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Judgment dated 15.06.2023
in S.A.Nos.1696 and 876 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.06.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A..Nos.1696 and 876 of 2001

M.Durai, S/o Marimuthu

.. Appellant in both the Second Appeals

Vs.

1. Lourdu Matha (died), W/o Yesu Rayappan

2. Muthiah S/o Jothi Muthu

3. Esakky Durai, S/o Sundaram

.. Respondents 1 to 3 in both the Second Appeals

4. Stephen, S/o Yesu Rayappan

5. Allbert, S/o Yesu Rayappan

.. Respondents 4 and 5 in S.A.No.876 of 2021

Second Appeal No.1696 of 2001 filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 15.09.2000 in A.S.No.74 of 1999 on the file of the Additional Sub-Court, Tenkasi, confirming the judgment and decree dated 11.03.1999 in O.S.No.100 of 1993 on the file of the District Munsif Court, Tenkasi.

Second Appeal No.876 of 2001 filed under Section 100 of the Civil

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Procedure Code against the judgment and decree dated 15.09.2000 in A.S.No.36 of 1999 on the file of the Additional Sub-Court, Tenkasi, against the judgment and decree dated 11.03.1999 in O.S.No.100 of 1993 on the file of the District Munsif Court, Tenkasi.

For appellant in both appeals : Mr.S.Ramesh for M/s.V.Srimathi

For respondents in S.A.1696 of 2001 :

Second Appeal dismissed against first respondent, order dated 9.7.2018

Notice served. Name printed in cause list - No appearance for RR-2 and 3

For respondents in S.A.876 of 2001:

R-1 died - steps taken

Mr.H.Arumugam for R-3 (steps taken)

Notice served. Name printed in cause list - No appearance for RR-2, 4 & 5

COMMON JUDGMENT

Second Appeal No.876 of 2001 is filed challenging the judgment and decree dated 15.09.2000 in A.S.No.36 of 1999 on the file of the Additional Sub-Court, Tenkasi.

2. Second Appeal No.1696 of 2001 is filed challenging the judgment and

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decree dated 15.09.2000 in A.S.No.74 of 1999 on the file of the Additional Sub-Court, Tenkasi.

3. The Appeal Suits in A.S.Nos.36 and 74 of 1999 arise out of the judgment and decree dated 11.03.1999 in O.S.No. 100 of 1993 on the file of the District Munsif Court, Tenkasi.

4. The said suit in O.S.No.100 of 1993 had been filed for declaration and permanent injunction.

5. The above said O.S.No.100 of 1993 was dismissed and that the counter-claim made by the defendants, for mandatory injunction for restoration of the Channel, was also dismissed.

6. While admitting both the Second Appeals on 30.10.2003, this Court formulated the following substantial questions of law (in common for both the appeals):

"1. Whether the Courts below are right in recognizing any right in favour of first defendant, particularly when she had failed to establish that her lands had the source of irrigation from the suit Well ?

2. Whether the Courts below have not misplaced the burden of proof upon the appellants when the obligation is upon the defendants to prove



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the existence of the channel, leading from Survey No. 54/11 to her property ?

3. Whether the Courts below ought to have drawn adverse inference for non-production of records against the defendants to establish their claim of enjoyment of the suit property ?

4. Whether the courts below have not misconstrued the Commissioner's report and arrived at a conclusion contrary to the records ?"

7. As both the Second Appeals arise out of the common judgment of the trial Court, the present Second Appeals are taken up together and disposed of by this common judgment.

8. Brief facts averred in the plaint in O.S.No.100 of 1993 are as follows:

(a) The suit property and other properties originally belonged to one Arulappan, from whom, his sons Devarajan and Dossan inherited and they have half share together in the Well. The other half share belonged to Michale, son of Joseph, who died three years, leaving behind two children, who were in the custody and care of their material grand-mother Sudalaimadi, who had leased out their share along with the lands entitled to it, to the plaintiff from 1990. The first defendant had no right over the Well, but she is claiming the right over the

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Well and she was stating that she would sell the land to the second defendant. Hence, the plaintiff herein sent a notice stating the true details on 01.01.1993, for which, on 05.01.1993, the defendants gave a false reply as if the first defendant had a share in the Well as late Michale's sister.

