



S.A.Nos.1300, 1301 and 1302 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2024

CORAM

THE HON'BLE MR JUSTICE G.ARUL MURUGAN

S.A.Nos.1300, 1301 and 1302 of 2005
and C.M.P.No.17511 of 2005

T.S.Sivalingam ... Plaintiff / respondent / appellant
in S.A.Nos.1300 and 1301 of 2005

1.T.S.Sivalingam

2.Thayammal

3.Thilagavathy ... Defendants/respondents/appellants
in S.A.No.1302 of 2005

Vs.

T.M.Periyasamy ...Defendant / Appellant / respondent
in S.A.Nos.1300 and 1301 of 2005
and
... Plaintiff/Appellant/respondent
in S.A.No.1302 of 2005



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Prayer in S.A.No.1300 of 2005: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree dated 25.04.2005 made in A.S.No.13 of 2005 on the file of the Additional District Court / Fast Track Court No.IV, Erode, Bhavani, reversing the Judgement and decree dated 09.09.2003 made in O.S.No.693 of 1998 on the file of the I Additional District Munsif Court, Bhavani.

Prayer in S.A.No.1301 of 2005: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree dated 25.04.2005 made in A.S.No.14 of 2005 on the file of the Additional District Court / Fast Track Court No.IV, Erode, Bhavani, reversing the Judgement and decree dated 09.09.2003 made in O.S.No.337 of 1999 on the file of the I Additional District Munsif Court, Bhavani.

Prayer in S.A.No.1302 of 2005: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree dated 25.04.2005 made in A.S.No.15 of 2005 on the file of the Additional District Court / Fast Track Court No.IV, Erode, Bhavani, reversing the Judgement and decree dated 09.09.2003 made in O.S.No.449 of 1999 on the file of the I Additional District Munsif Court, Bhavani.



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For Appellants : Mr.C.Munusamy
in all S.As

For Respondent : Mr.K.Megala
for Mr.N.Manoharan
in all S.As

COMMON JUDGEMENT

The plaintiff in O.S.No.693 of 1998 before this court is the appellant in the second appeals. The suit in O.S.No.693 of 1998 is filed before the I Additional District Munsif Court, Bhavani, Erode, seeking for a declaration and injunction in respect of 29 cents of land in Survey No.773/6, which consists of a land, a well with a motor, and service connection. The plaintiff has filed another suit in O.S.No.337 of 1999 on the file of I Additional District Munsif Court, Bhavani, seeking for a declaration and permanent injunction in respect of the E.B. service connection situated in Survey No.773/6. The respondent herein has filed a suit in O.S.No.449 of 1999 on the file of I Additional District Municipal Court, Bhavani, seeking partition in respect of several other properties, including the 29 cents in Survey



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No.773/6.

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2. It is the case of the plaintiff / appellant that 29 cents of land, inclusive of the well and electric service connection, was partitioned between him and his brother vide Ex.A1, partition deed. Thereby, half share of the property belongs to the plaintiff. It is also admitted by the plaintiff that, however, in respect of the well situated in Survey No.773/6, the defendant also has half share in the property, due to the fact that originally, the property belonged to the family properties of Semba Gounder and Kuppa Gounder.

3. It is the further case of the plaintiff that earlier, there was a Service Connection bearing No.614, which jointly stood in the name of the plaintiff and the defendant's vendors. Due to some problems with the adjacent landowners, the said service connection was disconnected, and there was no complaint or any steps taken by the defendant's vendors as they relinquished their right. Therefore, the plaintiff had made a separate application to the Electricity Department and communications were addressed to the plaintiff. As per the proceedings of the Electricity Board, payments were made by the



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plaintiffs, for which challans were issued, and a new Service Connection bearing No.152 was issued in the name of the plaintiff. Even according to the plaintiff, even though the defendant has the



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right to half share in the well, as far as the electricity service connection is concerned, the plaintiff is the exclusive owner.

