



SA.No.2241 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

S.A.No.2241 of 2003

G.Thirumalaisamy

... Appellant

Vs.

1.S.A.Govindasamy Gounder (died)
2.G.Natarajan
3.Latharani
4.Sounthar lakshmi
5.Senthilvel
6.Madankumar
7.Dhanalakshmi
(R1 died, R4 to 7 B/R as LR's of the deceased R1 vide Court
Order dated 30.06.2022 made in CMP.No.13092/21 in
S.A.No.2241 of 2003 (CVKJ).

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 18.06.2003 made in A.S.No.34 of 2002, on the file of the Subordinate Court, Dharapuram, confirming the judgment and decree dated 26.04.2002, in O.S.No.102 of 2000 on the file of the District Munsif Court, Dharapuram in so far it relates to item 3 of plaint schedule property praying to set aside the same.



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For Appellant : Mr..Asokan
For Respondents : Mr.A.S.Baalaji
for Mr.C.S.K.Sathish
for R2 and R3
R1-died
Not ready in notice for R4 to R7

JUDGMENT

The short issue involved in the above second appeal is with reference to item No.3 in the suit schedule relating to service connection No.354.

2. The short facts preceding the above second appeal are as follows:

The appellant herein is the plaintiff before the District Munsif Court, Dharapuram, in O.S.No.102 of 2000. The above suit was filed for declaration and injunction restraining the defendants from interfering with the plaintiff use of free service connection which has been described as item Nos.1 to 3 in the suit schedule property. It is the case of the plaintiff that the properties in which the service connection have been installed are their ancestral properties. The properties have been jointly



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enjoyed by the plaintiff, the second defendant and the other brothers of the plaintiff and the second defendant viz., Jeganathan and Venkidusamy. The first defendant is the father of the plaintiff and the second defendant and the third defendant is the wife of the second defendant. On 24.12.1969, the first defendant had executed a release deed in favour of the plaintiff, the second defendant and his other sons viz., Jeganathan and Venkidusamy, in respect of the property out of total extent of 19.40 S.No.548A even specified boundaries together with well in the said land. Thereafter, the first defendant's son Jeganathan had filed O.S.No.355 of 1970 on the file of the Subordinate Court, Coimbatore, seeking partition and separate possession of his share in the ancestral properties. This suit was compromised and the compromise memo was filed on 08.09.1970. Under this compromise, the plaintiff was entitled to two acres and the western corner of S.No.548A together with a half share in the well situated in S.No.548A. The remaining half share was allotted to the share of the second defendant. In the said well, service connection had been obtained in the name of the second defendant to which the plaintiff had an equal share. Similarly, the plaintiff had a 1/3rd right in the well situate on the eastern side of S.No.548A. The first



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defendant had 1/3rd share and the second defendant had the remaining 1/3rd share. The plaintiff and the defendants have been enjoying the respective properties in the above manner and ratio. On 24.12.1997, the second defendant and the plaintiff had executed Varthamana letter in and by which it was reiterated that the plaintiff had 1/3rd right to service connection No.62 in the well situated eastern corner of S.No.548A. Likewise, the second defendant and the first defendant had a 1/3rd share each in the same together with the service connection No.62. That apart, the agreement stipulated that the plaintiff is entitled to a right to draw water from the well using service connection No.354 for three and a half days in the night and the remaining days were to be used by the second defendant. The plaintiff had also sought similar rights in respect of the two other service connections namely service connection Nos.253 and 62. Since the defendants were not permitting the plaintiff to use the same and had questioned his right, the plaintiff had come forward with the suit in question. After having released rights in the property and service connection in S.No.548A, the first defendant had executed a sale deed in the name of the 2nd and 3rd defendant in respect of an extent of 50 cents in S.No.547 and 4 Acres in S.No.548A.



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3. On the basis of the sale, defendants 2 and 3 had approached the revenue authorities for transferring the same in their name against which the plaintiff has filed the suit in O.S.No.39 of 2000 on the file of the Vacation Court at Erode. By reason of these transactions, dispute arose between the parties with reference to the drawing of water from the well and the usage of the service connection constraining them to approach the police authorities who advised them to approach the Court to resolve the issue. Therefore, the plaintiff has come forward with the suit in question.

4. The second defendant had filed a written statement which is adopted by defendants 1 and 3 in which they had denied the claim of the plaintiff. The defendants have denied the Varthamana letter dated 24.12.1997 as being a fabricated document. The defendants have categorically stated that service connection No.354 was the exclusive property of the second defendant in which the plaintiff had no right. The first defendant alone had right to the well situate in the eastern corner of S.No.548A. This right has been sold by the first defendant in favour of



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the 3rd defendant. Likewise, it was contended that sofar as the service connection No.253 is concerned, the plaintiff was not entitled to the same, since it stands only in the name of the 3rd defendant. The defendants had stated they had no objection for executing necessary documents for transferring service connection No.62 in the name of the first defendant. Therefore, they sought for disposal of the suit, with reference to the other two service connections.