(b) Any sale deed fraudulently created between the first and second defendants will not bind the plaintiff. After reply notice, the first defendant, with the help of the second defendant, installed an old oil engine in the Well. After filing of the suit, the third defendant had purchased the property along with the right in the Well. Hence, he has also been added as a party to the present suit.

(c) The wife of Late Michale executed a sale deed in favour of one Irulappa Thevar on behalf of the minor children Rajkumar and Selvi, in which, their share in the Well was mistakenly stated as full share, instead of stating that they have only half share.

(d) On 17.07.1996, the plaintiff herein had purchased the property from Irulappa Thevar, and hence, the plaintiff is entitled to the entire Well right now.

(e) Hence, for the above reasons, the present Suit is filed praying for a declaration that the suit property belongs to the plaintiff only and for the consequential injunction restraining the defendants from disturbing the plaintiff's possession and enjoyment of the Well.



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9. Shorn of the facts as stated in the common written statement filed by all the defendants, are as follows:

(i) The said Michael Raj did not have half share in the Well, which belongs to his father Joseph, in whose name, Joint Patta No.497 was given. Joseph had Michale and another daughter Muthammal alias Lourdu Matha, who is the first defendant in the present suit. The said Joseph died 12 years before the suit.

(ii) 11 years before the first defendant and her brother partitoned their father's property, in which, half of the Well's right was given to the first defendant. The defendants have been issued Patta No.317 for it.

(iii) The first defendant had sold the Well to the third defendant- Essakkiodurai, bona-fidely for consideration on 22.02.1993, which cannot be objected to by the plaintiff. The first defendant had also installed an Oil Motor to draw Water from the said Well. This has also been sold to the third defendant.

(iv) The factum of Sudalaimadi Ammal orally leasing out the property to the plaintiff, is denied by the defendants, stating that she has no right to do the same.

(v) The suit-Well could not have been leased out alone by the plaintiff. The Well could have been used for irrigation purpose. The suit-Well exclusively

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belonged to the first defendant's father Joseph. In respect of the said Well, the plaintiff's predecessor-in-title Arulappan and Joseph had common right in Patta No.497 including S.No.54/11 which was also given. Taking advantage of the same, the plaintiff was utilising the suit-Well by fraudulently purchasing the same.

(vi) The plaintiff did purchase 1/20 share in the Well in S.No.54/9. As alleged by the plaintiff that he has half share in the Well in S.No.54/11, is not acceptable. The name of the Pattadar Gnanamuthu had been fraudulently withheld.

(vii) The first defendant was asked to sell her properties situated in Ayiraperi for meagre amount. The first defendant refused and sold it to the third defendant through the second defendant who is the father-in-law of the third defendant.

(viii) The plaintiff is having his lands only adjacent to the suit-land, but there is no proper water supply to the land. In S.No.54/11 -Well, there is good water supply to the crops in the Well.

(ix) It is stated that Arulappan's brother Gnanamuthu had sold his share of the Well in S.No.54/9 alone with the land to irrigation from it to the tune of 15 cents approximately, in S.No.54/8 on 07.11.1966.



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(x) Subsequent thereto, after the death of the first defendant's father Joseph, the said Well devolved upon Lurdhu Muthu (first defendant) in the family partition. She had sold it to Essakkidurai.

(xi) The plaintiff is taking advantage of the fact that there is a common Patta for the Well situated in S.No.54/11 and S.No.54/9.

(xii) It is for the plaintiff to prove as to how the Well in S.No.54/11 is entitled to his predecessor's half share without stating the right of Gnanamuthu.

(xiii) The plaintiff had obliterated the Channel running from the suit-Well East to the third defendant's 1-150 feet. This factum has been clearly stated in the Advocate Commissioner's report.

(xiv) The defendants also seek counter-claim of mandatory injunction for restoration of the Channel, for which the defendants had paid the Court fee.

10. Based on the above pleadings, the trial Court originally framed the following issues for consideration:

(i) To what relief, if any is the plaintiff entitled to ?

