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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2021
PRONOUNCED ON : 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1511 of 2007

- 1.Marriannan
- 2.Palaniappan (Died)
- 3.Muthu
- 4.Periannan
- 5.Dhandavan
- 6.Muthiyan
- 7.Mohan
- 8.Annamalai
- 9.Chellammal
- 10.Minor.Selvaraj
rep.by next friend mother
- 11.Mariammal
- 12.Parvathi
W/o.Late Palaniappan
- 13.Palaniyammal
D/o.Late Palaniappan
- 14.Govindan (Died)
S/o.Late Palaniappan
- 15.Palani Gounder (Died)
S/o.Late Palaniappan
- 16.P.Venkatachalam
S/o.Late Palaniappan
- 17.Marakkal
D/o.Late Palaniappan
- 18.Periyammal
D/o.Late Palaniappan



19. Mariyammal
W/o. Late Palani Gounder

20. Govindammal
D/o. Late Palani Gounder

21. Thandavan
S/o Late Palani Gounder

(Appellants 12 to 21 and R9 brought on record as Lrs of the deceased 2nd appellant viz., Palaniappan vide order dated 11.11.2020 in C.M.P.Nos.12161 to 2163/2020 and 12178 to 12180 of 2020 in S.A.No.1511 of 2007)

... Appellants /Defendants

/versus/

1. Palaniappan (Died)

2. Chinnathayi
W/o. Palaniappan

3. P. Palaniappan
S/o. Palaniappan

4. Chellakannu
D/o/ Palaniappan

5. P. Chithaiyan
S/o. Palaniappan

6. V. Palaniammal
D/o. Palaniappan

7. P. Mathaian
S/o. Palaniappan

8. P. Marimuthu
S/o. Palaniappan

9. Poongodi
W/o. Late Govindan



(RR2 to RR9 brought on record as Lrs of the deceased sole respondent viz., Palaniappan vide order dated 11.11.2020 in C.M.P.Nos.12161 to 12163/2020 and 12178 to 12180 of 2020 in S.A.No.1511 of 2007)

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...Respondents/Plaintiff in Lower Court

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the decree and judgment dated 27.07.2006 in A.S.No.41 of 2005 on the file of the Subordinate Judge, Mettur confirming the decree and Judgment dated 31/03/2005 passed in O.S.NO.75/2001 on the file of the District Munsif Court, Mettur.

For Appellants : Mr.V.Balasubramanian
For R1 : Died
For R2 to R8 : Mr.V.Sekar

JUDGMENT

(The case has been heard through Video Conference)

The defeated defendants in the suit in O.S.75 of 2001 are the appellants herein.

2.The respondents/plaintiffs have filed a suit in O.S.No.75 of 2001, before the District Munsif Court, Mettur, seeking the relief of declaration of title to draw water from the well and for declaration of right to carry the water from the well and for mandatory injunction viz., the suit has been filed for declaration of plaintiffs right to draw water from Survey No.62/1F2 to the lands in survey No.62/1G by water pipe and to the lands of survey No.62/1C by water channel through lands of the defendants in Survey No.62/1E as shown in the suit plan and by consequential injunction restraining the defendants not to interfere with the rights of drawing water from the well as shown in the suit plain and directing the defendants to restore the pipe line in between the lands in S.Nos.62/1F2 and 62/1G as well as to open the mud partition in the 'AB' water channel from the well in S.No.62/1F2 at the point in S.No.62/1C by means of mandatory injunction.

3.The defendants have denied the plaintiffs right to draw the water from the well and to carry the water in survey Nos.62/1G, 62/1E measuring to an extent of 55 feets each. The plea raised in the written statement is that there was no water tank and there is no pipelines for the same.



