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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.959 OF 2011

AND

M.P.NO.1 OF 2011

1.C.Krishnan

2.C.Kandiban

3.C.Babu

...Appellants / Respondents / Defendants

Vs.

M.Krishnan

...Respondent / Appellant / Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 21.02.2011 passed in A.S. No.49 of 2009, on the file of the Subordinate Court, Ranipet, reversing the decree and judgment dated 29.07.2009 passed in O.S. No.101 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Arcot.

For Appellants : Mr.P.Mani

For Respondent : Mrs.V.Srimathi

JUDGMENT

The appellants are the defendants in O.S. No.101/2005, on the file of the District Munsif cum Judicial Magistrate Court, Arcot. The respondent/plaintiff filed the suit for permanent injunction restraining the appellants / defendants from interfering with his peaceful possession and enjoyment of the suit property.

2. The suit property as prescribed in the plaint is a dry land in Survey number 171/2H (old Survey No.171/2), Kilminnel Village, Walajah Taluk, Vellore District, along with 1½ shares out of 5 shares in the well, motor pump set and electricity service connection.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.



4. The minimum facts that are required for the disposal of the present second appeal are as follows.

The plaintiff owns 1.38 acres out of 4.39 acres in Survey No.171/2H (old Survey No.172/2), Kilminnel Village, Walajah Taluk, Vellore District. He claims tagged share of $1\frac{1}{2}$ out of 5 in the irrigation facility from the well, motor pump set and electricity service connection. According to the plaintiff, he has been enjoying this right ever since the date of purchase of the suit property and that the defendants are attempting to interfere with his peaceful possession and enjoyment of the same.

5. The case of the defendants is that the suit property was originally owned by their father Chinnappa Gounder and the electric motor pump set was put up in the suit property by him during the year 1968. Subsequently, he sold some portions of his land to other persons, which eventually landed on the hands of the plaintiff. The defendants claimed that the plaintiff is entitled to only $1/18$ share in the well and motor pump set. According to them, the suit was filed out of enmity and is also bad for non joinder of necessary parties as all the other co-owners have not been impleaded in the suit.

6. The learned District Munsif cum Judicial Magistrate, after framing necessary issues and after full contest, dismissed the suit vide his decree and judgment dated 29.07.2009 on the following grounds:

- 1) The sale deed dated 30.05.1960 (Ex.A1) executed in favour of Periakulandaiammal mentions only $1/5$ share in the well. However, in the sale deed dated 17.11.1986 (Ex.A6) executed by Periakulandaiammal in favour of the plaintiff mentions about $1/5$ share in the irrigation facility, motor pump set and electricity service connection.
- 2) Though 0.94 cents of land alone was conveyed through Ex.A1, it is not known as to how Periakulandaiammal conveyed 0.98 cents to the plaintiff through Ex.A6 sale deed.
- 3) The alleged written agreement dated 01.10.1968 (Ex.A11) executed by the father of the defendants had not been proved by the plaintiff. In fact, this transaction was not mentioned in Ex.A6 sale deed.
- 4) The signature of Chinnappa Gounder (father of the defendants) on Ex.A11 was also proved to be forged when compared with his admitted signatures in the other documents.
- 5) Chockalingam, another vendor of the plaintiff had conveyed 0.40 cents of land along with $1/11$ share in the well, electric motor pump set and electricity service connection.
- 6) A perusal of Ex.A2 to Ex.A5, the parent documents of Ex.A4, shows that Chockalingam, vendor of the plaintiff got $1/9$ share out of $1/18$ share in the well and motor pump set.



While so, he cannot convey 1/11 share in the electric motor pump set and electricity service connection.

- 7) The plaintiff has not also claimed adverse possession over the suit property.
- 8) The plaintiff has not established his right by adducing acceptable evidence and should not pick holes in the defendants' case and on that score seek for a relief of injunction.

7. However, in the first appeal preferred by the plaintiff in A.S. No.49/2009, the learned Subordinate Judge, Ranipet, reversed the findings of the trial court and decreed the suit filed by the plaintiff vide his decree and judgment dated 21.02.2011 on the following grounds.

- 1) The plaintiff is entitled to 1½ shares in the irrigation facility proportionate to his share i.e. 1.38 acres out of 4.37 acres of land in the suit Survey Number even though shares in the electricity service connection and motor pump set were not specifically mentioned in the prior title deeds.
- 2) Considering the practice prevailing in those days, a share in the irrigation facility would be implicit with the proportion of the share bought in the land and the vendor would not have foreseen the problem which would crop up after getting the electricity connection and installation of the electric motor pump set.

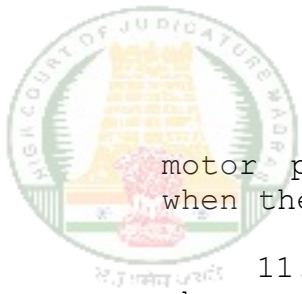
Thus the first appellate court decreed the suit in favour of the plaintiff.

8. Aggrieved over the same, the present second appeal is filed on the following substantial questions of law:

- 1) "Whether in law, the plaintiff is entitled to the specific right claimed in the suit well, motor pump set and electricity service connection, merely because, he purchased 1.38 acres out of 4.37 acres in S.No. 171/2 in the absence of any deed conveying such right to the plaintiff?
- 2) Whether in law, the plaintiff is entitled to the specific right claimed in the suit well, motor pump set and electricity service connection when the plaintiff's vendors had no right to convey such right to the plaintiff?"