(ii) Whether the third defendant is entitled to half share in the Well ?

(iii) Whether the defendants are entitled to the relief sought for in the



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counter-claim ?

(iv) Whether it is true that the plaintiff has no right over the suit-Well ?

Subsequently, during the course of trial, on 11.03.1999, the second and fourth issues quoted above were re-framed as follows:

Whether the plaintiff is entitled to the declaration for the entire suit-Well, belongs to him and for the consequential injunction restraining the defendants from disturbing his possession over the suit Well ?

11. In order to prove their case, on the side of the plaintiff, the appellant herein, one witness was examined as P.W.1 (Durai) and Exs.A-1 to A-7 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and one Thiru.Natarajan was examined as D.W.2 and Exs.B-1 to B-5 were marked.

12. Ex.C-1--being the Advocate Commissioner's report and Ex.C-2--being Commissioner's plan and Ex.X-1 being the copy of 'A' Register containing Patta Nos.317, 489, 559 and 600, were marked as Court documents.

13. After trial and hearing the arguments advanced on either side, learned trial Judge dismissed the suit filed by the plaintiff, as the plaintiff has not proved the case and he had taken the loop-holes left by the defendants in their

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pleadings. The learned trial Judge also dismissed the counter-claim made by the defendants in their written statement, as the defendants had not established that they have filed the counter-claim within the period of limitation from the date of obliteration of the channel. Challenging the aforesaid judgment and decree of the trial Court, the plaintiff has filed First Appeal in A.S.No.36 of 1999 and the defendants 1 and 2 have preferred an appeal in A.S.No.74 of 1999, which were partly allowed with directions.

14. Challenging the above judgment and decree of the first appellate Court, the plaintiff has preferred both these present Second Appeals.

15. For the purpose of easy reference, the parties are referred to as per their rank before the trial Court, as plaintiff and defendants.

16. Admittedly, the appellant is the plaintiff and he has filed the suit in O.S.No.100 of 1993 for declaration and permanent injunction and the defendants had filed counter-claim.

17. Admittedly, the appellant/plaintiff has filed the suit in O.S.No.100 of 1993 for declaration that the suit property belongs to the plaintiff only and for the consequential injunction restraining the defendants from disturbing the plaintiff's possession and enjoyment of the Well.

18. The defendants have filed the counter-claim seeking mandatory



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injunction.

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19. It is the specific case of the plaintiff that the suit property originally belonged to one Arulappan, who had got two sons, namely Devaraj and Dossan. Arulappan has got half share in the suit property. The said sons of Arulappan had inherited their respective shares. The other half share belongs to Michale (son of Joseph). The plaintiff purchased half share from the said Devaraj, who is one of the sons of Arulappan. In that way, the plaintiff is entitled to half share in the suit 'Well'.

20. Subsequently, the said Joseph died leaving behind two children, who were in the custody and care of their maternal grand-mother Sudalaimadi, who had taken lease out of the share, from the plaintiff, along with the lands that she is entitled to, to the plaintiff from 1990. Further, on 17.07.1996, the plaintiff had purchased the property from one Irulappa Thevar, and in that way, the plaintiff is entitled to entire share, right, title and interest in the suit Well situated in S.No.54/11 and the properties pertaining thereto as mentioned in the plaintiff-schedule property.

21. The appellant purchased the entire property (Well) and the properties surrounding the Well. It is the stand of the plaintiff that the defendants do not have any right, title and interest over the suit-Well and that the properties



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surrounding the suit Well in S.No.54/11, belong to the plaintiff and there is no dispute on that score,. If that be the case, the defendants do not have any land adjacent to the Well and therefore, they are not having any right, title and interest over the said Well. There is no water channel existing and there is not even electricity connection in the name of the defendants. There is also no oil/Engine/Motor. The learned Commissioner's report also clearly shows that there is only one Oil/Engine/Motor which belongs to the plaintiff. The trial Court, while dismissing the suit, also dismissed the counter-claim.

