



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.139 of 2014
and MP No.1 of 2014

1. Marappa Gounder

2. Nagamuthu

Both are residing at
Nagadevampalayam Village,
Gobichettipalayam Taluk,
Erode District

....Appellants/Appellants/Plaintiffs

Vs.

1. Subramaniam

2. Vadivel

3. Kumarasamy Gounder

All are residing at
Nagadevampalayam Village,
Gobichettipalayam Talu,
Erode District

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the decree and judgment dated 17.09.2013 made in A.S.No.39 of 2012 on the file of the learned Sub Court, Gobichettipalayam confirming the judgement and decree dated 26.09.2012 made in O.S.No.351 of 2007 on the file of the learned District Munsif Court, Gobichettipalayam.

For Appellant :Mr.N.Manokaran

For Respondents :Mr.Titus Enock for
Mr.I.C.Vasudevan



JUDGMENT

The plaintiffs are the appellants in this second appeal.

2. The plaintiffs are brothers. The 1st Defendant and the 2nd defendant are brothers and the 3rd defendant is a co-sharer in the property. The plaintiffs filed a suit seeking for the relief of permanent injunction restraining the defendants from obstructing or interfering with their right in taking water from the well to their agricultural lands.

3. The case of the plaintiffs is that old survey No.380 (New S.F No.90) had a total extent of 4.37 acres. According to the plaintiffs, 2.16 acres on the southern side belongs to the 1st and 2nd defendants and 1.07 acres on the northern side belongs to the plaintiffs. An extent of 1.14 acres, which is the middle portion belongs to the 3rd defendant. The further case of the plaintiffs is that there is a common well situated in the southern portion belonging to the defendants 1 and 2. It is stated that the plaintiffs are entitled for 1/4th share in the common well and they have fitted a 5 HP Electric Motor and pump to the well and they are drawing water from the said well to irrigate their lands. It is further stated that out of 8 days, the plaintiffs have the right of taking water from the common well for two days, the 1st and 2nd defendants have the right to take water for 3 ½ days and the 3rd defendant has the right to take water for the remaining 2 ½ days. This was followed for a long number of years and all the parties were accordingly irrigating their agricultural lands from the common well.

4. The grievance of the plaintiffs is that the defendants 1 and 2 started claiming exclusive right over the common well and prevented the plaintiff from drawing water from well to irrigate their lands. Hence, left with no other option, the plaintiffs filed the suit seeking for the relief of bare injunction.

5. The defendants 1 and 2 filed a written statement and admitted the properties that are enjoyed by the plaintiffs, the 1st and 2nd defendants and the 3rd defendant and the extent as stated by the plaintiffs. The only point of disagreement for the defendants 1 and 2 is that the plaintiffs do not have any right to draw water from the well and they denied that the plaintiffs had any share in the well. According to these defendants, the plaintiffs were never allowed to irrigate their agricultural lands from the suit well and hence, they sought for the dismissal of the suit. The 3rd defendant never contested the suit and he



remained exparte.

6. Both the Courts below concurrently held against the plaintiffs and found that the plaintiffs are not entitled for the relief sought for by them. Aggrieved by the same, the plaintiffs have preferred the present second appeal.

7. The learned counsel for the appellants submitted that the defendants 1 and 2 have clearly admitted the manner in which the lands are put to use and the existence of the channel between points A and B. Once such an admission is made, that prima facie establishes the right claimed by the plaintiff who uses the water drawn from the suit well to irrigate his agricultural lands. The learned counsel also placed reliance upon Ex.C1 to C4 and the Exhibit X series to explain the physical features and also the continuous usage of the water from the suit well to irrigate the lands belonging to the plaintiffs. The learned counsel further submitted that the EB service connection stood in the name of Karuppanna Gounder, who is the father of the plaintiffs and that by itself shows that the plaintiffs have been using the suit well and drawing water from the same through motor and irrigating their agricultural lands. The learned counsel concluded his arguments by submitting that the usage of water from the suit well has been substantially proved before the Courts below and the same was not taken into consideration by both the Courts below which warrants the interference of this Court in this second appeal.

8. This Court has carefully considered the submissions made on either side and the materials available on record and this Court also carefully went through the findings of both the Courts below.

9. In the present case, the defendants 1 and 2 have denied the very right of the plaintiff to draw water from the well in order to irrigate his agricultural lands. While dealing with this issue, both the Courts below took into consideration Ex.A50, A61 & A62. Ex.A50 is the sale deed that stands in the name of Semmanna Gounder. Ex.A61 is the Sale deed that stands in the name of the Pongianna Gounder and his wife. Ex.A62 is the sale deed that stands in the name of Semmanna Gounder, which was executed by Avinasi Gounder. On considering all these documents, both the Courts came to a categoric conclusion that the grand father of the plaintiffs had given up all his rights in the well that is situated in old survey Nos.380, 399 and 384. Thus, the Courts came to a conclusion that the plaintiffs are tracing a right in the well which was already given up by their grand



father long back.

10.It must be borne in mind that the suit was filed by the plaintiff claiming for the relief of bare injunction. There is a serious dispute on the very right of the plaintiff to use the water from the suit well. Under such circumstances, the plaintiff ought to have sought for the relief of declaration of his right and unfortunately, the plaintiff never sought for this relief. This is a crucial fact that becomes fatal to the case of the plaintiff.

11.Insofar as the enjoyment of the water from the suit well, both the Courts below took into consideration the electricity service connection that stands in the name of Karuppana Gounder, who was claimed to be the father of the plaintiffs. Both the Courts found that the name of the father of the defendants 1 and 2 is also Karuppana Gounder and therefore, it cannot be said that the connection was granted in the name of the father of the plaintiffs. This is more so since the grand father of the plaintiffs had already given up the right to use the suit well.

12.Both the Courts below also took into consideration the report of the Commissioner and came to a conclusion that the same does not really help the case of the plaintiffs. Ultimately, both the Courts below held that the suit well exclusively belongs to the defendants 1 and 2 and the plaintiffs do not have any right or share in the suit well.

13.The findings of both the Courts below is based on the evidence that is available on record. This Court does not find any perversity in the findings of both the Courts below and it does not warrant any interference of this Court. In any event, no substantial questions of law are involved in the Second Appeal.

14.In the result, this Second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

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To

1.The Sub Court, Gobichettipalayam

2.The District Munsif Court, Gobichettipalayam

Copy To:-

The Section Officer

VR Section, High Court

Madras.

+lcc to Mr.N.Manokaran, Advocate SR.No.13994

+lcc to Mr.I.C.Vasudevan, Advocate SR.No.14052

SA.No.139 of 2014

SPD(CO)

CB(23/03/2022)