9. Heard Mr. P. Mani, learned counsel for the appellants and Ms.V.Srimathi, learned counsel for the respondent.

10. At the outset, it may be observed that the issue involved in the present case is as to whether the plaintiff is entitled to 1½ share in the electric motor pump set and electricity service connection. It is pertinent to mention that the plaintiff has filed the suit only for a bare injunction and not for a declaration that he has 1½ shares in the electric



motor pump set and electricity service connection especially when the defendants have denied the existence of such a right.

11. Be that as it may, the plaintiff in order to prove his share over the electric motor pump set and electricity service connection, mainly relied on Ex.A1 to Ex.A6, Ex.A8 and Ex.A11. In Ex.A1, which is a sale deed of the year 1960, an extent of land measuring 0.94 cents out of 4.37 acres with 1/5 share in the well was conveyed. However, the purchaser of Ex.A1 conveyed 0.98 cents out of 4.37 acres to the plaintiff with 1/5 share in the well, 3 HP electric motor pump set and electricity service connection through a sale deed dated 17.11.1986 (Ex.A6). It is trite law that the vendor cannot convey a better title than what he possesses. There is no mention in Ex.A6 sale deed as to how the vendor of the plaintiff got 1/5 share in the electric motor pump set and electricity service connection. In this regard, the plaintiff relied on Ex.A11, a written agreement allegedly made by the father of the defendants on 01.10.1968. The trial court found that the signature of the father of the defendants was forged on Ex.A11 and that the plaintiff has not also proved the execution of Ex.A11 by adducing acceptable evidence. The trial court had given elaborate and cogent reasons for coming to such a conclusion and on the contrary, the first appellate court did not deal with these aspects at all. Pertinent it is to point out that even in Ex.A6 sale deed, there is no mention about Ex.A11 agreement.

12. Ex.A2 is a sale deed dated 13.10.1972 executed by Chinnappa Gounder, father of the defendants in favour of one Kuppammal. The property conveyed through Ex.A2 is 36 cents of land out of 4.37 acres in Survey No.171/2 with 1/18 share in the well and pump set. Kuppammal, in turn, sold the property to one Chockalingam (vendor of the plaintiff) through a sale deed dated 02.11.1977 (Ex.A3). The same property conveyed under Ex.A2 was conveyed through Ex.A3 to Chockalingam. Ex.A5 is a sale deed dated 02.11.1977 executed by Chinnappa Gounder in favour of Chockalingam, the vendor of the plaintiff. Through Ex.A5, 4 cents of land out of 4.37 acres along with 1/9 share in the well were conveyed. Chockalingam sold all the items purchased by him in the suit Survey number in favour of the plaintiff through a sale deed dated 15.10.1990 (Ex.A4) in which there is a mention about 1/11 share in 3 HP electric motor pump and electricity service connection. It is seen from Ex.A2 to Ex.A5 that Chockalingam got only 1/9 share out of 1/18 share in the well and motor pump set. In the circumstances, he cannot convey 1/11 share in 3 HP motor pump set. Therefore, the plaintiff cannot claim 1½ share in the motor pump set and electricity service connection. Admittedly the electricity service connection stands in the name of the father of the defendants. The observation of the first appellate court is that



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in those days there was a practice of transferring irrigation facility proportionate to the land purchased and that the vendor would not have foreseen the problems that would crop up after getting electricity service connection and after installation of electric motor pump set. This observation of the first appellate court cannot be accepted especially when there is no mention about the transferring of share in the electric motor pump set and electricity service connection in the sale deeds Ex.A2, Ex.A3 and Ex.A5. It is admitted that the electricity service connection was obtained in the year 1968 and Ex.A2, Ex.A3 and Ex.A5 are subsequent to that. As already observed, there is also no mention about Ex.A11 agreement in the sale deed Ex.A6 executed in favour of the plaintiff.

13. The trial court had analysed the evidence adduced on both sides threadbare and had found that the plaintiff is not entitled to 1½ share in 3 HP electric motor pump set and electricity service connection as claimed by the plaintiff.

14. The learned counsel for the respondent contended that when subsequent documents in favour of the plaintiff mention about the irrigation right through electric motor pump set and electricity service connection, it cannot be held that the plaintiff is not entitled from claiming such a right as there is no mention about the same in the parent documents. According to her, since a necessity has arisen the said rights were conveyed through Ex.A4 and Ex.A6 to the plaintiff. This argument cannot be accepted for the simple reason that

- 1) the vendor cannot convey a better title than what he possesses.
- 2) Since Ex.A2, Ex.A3 and Ex.A5, which are subsequent to obtention of electricity service connection, do not mention about the transfer of share in the electric motor pump set and electricity connection, the plaintiff cannot claim such a right.

15. Though the suit was filed for a bare injunction, the trial court had analysed each and every document adduced on the side of the plaintiff and had come to a definite conclusion that the plaintiff is not entitled for a permanent injunction as prayed for against the defendants. All the observations of the trial court are based on sound principles of law and on the contrary, the first appellate court merely based on surmises and conjectures had decreed the suit filed by the plaintiff. Therefore, the substantial questions of law are answered in favour of the appellants.

16. In the result,

- i. the second appeal is allowed. No costs.
Consequently connected Civil Miscellaneous



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Petition is closed.

- ii. The decree and judgment dated 21.02.2011 passed in A.S. No.49 of 2009, on the file of the Subordinate Court, Ranipet, is set aside.
- iii. The decree and judgment dated 29.07.2009 passed in O.S. No.101 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Arcot, is upheld.
- iv. The suit in O.S. No.101 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Arcot, is dismissed with costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

bga

To

1. The Subordinate Judge,
Ranipet.

2. The District Munsif cum
Judicial Magistrate,
Arcot.

3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.P.Mani, Advocate Sr.No.27229

+1cc to Mr.V.Ragavachari, Advocate Sr.No.26481

S.A.No.959 of 2011

GMR(CO)

RVM(18/05/2022)