefore, the same required registration and since the document was not registered it could not be looked into. However, the Appellate Court has rightly reversed the findings stating that no right to property has been created under the said document. The 3rd defendant would claim a right to the entire well, service connection, motor and pumpsets, on the strength of the Sale Deed dated 13.11.2000 executed by the 2nd defendant and his children in favour of the 3rd defendant. The 1st defendant who is also the son of Valliammal and who has a share in it has not joined in the Sale. The Lower Appellate Court has rightly taken note of the interpolation in the description of the property, particularly, the property described as Item - 8 in the suit schedule wherein the word "half" and புற have been added. In fact, the word "புற " has been added after striking out the word originally used by applying a whitener over it and thereafter, the word "புற " interpolated there. This interpolation is also seen in Page 7 which is the declaration given under Section 3(1) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Neither has this interpolation been countersigned by the parties nor has the Sub-Registrar Office noted the above as corrections/erasure.

15. A perusal of the documents would clearly show that the 3rd defendant had manipulated the documents to show that he has an absolute interest in the suit well. Admittedly, the plaintiffs predecessors in interest had a 1/4th share along with the father of Valliammal who had a right to the remaining 1/4th share. The trial Court has also rejected the mandatory injunction on the ground that the service connection has already been transferred in the exclusive name of the 3rd defendant. The Court has overlooked the fact that this transfer has been effected just prior to the filing of the suit and that too after the issue of Ex.A.3 -Legal Notice dated 18.01.2001. Ex.A.3 had been received by the defendants and Ex.A.4 is the reply dated 23.02.2001 issued by the defendants. Therefore, the transfer has been effected in a great haste. Further, the plaintiffs have asked for a declaration of their 1/4th share each in the suit well, however, on perusing the devolution of rights, it is clear that the plaintiffs together are only entitled to the 1/4th share which is available to their predecessors in interest, namely, Kumara Chetty, brother of Raoma Chetty. Though only one point for consideration has been framed, however, the Lower Appellate Court has considered the entire evidence and findings of the trial Court and has given reasons for disagreeing with the said



findings. The plaintiffs right to the 1/4th share has not been conveyed under Ex.B.1 since Ex.B.1 has not been executed by the plaintiffs. It is only the 2nd defendant who has conveyed his interest and not even the 1st defendant. The 2nd defendant has no right to convey the plaintiffs share. Therefore, the Substantial Questions of Law No.1 is answered against the appellant.

16.The plaintiffs have made out a prima facie case on the admitted genealogy of the parties and Ex.A.1 to show their rights to enjoy the suit properties to the extent of 1/4th share. The 3rd defendant has not been able to establish how he claims an absolute right, more particularly, when he has only purchased the right from one of the sons of Valliammal. Admittedly, Valliammal's 1/4th share would devolve equally among the sons of the appellants herein each would be entitled to 1/8 share. Further, the 3rd defendant is in possession of the ½ share which fell to the share of the father Sanjeevi Chetty. Therefore, the 2nd defendant could only convey his 1/8th share and it is not known as to how he has conveyed the entire share in the suit well, service connection and motor pumpset. The Substantial Questions of Law No.2 is answered against the 3rd defendant/appellant.

In fine, the Second Appeal is dismissed. The Judgment and Decree of the Lower Appellate Court in A.S.No.44 of 2007 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge, Thiruvallur.

2.The District Munsif, Pallipattu District.

+1cc to Mr.J.R.K.Bhavanantham, Advocate SR.No.35993

+1cc to Mr.M.V.Venkateshan, Advocate SR.No.35790

S.A.No.78 of 2009
and M.P.No.1 of 2009

MG (CO)
GMY (21/10/2021)