22. The case of the defendants is that the plaintiff purchased only the landed properties and the Well in S.No.54/9 in regard to 1/20 share. It is the main contention of the defendants that the first defendant is one of the legal heirs of the said Joseph and Joseph got one son Michael and the daughter being the first defendant. Both the said Michael and the first defendant divided their properties and the Well in S.No.54/9, which was allotted to the said Michael and Irulappa Devar. According to the defendant, the Well was allotted in S.No.54/11 to the said Joseph and after the death of Joseph, the said Michael and the first defendant divided the properties and also divided the Well in S.No.54/11.

23. The properties surrounded by the Well, were allotted to the Michael and the properties also were divided to the first defendant, who was next to that share, and therefore, the first defendant drew Water from S.No.54/11 and the

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channel is 150 meters length and 3 feet width, near the said Well.

24. The learned Advocate Commissioner's report also shows the existence of the channel/canal and also the existence of the oil, engine and motor. Since the plaintiff subsequently purchased only the share of the said Michael, being the brother of the first defendant, he has got only 1/2 share and the defendants have got 1/2 share. Since the appellant obliterated the said Channel/canal, the plaintiff had filed the present suit, and pending the present suit, the plaintiff had obliterated the channel and hence, the defendants have filed written statement claiming mandatory injunction by way of counter-claim and to restore the channel (irrigation channel) from the suit Well to the land of the defendants.

25. It is to be noted that pending the present suit, the first defendant sold the land to the third defendant and as of now, the third defendant is in possession and enjoyment of that property. The plaintiff has suppressed the material facts and the plaintiff also suppressed that the said Joseph had got a son Michael and the first defendant Lourdu Matha. Further, they have only share in the Well in S.No.54/11 sold to the plaintiff and the first defendant does not have any right, title and interest over the suit Well. Thus, the plaintiff suppressed the factum of partition between the first defendant and her brother and the plaintiff filed the suit for declaration claiming that the entire suit Well is situated in S.No.54/11, which absolutely belonged to the plaintiff. It is for the plaintiff to

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prove his case and he cannot take advantage of the loop-holes in the case of the defendant.

26. The trial Court rightly dismissed the present suit in O.S.No.100 of 1993 filed by the plaintiff, but however, while so dismissing the suit, the trial Court failed to consider the Commissioner's report/plan and the title deed of the defendants, and the suit was "dismissed simpliciter", apart from dismissing the counter-claim filed by the defendants also, on the ground of limitation. Thus, the defendants had filed First Appeal before the Sub-Court, and the appeal was rightly allowed by the lower appellate Court. Now, the plaintiff is also before this Court. For the reasons stated above, it is the contention of the defendants that there is no merit in the Second Appeals and the same may be dismissed as such.

27. Learned counsel for the appellant/plaintiff submitted that the plaintiff purchased the entire properties including the Well and its in-and-around area. Apart from this, the plaintiff also purchased the entire Well and the surrounding properties totally that belong to the appellant/plaintiff and the defendants do not have any land adjacent to the Well. There was no Channel/canal for irrigation. The defendants have not proved the partition and also the title and they do not have any land in-and-around the Well. There is no need to draw Water and there is no need to have the irrigation channel therein and the defendants have not proved the oral and documentary evidence on that line. Moreover, the

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Commissioner's report also shows only shorter extent of 11 feet only and after that, there was no Channel/canal on the land or in-and-around the Well that belonged only to the plaintiff. The plaintiff produced the title deed in original and he purchased the property from the legal heirs of Irulappan and also the remaining share also from the legal heirs of the said Joseph, i.e. wife and children of Michael, who is the son of Joseph and he has also produced title deeds under Exs.A-1 to A-7 and established that he is in possession and enjoyment of the property and also the title and possession and enjoyment over the suit property.