4. The defendant has filed a written statement contending that there are no title documents to the property, and it is seen that from the revenue documents filed in Ex.B2, the 29 cents of property in Survey No.773/6 jointly stands in the name of five pattadars, including the name of vendors of the defendant. While so, the self-serving document executed between the plaintiff and his brother in Ex.A1, partition deed will not bind the defendant. Therefore, the defendant's vendors were entitled to half share in the land and well in Survey No.773/6. By a sale deed dated 05.06.1998 in Ex.B1, the defendant's vendors have sold other extent of lands, including a half share in the 29 cents in Survey No.773/6 as item 2 to the Schedule along with the well, motor and service connection. The defendant contended that he is entitled for partition in respect of the said land, and on the strength of the documents in Ex.B2 and the sale deed, the defendant is entitled for a half share in the land, well and the service connection.

5. During trial, five witnesses, P.W.1 to P.W.5 were examined on the



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side of the plaintiff and documents in Ex.A1 to Ex.A14 were marked. Four witnesses D.W.1 to D.W.4 were examined on the side of the defendant and Ex.B1 to Ex.B6 were marked. Through the witnesses summoned, the documents in X1 to X11 were marked. An Advocate Commissioner was appointed in the suit, whose report along with the plan has been marked as Ex.C1 and Ex.C2. In the joint trial, the trial court, by analysing the evidence and documents by a common judgement and decree dated 09.09.2003, decreed the suit in O.S.No. 337 of 1999 and O.S.No.693 of 1998, filed by the plaintiff / appellant and dismissed the suit in OS No. 449 of 1999, filed for partition by the defendant / respondent. Subsequently, three appeals in A.S.Nos. 89, 90 and 31 of 2002 were filed as against the common judgement, and after re-appreciating the evidences, the Lower Appellate Court vide common judgement and decree dated 30.09.2002, allowed the appeals and remanded the matter back to the trial court for retrial.

6. Pursuant to the order of remand, after the evidences were let in, the trial court appreciated the oral and documentary evidence, and vide a common judgement and decree dated 09.09.2003, decreed the suit in O.S.No. 693 of 1998 and O.S.No. 337 of 1999, and dismissed the suit in O.S.No. 449



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of 1999. Against which, the respondent / defendant filed appeals in A.S.Nos.

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13, 14 and 15 of 2005 on the file of the learned Additional District Court,
Fast Tract Court No.4, Bhavani.

7. The First Appellate Court, after re-appreciating the evidences, vide a common judgement and decree dated 25.04-2005, allowed all the three appeals, thereby, dismissing the suit in O.S.No.693 of 1998, O.S.No.337 of 1999, and decreed the suit for partition in O.S.No. 449 of 1999. Aggrieved by the same, the plaintiff in O.S.No.693 of 1998, O.S.No.337 of 1999 and the defendant in O.S.No. 449 of 1999, is before this court with three separate second appeals.

8. At the time of admission, this court by order dated 25.11.2005, framed the following common substantial questions of law in all the three appeals:

"(i) Whether the First Appellate Court is correct in law in holding that there is no partition in respect of the suit property by overlooking the partition deed marked as Ex.A.1 especially when the division made under Ex.A.1 has not been challenged in the First Appeal filed by the respondent herein ?



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(ii) Whether the First Appellate Court is right in negating the claim of the appellant over the electric service connection in question notwithstanding the documentary evidence marked as Exs.A.3 to A.7 and A.12 to 14 which exclusive proves the ownership of the appellant ?

(iii) Whether the First Appellate Court being the final court of fact is right in reversing the well considered Judgment of the trial court particularly in the absence of any reasoning to defer from the findings of the trial court on all the issues ?"

9. Learned counsel for the appellant contended that 29 cents of land belongs to the plaintiff's brother, which was partitioned among them in Ex.A1, and as per the partition, the plaintiff has become the owner of the property. However, the defendant / respondent, being a purchaser, has partial right over the well, but he is not entitled to the other portion of the land. It is also contended by the learned counsel that he has filed the documents vide Ex.A1 and Ex.A2, the partition deed and exchange deed, to establish that he is the owner of the property in Survey No.773 /2006.