4. Before the Trial Court, on behalf of the plaintiffs, PW1, PW2, PW3 were examined and Exs.A1 to A18 were marked; on behalf of the defendants DW1 & DW2 were examined and marked Exs.B1 to B5; Court exhibits viz., Exs.C1 & C2 were also marked. In view of the dispute between the party relating to situs and also with regard to the alleged existence of the pipeline underneath in survey Nos.62/1F2 and 62/1G, an Advocate Commissioner was appointed and he has filed a report & plan and the same were marked as Exs.C1 & C2 respectively.

5. Thereafter, the Trial Court has decreed the suit. Aggrieved against the judgment and decree passed in the above said suit, the defendants have filed appeal suit in A.S.No.41 of 2006 before the Sub-Court, Mettur and by an order dated 27.07.2006, the learned Judge has dismissed the appeal suit and confirmed the judgment and decree passed in O.S.No.75 of 2001. Hence, the Second Appeal by the defendants.

6. This Second Appeal is admitted on the following substantial questions of law 1 & 2:

"1. Whether it is correct in law by the Lower Courts in rejecting the evidence of DW1/third appellant with regard to the alternative source of irrigation of the respondent/plaintiffs lands as the not relevant fact while the respondent/plaintiff claimed the right of drawing the water through appellants/defendants lands by way of easement of necessity.

2. Whether the Lower Courts are correct in law in granting declaratory relief in favour of plaintiff to draw water through appellants/defendants lands as the easement right presumption merely based on the Advocate Commissioner report Ex.C.1 and plan Ex.C2."

7. Heard the learned counsel for the appellants and respondents on the above substantial questions of law.

8. On a perusal of the pleadings and the evidence i.e., both the oral and documentary evidence, one Mariappan and Thandava Gounder are brothers. Mariappan had son by name Palaniyappan & Thandava Gounder had son by name Marimuthu Gounder. The said Palaniyappan had three sons Mariappan, Palaniappan & Muthu, they are arrayed as defendants 1 to 3 while the defendants 4 to 6 are sons of the second defendant/Palaniappan, the defendants 7 & 8 are the sons of Periannan and the 9th defendant is the son of the



first defendant. Marimuthu Gounder had two sons Palaniyappan and Andiyappan. Mariyanna Gounder and Thandava Gounder had owned land to an extent of 11.20 acres in survey No.62/01, there was a oral partition and subsequently, the devision of property was effected by a document under Ex.A1.

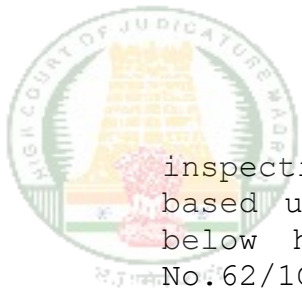
9.The "B" Schedule property under Ex.A1/partition deed belongs to the plaintiff and the "C" schedule property plaintiff's brother and thus as per the schedule of the properties under Ex.A1/partition deed, there is well in Survey No.62/1F2, in which, the plaintiffs are having 1/3rd share to draw water. The well is situated in Survey No.62/1F2, after re-survey, devision is not in dispute.

10. In the cross examination of DW1/Muthu, he has admitted that the plaintiffs are having all rights in the common well, which is situated in Survey No.62/1F2. Admission by the defendants as to the right of the plaintiffs is best form of the evidence and accordingly, both the Courts below have rightly come to the conclusion that the plaintiffs have a common right to draw water from the common well, which admittedly situated in survey No.62/1F2.

11.The learned counsel for the appellants would contend that both the Courts are erred in relying upon the Advocate Commissioner's Report and it is a plan for deciding in favour of the plaintiffs regarding the easementary right to draw the water from the well and further contend that when there is no title in the well and channel, the Courts below have committed an error in declaring the declarative relief to the plaintiffs, availability of alternative source for the irrigation for the plaintiffs was not consider in the proper prospective.

12.The learned counsel for the respondents/plaintiffs made submissions in support of the judgment passed by the Courts below. Perused the evidence of the Advocate Commissioner's report viz., Exs.C1 & C2. The physical features of the lands in subject matter of the second appeal was elaborately discussed by both the Courts below.

