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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.586 of 2017

Muthukumaran ... Appellant/Appellant/Plaintiff
Vs.

Ramalingam ... Respondent/Respondent/Defendant

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment in A.S.No.19 of 2014 passed by the First Additional Subordinate Judge, Villupuram dated 19.09.2016 confirming the judgment and decree in O.S.No.194 of 2011 dated 28.02.2014 on the file of Principal District Munsif, Villupuram.

For Appellant : Mr.R.Rajesh

For Respondent : Ms.P.Kavitha Balakrishnan

J U D G M E N T

The unsuccessful plaintiff is the appellant before this Court.

2. The plaintiff filed a suit for declaration of his undivided 3/5th share in the well, the suit property, permanent injunction restraining the defendant from interfering with his right to take water from the well and mandatory injunction that the defendant to remove the debris from the suit well. According to him originally the suit property belonged to one Jeyrama Iyer from whom the defendant's father purchased undivided 1/5th share in the well on 25.06.1963. Out of the remaining 4/5th share plaintiff is entitled to undivided 3/5th share with a right of way in the said survey field to take water from the said well by virtue of sale deeds executed by the said Jeyarama Iyer in favour of the plaintiff's father on 14.06.1965, 24.01.1970 and 07.03.1970 and another sale deed executed by one Selvakumari and Vijaybal who purchased the share in the well from the said Jeyarama Iyer by virtue of sale deed dated 23.12.2009. The plaintiff father was enjoying the well water. However, after five years the well became dry during summer days. On 06.09.2010, all of a sudden the defendant closed the well by dumping debris with the help of hooligans. His attempt to



prevent the act did not fructify. Therefore, he issued a legal notice calling upon the defendant to remove the debris from the 21 feet well. The defendant having acknowledged the notice on 14.09.2010 failed to reply the same. Therefore, he filed the suit for declaration of 3/5th undivided share and consequential relief.

3. The defendant denied the averments made in the plaint and filed a detailed written statement that the plaintiff father infact had purchased 3/4th share in the 1/5th share in the well. Other than the plaintiff several persons have purchased right to fetch water from the very same well. The well become barren in the year 1973 and was unused. Due to the non user for the past 38 years it got dilapidated and defunct and natural non use. Infact from the year 1973, the Panchyat has laid pipelines to provide water to each and every house. The plaintiff and defendant has got water connection to their houses. Apart from that in the year 1973 itself the plaintiff has dug a well in his own land and was using it. The plaintiff filed a suit with an ulterior motive to cause mental agony to the defendant since the plaintiff picked up quarrel with the defendant with regard to a lane between their houses. The suit was filed in O.S.No.275 of 1998 and the same was dismissed and an appeal was filed by him in A.S.No.9 of 2013 and it was decided in favour of the plaintiff. Thereafter, he filed another suit in O.S.No.390 of 2008 and the defendant filed a counter suit is O.S.No.409 of 2008. Finally, the parties have reached a compromise and a compromise decree was passed.

4. As per the compromise a compound was built between the land of the parties and plaintiff has lost his right to use the well and he is estopped from claiming right over the well. Since the other owners of the well were not impleaded the suit is bad for non joinder of necessary parties. The Trial Court framed appropriate issues and found that the plaintiff is not entitled to the declaration sought for and dismissed the suit. The Appellate Court confirmed the findings of the Trial Court and dismissed the appeal preferred by the plaintiff. Aggrieved over the same, the Second Appeal has been preferred.

5. Heard the submissions of both the sides. Both the parties have consented to argue the matter on the following questions of law framed in the memorandum of the Second Appeal.

"A. Whether the decrees and judgments of the courts below are legally sustainable in as much as that they erred in dismissing the suit and ignoring the fact that the Appellant has established his case by Ex.A.2 to Ex.A.5 and admission of the defendant?

B) Whether the decrees and judgments of



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the Courts below are legally sustainable in as much as that they erred in dismissing the suit on the ground that, the suit is bad for non-joinder of necessary parties against them, when especially no cause of action is against them?"

6. From the materials placed before this Court, it is noted that the plaintiff filed a suit for declaration of his 3/5th share in the well in the suit property. Even though he claim 3/5th share, he would admit in his evidence that apart from him more than 7 to 8 persons have purchased right to fetch water from the well. The same was mentioned in the written statement inspite of the same, he has not impleaded any of the parties in the suit.

7. The Trial Court had also found that having admitted there are other owners, the plaintiff could have examined them as witnesses but that also he failed to do. Therefore, on the first issue the finding was given that the suit is bad for non joinder of necessary parties as admitted by him.

8. Secondly, the defendant has denied the title of the plaintiff to 3/5th undivided share in the well and would contend that he had 3/4th share out of 1/5th undivided share. The plaintiff failed to prove the fact that he is entitled to 3/5th undivided share in the well. No evidence was let in except for the self serving evidence of the plaintiff and no independent witnesses were examined to prove the fact. Therefore, in the absence of necessary parties as well as sufficient evidence on the side of the plaintiff the claim for declaration was negatived by the Trial Court as it was not proved.

9. Thirdly, the compromise deed filed before the Court in O.S.No.390 of 2008 and 409 of 2008 was marked as Ex.B1. As per the compromise deed the plaintiff has consented to build the compound wall around the defendant's property. Once he has consented for constructing compound wall, he is bound by the promise made by him. In the compromise deed there is no mention about the reservation of rights with regard to use of the well. Infact no mention about the well at all. The plaintiff would contend that 1½ feet gap was let out in the compound wall for the purpose of having access. No such pleadings were made in the plaint nor any recital in the compromise deed filed before the Court in this regard. Therefore, the Court has found that the plaintiff is estopped from claiming any access and right over the well as per Sec.115 of The Indian Evidence Act, 1872.

10. Apart from this, the statement of the defendant that the well was left unused for past 3 years and it could not have been filled by debris over night. But the factum that it was



dumped with debris was not proved through independent witnesses. Except for the legal notice there is no iota of evidence that the well was filled up with debris by the defendant. In the absence of any evidence, the Trial Court refused to accept the contention of the plaintiff and negatived to the prayer of permanent injunction as well as mandatory injunction of restoring the well. The finding of the Trial Court is based on sound reasons and the fact was confirmed by the First Appellate Court considering the evidence. Infact the defendant had denied the suggestion that the well was demolished by him and that it was not closed by him. Therefore, it is clear that the plaintiff has failed to discharge the burden cast upon him that he had 3/5th undivided share in the well, right of way to access the same, which was closed by the defendant on that particular day and that he is not bound by the compromise deed.

11. In such circumstance, I do not find any discrepancy in the concurrent orders passed by the Courts below and as such the judgments are legally sustainable and they cannot be interfered. The questions of law is answered against the appellant.

12. The factum that there are several owners as admitted by the plaintiff in his own evidence and even after putting him on notice, he failed to either implead them or to examine them as witnesses. In that event the finding that suit is bad for non joinder of parties is also correct. Accordingly, the second question of law is answered against the appellant. In fine, the Second Appeal merits no consideration, accordingly dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

To

1. The First Additional Subordinate Judge, Villupuram
2. The Principal District Munsif, Villupuram.

+1cc to Mr.R.Rajesh, Advocate SR.No.3861
+1cc to Mr.Ms.P.Kavitha Balakrishnan, Advocate SR.No.3652

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KV (CO)
GMY (03/06/2022)