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WEB COPY 9.1 Further, according to the learned counsel, earlier, there was a common Service Connection bearing No.614, and due to the problem with the adjacent landowners, the carriers were removed and the electricity service connection was disconnected. As a result of which, the plaintiff was not able to cultivate his land, which led to sending several complaints and reminders to the Board officials and the other higher officials. Even after great difficulties, he was not able to restore the service connection bearing No.614. On the other hand, the plaintiff has applied for a new service connection. Since the defendant / respondent's vendors have relinquished their right in the service connection bearing No.614, the Electricity Board addressed the plaintiff to make payments as it can only be given a new service connection. Having no other alternative, the plaintiff has also made the payments. The documents vide Ex.A.3, Ex.A.4, Ex.A.12 and Ex.A.15 are the application, communication, and chellan issued for the payments made in favour of the Electricity Board. Pursuant to which, a new service connection bearing No.152 was issued in the name of the plaintiff. Even though, the defendant / respondent has a partial share in the well, he does not have any right over the new service connection availed by the plaintiff bearing No.152.



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9.2 The learned counsel further submitted that earlier, the suit filed by the appellant in respect of 29 cents of the land and the E.B. service connection was decreed, and that the appeal preferred was also allowed and remanded back to the trial Court by the Lower Appellate Court. Again, after appreciation of evidence, the trial court decreed both the suits filed by the plaintiff / appellant. However, the First Appellate Court reversed the said judgement by relying on some stray sentences in evidences that adduced by the witnesses. The lower Appellate Court's finding was not based on the evidence available on record. Therefore, the appellant has sought for interference of the appeals and prayed for allowing these appeals.

10. Per contra, the learned counsel for the respondent submitted that when there are no title deeds available to trace the ownership, admittedly, Semba Gounder and Kuppa Gounder were the owners of the property and no partition have been effected in their family and the revenue document filed in Ex.B2 stands in the name of the five pattadars, wherein the name of Kuppa Gounder found place. Therefore, it could be easily inferred that both Semba



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counter and Kuppa Gounder have half share in the 29 cents of property along with the well and electricity service connection in Survey No.773/6.

10.1 The learned counsel for the respondent further submitted that even though reliance is made by the appellant / plaintiff on the strength of Ex.A.1, partition deed and Ex.A.2, exchange deed, they are self-serving documents as the plaintiff cannot claim any exclusive right based on these documents when it is not established how he is entitled for the entire extent of 29 cents in Survey No.773/6. Further, she contended that no documents have been filed to show that the defendant's vendors had relinquished their right in service connection bearing No.614. Therefore, he also has a right in the new service connection bearing No.152. Only based on that, the defendant's vendors, vide Ex.B1, sale deed, have conveyed the other extent of lands along with 14.5 cents of land, which is half the share of 29 cents in Survey No.773/6, along with the right to the motor pump set and the service connection. Therefore, the learned counsel for the respondent contended that the defendant is the owner of half share as per the document which has been rightly taken note of by the First Appellate Court, and the First Appellate Court has allowed the appeals, thereby, decreeing their suit filed for partition



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and dismissing the two suits filed by the plaintiff / appellant. Contending so, the learned counsel for the respondent submitted that the finding of fact arrived at by the First Appellate Court is based on the documents and evidences and there is no substantial questions of law for this Court to interfere with the appeals and sought for dismissal of the appeals.

11. Heard the counsel on either side and perused the materials available on record.

12. It is an admitted case where Semba Gounder and Kuppa Gounder are the brothers and they were entitled to several ancestral properties in Survey Nos.773/5, 773/6, 773/7 and 773/8 and also other extent of lands. Admittedly, from the evidence of the plaintiff and the defendant, it could be seen that there has been no partition in the family and they continue to enjoy the properties as a common property. The entire dispute is only in respect of 29 cents of land, the well, motor and the service connection in Survey No.773/6.

13. It is the case of the appellants that they are the absolute owners of



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25 cents of the land in Survey No.773/6. The respondent / defendant and the appellants each have a half share in the well on the 4 cents of land, along with the motor pump set and the earlier service connection bearing No.614. The plaintiff / appellant claims that through the registered partition deed and exchange deed in Ex.A1 and Ex.A2, the 29 cents of land has been partitioned by him and his brother. Therefore, the plaintiff is entitled for the entire extent of land, and the respondent / defendant cannot make any claim in respect to this portion of the land since they admittedly do not have any documents.