13.The sum and substance of the Advocate Commissioner's report is that at the time of the inspection, the Advocate Commissioner has noticed the existence of the two water tanks situated in Survey No.62/1F2, Survey No.62/1E. It is also noticed by the Advocate Commissioner that there is a source for carrying the water to irrigate the land situated in survey No.62/1F2. There are two water tanks at the time of the



inspection, they are well and newly constructed water tanks and based upon the Advocate Commissioner's report, both the Courts below have come to the conclusion that the land in survey No.62/1G has no independent resources to irrigate those lands and it is only irrigate through common well that is situated in Survey No.62/1F2. Further, entire extent of the land in Survey No.61/1 originally enjoyed by the one and same family, subsequently, there was a partition deed under Ex.A1 and hence, the well is a common source to irrigate the entire land situated in undivided original survey No.62/1. Therefore, right of drawing the water from the common well through channel to irrigate the land cannot be prevented.

14.As discussed supra, in view of the specific recital in Ex.A1/partition deed and coupled with the admission of DW1 in his cross-examination, both the Courts below have rightly come to the conclusion that the plaintiffs are having 1/3rd share in the common well and as such, they can draw water from the well. In exercise of such existing right, the plaintiff has lied PVC water pipe, as pleaded in the plaint and as deposed by PW1 supported and corroborated by the oral evidence of PW2 and the same was duly stands corroborated by Exs.C1 & C2/Advocate Commissioner's report & plan respectively and hence, both the Courts below have rightly appreciated both the evidence and witness with regard to right of the plaintiffs to draw water from the common well.

15.Thus, both from the oral and documentary evidences, coupled with the admission of DW1, as per Ex.A1, the plaintiffs are having 1/3rd share of right in suit common well, which is admittedly situated in Survey No.62/1F2 and after sub-division, Survey No.62/1G has no source of the water for irrigation purpose and hence, in view of the existence of the share in the common well from land in Survey No.62/1F2, two water tanks have been constructed and underneath pipe lines were connected. The connected underneath plastic pipelines crossed through the Survey No.62/1E(which was allotted to the defendants' land) at the five feet underneath to the land, and such extent is for the last more than 50 years. Therefore, to irrigate the lands in Survey No.62/1F2, pipeline was connected through the lands in Survey No.62/1E to take water from the common well situated in Survey No.62/1F2 and such things have been duly demonstrated by the plaintiffs through the oral evidence and independent witnesses namely PW1 and PW2 coupled with documentary evidence viz., Ex.A1; further, admission made by DW1 in the cross-examination; the factual situation is also duly reflected under Exs.C1 & C2 and hence, both the Courts below have rightly come



to the conclusion that the existence of the right over the property, since, the lands in survey No.62/1E is earlier part of composite lands in Survey No.62/1 and hence, since the parties are derived title from the common ancestor, the plaintiffs have got the relief of easement of necessity, besides, the admission made by DW1. In the absence of any alternative source for water irrigation, both the courts below have rightly held that the plaintiffs are entitled for relief of declaration and for mandatory injunction and there is no substantial question of law in view of the factual possession as reflected by the documentary evidence.

16.Both the substantial questions of law do not arise for consideration on the above factual background and hence, both the substantial questions of law answered in negation against the appellant.

17.In view of the above, the Second Appeal is devoid of merits, dismissed. The judgment and decree, passed in O.S.No.75 of 2001, by the District Munsif Court, Mettur, dated 31.03.2005, by confirming the judgment and decree, passed in A.S.No.41 of 2005, by the Sub Court, Mettur, dated 27.07.2006, is hereby confirmed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To:

1.The Subordiante Judge,
Mettur.

2.The District Munsif,
Mettur.

+1cc to Mr.V.Sekar, Advocate Sr.31313

+1cc to Mr.V.Balasubramanian, Advocate Sr.31269

S.A.No.1511 of 2007

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