



S.A.No.459 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.459 of 2018
and
C.M.P.No.12436 of 2018

1. Kasinattar
2. Pachaiyammal
3. Rajakumari
4. Rajendran (Died)
5. Vasugi
6. Ganasundari
7. R.Chitra
8. R.Surendran
9. R.Gajendran
10. Gnanachandran

...

Appellants

(A7 to A10 are brought on record as legal representatives of deceased A4 vide Court order dated 02/01/2024 made in C.M.P.No.20999 of 2022)

-Vs-

1. Munusamy (Died)
2. Muniyammal
3. Kasiammal
4. Pachaiyammal
5. Ganesan
6. Perumal
7. Alamelu
8. Indira
9. Chinnappa

...

Respondents

(R2 to R9 are brought on record as legal representatives of



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deceased sole respondent vide Court order dated 12/03/2024 made in C.M.P.Nos.5708, 5709 and 5711 of 2024)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 08.01.2018 made in A.S.No.6 of 2014 on the file of the Subordinate Court, Gingee, by reversing the judgement and decree dated 20.12.2013 made in O.S.No.378 of 2001 on the file of the Additional District Munsif, Gingee.

For appellants	: Mr.R.Rajaramani for Mrs.S.Sasikala
R1	: Died
For R2 to R9	: Mr.R.Sunil Kumar

JUDGMENT

This second appeal arises under a short narrow compass *viz.*, entitlement to use the suit well. The plaintiff sought for declaration of his 1/4th right to use the suit well and also for permanent injunction.

2. The Trial Court dismissed the suit and the First Appellate Court reversed the finding of the Trial Court and granted a decree as prayed for by the plaintiff. Aggrieved by the reversal finding rendered by the First Appellate Court, the legal heirs of the first defendant and second



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defendant have preferred the above second appeal.

3. The second appeal was admitted on 29.01.2019 on the following substantial questions of law.

“(1) Whether the lower appellate Court is right in granting the relief on the basis of Ex.A1 when Poongavanammal, the vendor of the plaintiff does not have any right over the suit well under the said document?”

“(2) Whether the lower appellate Court is right in granting the relief on the basis of the report of the Advocate Commissioner with regard to the presence of the oil engine and motor in the suit without even ascertaining whether they are in running condition?”

4. Heard Mr.R.Rajaramani, learned counsel for the appellants and Mr.R.Sunilkumar, learned counsel for the respondents.

5. The learned counsel for the appellants would first and foremost contend that the First Appellate Court has not followed Order XLI Rule 31 of C.P.C. and without even setting out the points for



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determination or consideration, the First Appellate Court has proceeded to decide the appeal and set aside the judgment and decree of the Trial Court.

6. Per contra, the learned counsel for the respondents would invite my attention to exhibits filed by the plaintiff, especially Ex.A3 and also Ex.B1, to contend that the suit well was jointly mutated in the names of Poongavanammal and Anandayee Ammal, under whom both the parties claim their right. He would further refer to the oral evidence of D.W.1 and D.W.2 to fortify his contention that the claim of the defendant was admittedly only to an extent of $3/4^{\text{th}}$ right and the plaintiff had filed substantial evidence to establish his right to use his $1/4^{\text{th}}$ right to the suit well.

7. Be that as it may, I have gone through the judgment and decree of the Trial Court and the First Appellate Court. The Trial Court had dismissed the suit citing certain lacunae on the part of the plaintiff to prove his right. It is the specific case of the plaintiff that the Trial Court had not considered the material evidence available on record and the First



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Appellate Court had rightly interfered with and granted the decree in favour of the plaintiff.

8. On going through the judgment and decree of the First Appellate Court, I find that as rightly pointed out by the learned counsel for the appellants, the First Appellate Court has not determined the points for consideration which is mandatory under Order XLI Rule 31 of the C.P.C. That apart, the First Appellate Court has not discussed the material evidence, either oral or documentary evidence, adduced by the parties, either in a proper perspective or in a judicious manner. The First Appellate Court has proceeded to decide the appeal more on surmises and conjectures.

9. I have also noticed that the defendants had sold their entitlement in the suit well. However, the learned counsel for the appellants would submit that they are continuing to irrigate their land and using the suit well and what was sold was 3/4th in another well and not the suit well comprised in S.No.8/12. I find from the judgment and decree of the First Appellate Court that the First Appellate Court has not



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properly discharged the duty cast upon it and being the final Court of facts, the First Appellate Court is expected to discuss both the pleadings and evidence, oral and documents, adduced by the parties and frame proper points for determination in the appeal. Without doing so, the First Appellate Court has upset the findings of the Trial Court.

10. If the second appeal is decided on merits keeping in mind the approach of the First Appellate Court, it may cause serious prejudice to the appellants. Therefore, in my view, the matter has to be remitted back to the First Appellate Court and the First Appellate Court has to decide the appeal afresh in accordance with law. As it is only arguments to be advanced in the appeal, the First Appellate Court has to decide the appeal based on the arguments to be advanced by either side, within a period of eight weeks from the date of receipt of a copy of this judgment without being influenced by any of the observations made hereinabove in this judgment. The substantial questions of law are answered in favour of the appellants.

Accordingly, this second appeal is allowed and the judgment and



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decree passed by the First Appellate Court in A.S.No.6 of 2014 dated 08.01.2018. Further, the matter is remitted to the First Appellate Court to hear the case in A.S.No.6 of 2014 afresh and in accordance with law and decide the same within a period of eight weeks from the date of receipt of a copy of this judgment. Consequently, connected C.M.P. stands closed.

No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

- 1.The Sub Judge, Gingee.
- 2.The Additional District Munsif, Civil Judge (Junior Division), Gingee.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.,

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