5. The learned Principal District Munsif, Dharapuram, had framed issues and in the course of trial, the plaintiff had examined himself as PW.1 and one Shanmugam as PW.2 and marked Exs.A1 to A7; the second defendant examined himself as DW.1 and one Sivalingam as DW.2 and the first defendant was examined as DW.3; Exs.B1 to B3 were marked. The learned Principal District Munsif was pleased to decree the suit with reference to the reliefs 1, 2, 3, 4 and dismissed the suit with reference to reliefs 5 and 6. Challenging the same, the plaintiff has filed A.S.No.34 of 2002 and the defendants had filed A.S.No.37 of 2002. The learned Subordinate Judge, Dharapuram by judgment and decree dated 18.06.2003 was pleased to dismiss both



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the appeals. The defendants have not challenged the judgment and decree in A.S.No.37 of 2002 and the plaintiff has filed this appeal in respect of the judgment and decree in A.S.No.34 of 2002.

6. The second appeal was admitted by this Court by order dated 13.02.2004, on the following substantial questions of law:

“(i) Whether the Courts below were right in holding that the plaintiff has no right to the service connection No.354 with the 5 H.P Motor when the plaintiff has proved his right to the same by documentary and oral evidence?;

(ii) When one of the attesting witnesses was examined as P.W.2 to prove execution on Ex.A2, whether the Courts below are right in rejecting the agreement, Ex.A2 solely on the ground that it does not contain the names and addresses of the attesting witnesses?;

(iii) When the plaintiff has proved the execution and the contents of the agreement Ex.A2 by examining one of the attestors, viz., PW.2 to the document was written by



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the 2nd defendant himself in his own hand, whether the Courts below are right in rejecting Ex.A2 and hold that the plaintiff has not proved his claim for the service connection No.354?”

7. Mr.R.Asokan learned counsel appearing on behalf of the plaintiff would contend that the courts below erred in rejecting Ex.A2 only on the ground that the same is not registered. He would further submit that the defendants have conceded the right of the plaintiff to the other two service connection which also forms part of the said agreement/ Ex.A2. That being the case, he would submit that the Courts below have erred in rejecting the claim with reference to the service connection No.354, that is; the third item of the suit schedule. He would further submit that the defendants who have denied the agreement has not taken any steps to have the signature of the second defendant cross checked. Therefore, he would submit that the Courts below have committed a grave error in rejecting the defendants suit third item service connection.



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8. Per contra, Mr.A.S.Balaji, appearing on behalf of the respondents/defendants would submit that even at the outset, the defendants had denied the execution of the document and once the same has been denied, it is for the plaintiff to prove its execution. The plaintiff has miserably failed to prove the same. That apart, he would submit that the documents appear to be fabricated. Therefore, the Courts below have rightly refused to grant the relief as claimed by the plaintiff.

9. Heard the counsels and perused the records.

10. The plaintiff has filed this appeal only with reference to the 3rd item of the suit schedule service connection. It is his case that the right to use the well and the service connection for 3 ½ days per week has been granted to the plaintiff under Ex.A2. A perusal of Ex.A2, particularly page Nos.2 and 3 clearly shows that the same is a fabricated document. The signatures are found on the reverse of the second page and the contents clearly indicate that it has been a created document. That apart since rights have been conferred under the said document, the same ought have been registered. In the instant case, the plaintiff has



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not taken steps to have the documents registered. That apart once the right of the plaintiff with reference to the first item of the service connection in the suit schedule has been given under the compromise decree in O.S.No.355 of 1970 by the Subordinate Judge, Coimbatore, there is no explanation as to why this property is included in Ex.A2 and not in the compromise. The agreement, Ex.A2, does not give any details about the witnesses and the Courts below have rightly rejected the said agreement. Except for this agreement, the plaintiff has no other document to prove his contention that he has right to the 3rd item of the suit property. The Courts below have rightly assessed the evidence and rejected the claim of the plaintiff. Therefore, the substantial questions of law 1 to 3 are answered against the plaintiff and consequently, the second appeal is dismissed by confirming the decree passed by the Courts below.

No costs.

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Index : Yes/No
Internet : Yes/No
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1. The Subordinate Court, Dharapuram.
2. The District Munsif Court, Dharapuram.



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