



S.A.No.1070 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1070 of 2019

1. Ravi
2. Vijayakumar ... Appellants

Vs.

1. Lakshmanan
2. Rajakumari
3. Parimala
4. Prabhu ... Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 20.03.2019 passed in A.S.No.12/2014, on the file of the Sub Court, Gingee, Villupuram District upholding the decree and judgment dated 30.09.2013 passed in O.S.No.292/2007, on the file of the Principal District Munsif, Gingee, Villupuram District.

For Appellants : Mr.R.Rajarajan
For Respondents : Mr.V.M.Venkatraman

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.

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2. The plaintiffs filed the suit in O.S.No.292/2007 before the Principal District Munsif, Gingee, Villupuram District, for declaration of their title to the suit 'B' Schedule property which is described as a 'well' with electricity service connection bearing number 132, situate in third item of 'A' Schedule property. They have also prayed for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit well ('B' Schedule property).

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiffs in a nutshell is as follows :

The suit properties ('A' and 'B' Schedules) originally belonged to one Annamalai Mudhaliar. Kannan Gounder, the father of the plaintiffs purchased the suit properties from Annamalai Mudaliar through a registered sale deed dated 30.08.1951 (Ex.A1 = Ex.B2) from out of his own income. The first defendant and late Arjunan are the brothers of



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Kannan Gounder. Kannan Gounder and his brothers were residing in a joint family with their parents Kathavaraya Gounder and Karuppayee Ammal (second wife of Kathavarayann gounder). Kathavaraya Gounder, his wife Karuppayee ammal and his son, Lakshmanan (D1) purchased certain properties and were enjoying the same. Kannan Gounder exchanged his land in Survey number 133/5 measuring 0.31 cents for the lands in survey number 144/1 belonging to the I defendant. Thus Kannan Gounder was in possession and enjoyment of 0.44 cents in the suit village. There was a well in survey number 116/1 and since it was in dilapidated condition, Kannan Gounder dug a new well in the year 1967 and also obtained an electricity service connection in the year 1969. He was enjoying the well without any interference from any one. Kannan Gounder has four sons by names, Thirisangu, Ramachandran, Ravi (first Plaintiff) and Vijayakumar (second plaintiff). Ramachandran and Thirusangu executed two sale deeds, dated 16.03.2000 and 10.11.2006 (Ex.A2 and Ex.A3) in respect of their shares in the suit properties in favour of their brothers (plaintiffs 1 and 2). The defendants who are claiming right over the well, had issued a notice, dated 22.12.2006



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(Ex.A4) to the plaintiffs. When this was questioned by the plaintiffs through some mediators in the village, the defendants informed them that they would not take any legal action on the basis of the notice, dated 22.12.2006 (Ex.A4). Kathavaraya Gounder executed a settlement deed, dated 01.07.1980 (Ex.A5) in favour of the first defendant in respect of the properties purchased by him. Similarly Karuppayee ammal executed a settlement deed dated 19.05.1982 (Ex.A6) in respect of the properties purchased by her in favour of the first defendant and late Arjunan. In both these documents, there is no mention about the suit well. However, the defendants are attempting to interfere with the plaintiffs peaceful possession and enjoyment of the well in the suit property. Hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. Kathavaraya Gounder married one Karuppayee ammal after the death of his first wife. Angammal, Harikrishnan, Lakshmanan and Arjunan are the children born to Kathavaraya Gounder and



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Karuppayee ammal. Karupayee ammal purchased certain lands through a registered sale deed, dated 04.06.1947 (Ex.B1) in Mazhuvanthangal village from out of her income from her own properties which, she got from her parents. Kannan Gounder was born to Kathavaraya Gounder and his first wife. Since Kannan Gounder was the eldest son in the family, the properties comprised in the sale deed dated 30.08.1951 (Ex.A1 = Ex.B2) was purchased in the name of Kannan Gounder from one Annamalai Mudhaliyar.

- ii. Thereafter Kathavaraya Gounder and Karuppayee ammal executed settlement deeds, in respect of their properties through the registered settlement deeds, dated 01.07.1980 and 19.05.1982 (Ex.B8 and Ex.B9) in favour of Lakshmanan and Arjunan respectively.
- iii. All the properties were enjoyed in common.
- iv. Subsequently, the properties were partitioned even during the life time of Kathavaraya Gounder.
- v. The well situate in the 'B' Schedule property was enjoyed in common by all the brothers.



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vi. Therefore, Kannan Gounder cannot execute a Settlement deed, in respect of the well in favour of his sons, the plaintiffs.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the 'B' Schedule property absolutely belonged to the plaintiffs?*
- ii. *Whether the plaintiffs are in possession of 'B' Schedule property?*
- iii. *Whether the plaintiffs are entitled for a declaration and injunction as prayed for by them?*
- iv. *To what relief the plaintiffs are entitled?*

7. In the Trial Court, the first plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A9. The defendants 1 and 2 examined themselves and marked Ex.B1 to Ex.B36.

8. After full contest, the learned Principal District Munsif, Gingee, Villupuram District, vide his decree and judgment dated



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30.09.2013 dismissed the suit filed by the plaintiffs on the ground that the 'B' schedule property is being enjoyed in common by the plaintiffs and the defendants.