28. It is the further contention of the learned counsel for the appellant/plaintiff that the plaintiff purchased the property from the legal heirs of the said Irulappan and also the remaining share from the legal heirs of the said Joseph, and that the wife and children of Michael who is the son of Joseph, also produced title deeds under Exs.A-1 to A-7 and established that he is in possession of the property and the appellant/plaintiff has also prescribed right, title and interest over the suit property. The title deed was executed by the legal heirs of Irulappan and Devarajan, being the Power Agent of Dossan, in favour of the plaintiff, and the appellant has marked Ex.A-1 sale deed, dated 19.06.1992 and also the Adangal extract of the plaint schedule property, was also marked as Ex.A-2. The legal heirs of Dossan sold the properties of Irulappan under

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registered sale deed, dated 20.04.1995, which was marked as Ex.A-3. From the said Irulappan and Devarajan, the appellant/plaintiff purchased the property under registered sale deed, dated 17.07.1996 under Ex.A-4. Thus, from Exs.A-1 to A-4, it is clear that the appellant/plaintiff is entitled to in and around the property, ie. A-schedule which is situated in and around B-schedule Well. Even the evidence of the plaintiff and the defendant clearly show that the Well situated in S.No.54/11 belongs only to the appellant. Further, in order to substantiate his case, the plaintiff examined himself as P.W.1 and he has established that the right, title and interest over the property in A-schedule and also the appellant's exclusive right over the Well, including the Well situated in S.No.54/11 also. Unfortunately, the trial Court failed to consider the plaint averments and the pleadings and oral and documentary evidence and dismissed the suit and when he approached the first appellate Court, the first appellate Court also failed to re-appreciate the materials on record and dismissed the First Appeal and hence, the plaintiff is before this Court.

29. Learned counsel for the defendants submitted that the plaintiff has not come to Court with clean hands and he has suppressed several material facts. The learned Advocate Commissioner's report clearly shows that there was a canal and there was some mark to obliterate and in the suit Well, Joseph has got right in S.No.54/11 and only the said Irulappan and Devarajan got a right only on



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the Well in S.No.54/11 only. The appellant purchased the property from the legal heirs of Irulappan and the Well is situated in S.No.54/9 only. The Well situated in S.No.54/11 belongs to Joseph and the said Joseph died with the intestate succession leaving behind the first defendant and his brother one Michael and both of them have divided the properties by partition and they are entitled to each half share in the Well situated in S.No.54/11. The brother and sister of Joseph entered into partition and they have got their respective shares being enjoyed by them and they are entitled to one-half share in the suit property under partition. The said Michalel, his wife and children sold the property to Irulappan, from whom the appellant purchased only half share in the Well and the first defendant has got remaining half share in the Well. Though the first defendant did not have the property adjacent to the Well, however, the first defendant has got his share in the property and also the Well and he was drawing water for irrigation from the suit Well only through the lands of the appellant, and that for the canal, exclusively water is drawn from the said Well situated in S.No.54/11 and exclusively it was for the first defendant and taking advantage of the same, the canal was running over the lands of the appellant/plaintiff, and taking advantage of the same, the property on both sides of the irrigation channel belonging to the plaintiff and he obliterated the irrigation channel, and deprived the defendants from drawing water for irrigation from the



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suit Well and pending suit, the plaintiff obliterated, and that the defendants also filed counter-claim along with the written statement, denying the exclusive right of the plaintiff.

30. The trial Court rightly appreciated the evidence, since the appellant failed to establish the exclusive right over the suit Well and dismissed the suit, however, the first appellate Court failed to consider the learned Advocate Commissioner's report and plan (Exs.C-1 and C-2) also and the defendants' documents. Since the appellant had got the land surrounding the suit Well, and both sides of the irrigation canal, it does not mean that only he has exclusive right over the suit Well and he obliterated the irrigation channel. The trial Court failed to consider the same and dismissed the suit, but the first appellate Court rightly considered and re-appreciated the evidence and considering the facts and circumstances of the case and also the learned Advocate Commissioner's report, though dismissed the First Appeal, the suit was ultimately decreed. There is no merit and there is no substantial question of law in these Second Appeals. These appeals are based on the factual aspects of the matter and the findings also are based only on re-appreciation of the oral and documentary evidence. Hence, the appeals may be dismissed, as there is no substantial question of law for considering the same.

31. Heard both sides and perused the materials available on record.

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32. As already stated, the plaintiff filed the suit for declaration to declare that the suit Well is situated in S.No.54/11 and it exclusively belongs to the plaintiff by way of purchasing the same from his predecessors-in-title. The defendants do not have any right, title and interest over the Well and they are trying to disturb the plaintiff and therefore, the suit for declaration was filed by the plaintiff with a prayer for injunction also.