14. As far as the claim in respect of 29 cents in Survey No.773/6 is concerned, there is no document available to trace the title. From the documents filed in Ex.B2 and the plaintiff's very own documents in Ex.A-9 and Ex.A-11, which are the Patta A-register and adangal extracts, it could be seen that the entire extent of lands in Survey No.773/6 stands in Patta No.803, which stands in the name of five pattadars, including the plaintiff and the defendant's vendors. When there are no other title documents available, it shows that the five pattadars are the joint owners of the property. In Survey No.773/6, the plaintiff / appellants failed to establish as to how they became the absolute owners of the land for the entire extent, particularly



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when they admit that the defendant / respondent has a half share in the well alone. The PW-1 in his evidence has also admitted that the properties belong to Semba Gounder and Kuppa Gounder and that there have been no division in the family and the parties continued to enjoy their shares as undivided joint shares. However, PW-1 has only stated that the old service connection alone has been cancelled and he has become the exclusive owner of the new service connection bearing No.152.

15. From the documents available on record and the admission made by the plaintiff, it can be easily concluded that even though partition and exchange has been executed between the plaintiff and his brother in Ex.A1 and Ex.A2, that will not bind the respondent / defendant. From the documents available on record, the plaintiff and the defendant's vendors are entitled to a half share in the 29 cents of land in survey No. 773/6 and also in the well.

16. As far as the electricity service connection is concerned, it is borne out from records that admittedly there was an old service connection in bearing No.614, which stood in the name of all the joint pattadars, including



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the plaintiff and the respondent's vendors. Due to some problem with the adjacent landowners, there were disturbances created and the said service connection was disconnected. The respondent / defendant's vendors had never sought to interfere or take any steps for reconnecting the service connection. On the contrary, the plaintiff / appellant has taken enormous efforts in making complaints and also made representation to the Electricity Board to reconnect the service connection bearing No.614. The documents filed in Ex.X1 to Ex.X11 establishes that all the steps and complaints filed by the plaintiff / appellant to re-secure the service connection bearing No.614 did not materialize and the plaintiff / appellant was only given an option to avail a new service connection as the defendant / respondent's vendors have also relinquished their claim in respect of old service number bearing No.614 as they have not taken any steps. Pursuant to the communication, the plaintiff / appellant has made payments as evidenced in Ex.A4, and the communication in Ex.A12 and the challan issued by the Electricity Board in Exhibit A-15 would reveal that the earlier service connection bearing No.614 was disconnected, and upon the application making of fresh payment by the appellant / plaintiff, a new service connection bearing No.154 has been effected in the name of the plaintiff / appellant.

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18. In such circumstances, the plaintiff / appellant is not entitled for declaration as claimed by him for the entire extent of 29 cents and also the respondent / defendant is not entitled to claim for partition in respect of service connection bearing No.152. The appellant / plaintiff is entitled for a decree in respect of E.B service connection alone in new service connection bearing No.152 as prayed for in O.S.No.337 of 1999.



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19. In view of the above findings, this court comes to a conclusion that the plaintiff / appellant is only entitled to 14.5 cents of land in Survey No.773/6, and the defendant / respondent is entitled to the balance extent of 14.5 cents as per the sale deed in Ex.B.1. As far as the decree granted for partition in OS No. 449 of 1999, the decree in respect of the Electricity Service Connection bearing No.152 alone is to be modified and the right to



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the plaintiff / appellant in respect of new service connection bearing No.152 is declared in his favour.

20. Accordingly, both the appellant and the respondent will be entitled to 14.5 cents of land each along with the half share in the well in Survey No. 773/6 in Patta No.803, and the plaintiff / appellant alone shall be entitled for the new service connection bearing No.152, which is in the suit property.

21. In the result,

(i) the Second Appeal No.1300 of 2005 stands partly allowed and the suit in OS.No.693 of 1998 is decreed in respect of 14.5 cents alone.

(ii) the Second Appeal No. 1301 of 2005 stands allowed and the judgement and decree of the First Appellate Court is set aside, and the judgement and decree of the trial Court is restored.

(iii) the Second Appeal No. 1302 of 2005 stands partly allowed, and the judgement and decree of the First Appellate Court in respect of the electricity service connection bearing No.152 alone is set aside. In all other



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aspects, the judgement and decree of the First appellate court is confirmed.

No Costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation Case : Yes/No

To:

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