9. Aggrieved over the decree and judgment passed by the Trial Court, the plaintiffs filed an appeal in A.S.No.12/2014 before the Sub Court, Gingee. The learned Sub Judge, Gingee, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court, vide his decree and judgment dated 20.03.2019, as against which the present second appeal is filed.

10. The second appeal was admitted by this Court on 01.11.2019 on the following substantial questions of law:

- i) Are not the Courts below wrong in dismissing the suit on the basis of Ex.B28, Sale Deed, which is not pertaining to the suit B schedule property?*
- ii) Whether the Courts below are correct in holding that the suit property to be a joint family property without any*



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pleadings and evidence that the suit properties were purchased in the name of Kannan Gounder under Ex.A1 out of the surplus income yielded by the joint family property?

11. Heard Mr.R.Rajarajan, learned counsel for the appellants and Mr.V.M.Venkatraman, learned counsel for the Respondents.

12. Mr.R.Rajarajan, learned counsel for the appellants contended that the well mentioned in Ex.B28 is not the disputed well and therefore both the Courts below had committed an error in coming to the conclusion that the suit well was being enjoyed in common.

13. Per contra, Mr.V.M.Venkatraman, learned counsel appearing for the Respondents 1 to 6 contended that both the Courts below by well reasoned judgments had dismissed the suit filed by the plaintiffs and therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.



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14. The dispute between the parties is only with regard to the well which is described as the 'B' Schedule property. The well is situated in S.No.116/1H. In order to substantiate that the 'B' Schedule property absolutely belonged to the plaintiffs, the plaintiffs mainly rely on the certified copy of the sale deed, dated 30.08.1951 (Ex.A1) in favour of Kannan Gounder, father of the plaintiffs and also a Partition deed, dated 16.03.2000 (Ex.A2) entered into between Kannan Gounder and his sons. The original of Ex.A1 is marked as Ex.B2. Kannan Gounder and Thirisangu sold their shares in the suit property in favour of the plaintiffs through the registered sale deed, dated 10.11.2006 (Ex.A3). According to the plaintiffs, their father Kannan Gounder purchased the properties mentioned in the sale deed (Ex.A1 = Ex.B2) from out of his own income and also dug a well in the year 1967. On the contrary, the defendants have contended that the property mentioned in Sale deed, dated 30.08.1951 (Ex.A1 = Ex.B2) were purchased in the name of Kannan Gounder since he was the eldest son in the family and all the properties were enjoyed in common. Their further contention is that Kathavaraya Gounder and Karuppayee ammal executed two settlement deeds, dated



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01.07.1980 and 19.05.1982 (Ex.B8 and Ex.B9) in favour of their sons first defendant and late Arjunan and subsequently all the properties of Kathavaraya Gounder were partitioned. It is their specific contention that 'B' Schedule property (well) was being enjoyed in common.

15. In the sale deed dated 30.08.1951 (Ex.A1 = Ex.B2) , there is no mention about the existence of a well. Therefore the well should have been dug up only subsequently. Hence, Ex.A1 is not helpful to the case of the plaintiffs. Ex.A2 and Ex.A3 are based on the Ex.A1 sale deed. A perusal of the sale deed, dated 30.05.1984 (Ex.B28) executed by Arjunan (husband of the second defendant and father of the defendants 3 and 4) in favour of his brothers Kannan Gounder and Lakshmana Gounder shows that all the brothers were enjoying the well in common. It is also pertinent to point out that the first plaintiff during the course of cross examination admitted that there is only one well in the properties belonging to the family of the plaintiffs and defendants. The plaintiffs have not examined their father Kannan Gounder as a witness in the Trial Court to explain about the sale deed, dated 03.05.1984 (Ex.B28). When



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Kannan Gounder was very much alive, he could have come to Court and explained as to why he did not raise any objection with regard to the share mentioned in the well (Ex.B28). Moreover, the defendants have also paid electricity bills as is seen from Ex.B17 to Ex.B19 right from the year 1980 and therefore the irresistible inference is that the plaintiffs and the defendants were enjoying the suit well ('B' Schedule property) in common. Though an attempt was made by the learned counsel for the plaintiffs to show that the well mentioned in Ex.B28 is not the disputed well, the evidence of the plaintiffs clearly would go to show that the entire family had only one well for irrigation purpose. No steps were taken by the plaintiffs to prove that the well mentioned in Ex.B28 lies elsewhere. Both the Courts below have analysed the evidence on record in the right perspective and had come to a definite conclusion that the suit well is being enjoyed in common and that the plaintiffs have not established any of their contentions. Therefore, the substantial questions of law are answered against the appellants.



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16. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 20.03.2019 passed in A.S. No.12/2014, on the file of the Sub Court, Gingee, Villupuram District and the decree and judgment dated 30.09.2013 passed in O.S.No.292/2007, on the file of the Principal District Munsif, Gingee, Villupuram District, are upheld.
- iii. The suit in O.S.No.292/2007 on the file of the Principal District Munsif, Gingee is dismissed with costs.

03.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Sub Court, Gingee, Villupuram District.
2. The Principal District Munsif, Gingee, Villupuram District.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

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