33. The case of the defendants as stated above, is that the plaintiff is not entitled to exclusive title over the property, i.e. suit Well and the first respondent has half share in the Well and this fact was suppressed by the plaintiff, who has not established the exclusive right and title and enjoyment over the Well.

34. As far as the first substantial question of law is concerned, admittedly, the appellant/plaintiff purchased the property from the legal heirs of one Irulappan and Devarajan. The defendants denied that either Irulappan and legal heirs of Irulappan are entitled to share in the Well situated in S.No.54/11. However, the defendants have also not established exclusive right over the suit Well and the first defendant's father Joseph alone has got a share in the entire Well.

35. Admittedly, the appellant has right in the Well and the said Joseph and one Irulappan purchased the property from the legal heirs, namely son of the



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said Joseph and from them, the appellant purchased the property under Ex.A-4. They have admitted the right and title over the said Joseph in the suit Well. The vendor purchased the property and also the share in the Well from the legal heirs of the son of Joseph and from them, the appellant purchased and he cannot deny the right of the first defendant.

36. Admittedly, the first defendant is the daughter of the said Joseph and sister of Michael. Though the first defendant stated that the Well is situated in S.No.54/11, which exclusively belongs to Joseph and also on the death of the said Joseph, the respondent/defendant and his brother Michael entered into partition and each of them are entitled to half share and the legal heirs of Michael only sold half share and the first defendant is entitled to half share, however, the fact remains that the appellant has not denied that the first defendant is not the daughter of Joseph and sister of Michael. Even assuming that as per the case of the plaintiff, Irulappan and Joseph are entitled to a share in the Well and they have purchased only the share of Irulappan from their legal heirs and therefore, the Joseph also is entitled to share in the said Well.

37. Admittedly, the said Joseph has got son Michael and daughter being the first defendant. The appellant has suppressed the same and even in the evidence, the appellant has not denied that the first respondent is not the daughter of Joseph and sister of Michael and therefore, even admitting the case

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of the appellant, the said Michael is entitled to share and Joseph has got half share in the Well and after the death of Joseph, Michael has 1/4 share and the first respondent has got 1/4 right and share in the Well. Admittedly, the said Irulappan purchased only from the legal heirs of Michael and therefore, from them, the appellant purchased the property under Ex.A-4 only 1/4 share in the said Well and therefore, the first defendant has got 1/4 share in the said Well in S.No.54/11. In that way, on the date of filing of the suit by the plaintiff, the first defendant has got a share in the Well. Subsequently, pending the suit, the third respondent purchased the same. Therefore, the appellant claims exclusive right of declaration and injunction.

38. The trial Court as well as the first appellate Court rightly appreciated the evidence. The appellant has not established his right, title and interest of the Joseph who purchased from the legal heirs of the deceased Michael. Since the first defendant is also the daughter of Joseph, the case of the appellant is not acceptable. The first defendant clearly stated that the partition between her and her brother and the land which is adjacent to the Well, was allotted to his brother and she was also allotted the land on the either side.

39. Because all the lands are in and around the Well, the Well which belongs to the appellant, does not mean that the appellant is entitled to exclusive right over the Well. It is for the plaintiff to prove that he purchased the



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entire right, title and interest over the Well from the original owner. It is for the plaintiff who has filed the suit to prove his case and he cannot take advantage of the loopholes left by the defendants in their case. The first substantial question of law is answered accordingly in favour of the defendants and against the plaintiff.

40. As far as second substantial question of law is concerned, as already stated, the first defendant has got some right, title and interest over the Well and also the Advocate Commissioner's report also shows that there was an irrigation channel/canal of a shorter extent and there was obliteration. The case of the respondents is also that the water could be drawn from the said Well situated in S.No.54/11 and oil engine and motor were established and drawing water for the irrigation channel/canal and thereby, irrigated his lands. Subsequently, the same was sold to the third respondent. As already stated, the right, title and interest over the Well and share in the Well were established by the defendants and also the mark of the channel which was to some extent, was obliterated and recently, it was also established through the Advocate Commissioner's report and the oral evidence of the defendants that the trial Court failed to appreciate the same, and the first appellate Court as final Court of fact finding, while re-appreciating the oral evidence and also the documentary evidence and also the Commissioner's report and plan, clearly established that

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originally, there was irrigation channel from the suit Well in S.No.54/11 and after larger extent, it was marked obliterated and therefore, it was found that the defendants have proved the existence of channel/canal prior to filing of the suit, and though the trial Court failed to appreciate the same, the first appellate Court elaborately re-appreciated and found that the defendants have proved the existence of the suit Well in S.No.54/11. There is no perversity in re-appreciation of evidence by the lower appellate Court, and therefore, the second substantial question of law is answered against the plaintiff and in favour of the defendants.

41. As far as the third substantial question of law is concerned, already, as stated above, the appellant himself had admitted that the said Irulappan and Joseph are having right in the suit Well and also he admitted that he purchased the Well from the vendor of the legal heir of the son of the said Joseph, namely Michael and when once they have admitted the right, title and interest of the legal heirs of the said Michale, the third respondent is none other than the sister of Michael, and since she has also right, title and interest over the suit Well and when once it is established, it is for the plaintiff to prove the exclusive possession of right, title and interest in the suit Well, and therefore, mere non-production of any records by the defendants, is not fatal to the case of the defendant and it is for the plaintiff to establish that when once the right, title and interest of ancestors are admitted, then the exclusion of the legal heirs or successors have



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to be established by the appellant and the appellant as plaintiff, has to prove his case and he has to stand on his own legs of his own case and he has to strengthen his case based on his own pleadings and he cannot take the advantage of the weakness in the case of the defendants or the loopholes left by the defendants. Therefore, in the said circumstances, when once the plaintiff admitted the right, title and interest of the ancestors of the first respondent, and also the appellant has to establish that the respondents are not entitled to the share in the Well and admittedly, he has purchased the suit Well only from the ancestors and derived a portion of the right, title and interest on the Well from the ancestors of the first defendant.

42. In the above circumstances, though the first appellate Court re-appreciated the evidence and given findings which is in order and there is no perversity or illegality in the findings of the first appellate Court, the third substantial question of law is also answered in favour of the defendant and against the plaintiff.

43. As far as the fourth substantial question of law is concerned, as already stated, the respondents have established their case that they have got right, title, share and interest over the suit Well and the plaintiff has not established the right, title and interest over the suit Well and it is also established that though the plaintiff has got adjacent property in and around the suit Well,



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but the defendants have stated that there is no irrigation channel/canal from the suit Well to her land, and subsequently, the same was sold to third respondent and the Commissioner, while inspecting the property, has clearly stated about the existence of the Well in S.No.54/11 and there was a mark for its existence and canal to some extent and thereafter, it was obliterated and therefore, the right, title and interest of the defendants was established and the Commissioner's report also shows that there was some marked portion for existence of the canal starting from the suit Well to some extent and thereafter, there was no continuity and the same was recently obliterated. Therefore, considering the said facts, the first appellate Court re-appreciated the facts coupled with the oral and documentary evidence and also the Commissioner's report and plan, and thus, in the above circumstances, the plaintiff has not proved that the defendants have no right, title and interest over the suit Well and the Commissioner's report also establishes that there is continuity of the canal, which was recently obliterated.

44. Hence, in the above circumstances, this Court does not find any perversity in re-appreciation of the evidence by the first appellate Court. Hence, there is no merit in the fourth substantial question of law also, which is also answered in favour of the defendant and against the plaintiff.

45. Considering the pleadings and facts and circumstances, and the case



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of the parties, all the substantial questions of law are answered in favour of the defendants and against the plaintiff.

46. Since both the Second Appeals arise out of the same suit, and the issues involved are also same, there are no merits in both the Second Appeals, which are dismissed, confirming the judgment and decrees of the first appellate Court. There shall be no order as to costs.

15.06.2023

CS

To

1. The District Munsif, Tenkasi
2. The Addl. Subordinate Judge, Tenkasi
3. The Section Officer,
V.R Section, Madurai Bench of Madras High Court, Madurai.

P.VELMURUGAN, J

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