



S.A.(MD)No.903 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.903 of 2008

Padmavathi Amma

...Appellant

-Vs-

1.Padmakumar
2.Madhavan Pillai
3.Jayakumari
4.Vilasini

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.63 of 2005, dated 18.12.2007 on the file of the Subordinate Judge, Kuzhidurai, confirming the judgment and decree in O.S.No.92 of 2001, dated 25.02.2005 on the file of the First Additional District Munsif, Kuzhithurai.

For Appellant	: Mr.K.Sreekumaran Nair
For R1 and R2	: Mrs.J.Anandha Valli
R3 and R4	: Ex parte



S.A.(MD)No.903 of 2008

WEB COPY

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit was filed for a declaration that the plaintiff has right to use suit 'B' schedule tank as well as Well without any hindrance from the defendants and for a consequential injunction restraining the defendants from interfering with the exercise of said right by the plaintiff. The suit as well as the first appeal filed by the plaintiff were dismissed. Aggrieved by the concurrent findings against her, the plaintiff is before this Court.

2.According to the plaintiff, the property situated in Old S.Nos.7332 and 7327B were known as “Thekke Veettuvilai”. The total extent in S.No.7332 was 2 acres 33 cents and the total extent in S.No.7327B was six cents. Both the survey numbers lie continuously as a single block. It was the case of the plaintiff that her grandfather, Padmanabha Pillai and his children Raghavan Pillai and others had entered into a partition on 21.01.1957 and under the said document, S.No.7332 was sub divided into 22 plots. The father of the plaintiff, Raghavan Pillai, was allotted 32 cents in the said survey number including Plot Nos.3, 4, 17, 8 and 7.



S.A.(MD)No.903 of 2008

WEB COPY

3.The plaintiff had put up a residential building in Plot No.4 measuring about 12½ cents under a permission from her father Raghavan Pillai. Subsequently, her father passed away leaving behind a Will, dated 20.03.1983 under which, Plot No.4 and others properties were bequeathed to the plaintiff. The properties given to the plaintiff were described as 'A' schedule to the plaint. It was claimed by the plaintiff that the tank as well as the Well situated in S.No. 7327B were left in common for the use of all the allottees under the partition deed. Thus, the plaintiff claimed undisputed right to take water from the Well and use the tank for bathing and other purpose. The tank and the Well are described as 'B' schedule property. In order to exercise the said right of taking water from the Well and for taking bath in the tank, the plaintiff has to pass through Plot Nos. 5, 3, 1, 2, 11 and 12. The said passage was described as 'C' schedule in the plaint. As the defendants obstructed in exercising the said right by the plaintiff over the suit 'B' schedule property, the plaintiff was constrained to file a suit for the aforesaid relief.

4.The defendants filed a written statement and denied the averments contained in the plaint, as if S.Nos.7332 and 7327B were situated in one block. It



S.A.(MD)No.903 of 2008

was specifically averred by the defendants that the tank and the Well situated in S.No.7327B were not common properties and in none of the partition deeds relied on by the plaintiff, the tank and the Well were described as common property. It was further claimed by the defendants that southern 1/3 in the Well and tank was exclusively allotted to one Bagavathi Pillai as Item No.10 of 'C' schedule in the partition deed, dated 23.06.1113 (Tranvancore Era). It was further claimed that Bagavathi Pillai, who was allotted 1/3 of the right in tank and Well, sold the same to the first defendant on 20.03.2000 for valuable consideration and put him in possession. Thus, the first defendant was claimed to be the owner of 1/3 share in the tank as well as the Well. It was also claimed that Plot No.3 was the house and site of the defendants and there was no pathway, as claimed by the plaintiff.

5.Before the trial Court, one witness was examined as PW-1 and 12 documents were marked as Ex-A1 to Ex-A12 on behalf of the plaintiff. On behalf of the defendants, the first defendant was examined as DW-1 and six documents were marked as Ex-B1 to Ex-B6. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.



S.A.(MD)No.903 of 2008

WEB COPY

6.The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to establish her right over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.63 of 2005 on the file of the Subordinate Court, Kuzhithurai. The said appeal was dismissed by confirming the judgment and decree passed by the trial Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

7.The learned Counsel for the appellant submitted that the appellant/plaintiff has right to use the tank as well as the Well situated in suit 'B' schedule property by passing through suit 'C' schedule pathway and the said right available to the plaintiff was established by her by producing a partition deed, dated 21.01.1957, which was marked as Ex-A2 and the Courts below without properly taking into consideration the documentary evidence let in by the plaintiff, erroneously held that the plaintiff failed to establish her right over the suit 'B' and 'C' schedule properties and hence, the judgments and the decrees passed by the Courts below are liable to be set aside.



S.A.(MD)No.903 of 2008

WEB COPY

8.The plaintiff claims right over Plot No.4 in suit 'A' schedule property by virtue of allotment of the same along with other properties in favour of her father under a partition deed, dated 21.01.1957 and the Will allegedly executed by her father, dated 20.03.1983. It was also claimed by the plaintiff that the tank as well as the Well situated in suit 'B' schedule property in S.No.7327B was treated as a common property for all the allottees of the share under partition deed, dated 21.01.1957. It was also claimed that suit 'C' schedule property is a passage to reach the tank as well as the Well situated in suit 'B' schedule property.

9.The trial Court as well as the appellate Court by taking into consideration the recitals found in Ex-A2 and Ex-A3, the partition deed, dated 21.01.1957, came to the conclusion that the suit 'B' schedule property was not at all mentioned in the partition deed relied on by the plaintiff and the right to use tank and Well in the suit 'B' schedule property was not recited in the partition deed, dated 21.01.1957. There is no explanation on the part of the plaintiff as to how she is entitled to claim right to use the Well and the tank situated in suit 'B' schedule property.



S.A.(MD)No.903 of 2008

WEB COPY

10. More over, as rightly pointed out by the first appellate Court, PW-1 clearly admitted that there was no mention about the common right available to the allottees of share under Ex-A2 in respect of S.No.7327B (Suit 'B' schedule property). Further, as per the partition deed produced by the defendants, dated 23.06.1113 (Travancore Era), 1/3 of the suit 'B' schedule property was allotted to the share of predecessor of the first defendant, namely, Bagavathi Pillai. Though the plaintiff referred about the Will allegedly executed by her father, when there was no reference about the common right in respect of tank and Well situated in suit 'B' schedule property in the partition deed relied on by the plaintiff, both the Courts below on proper appreciation of oral and documentary evidence came to the conclusion that the plaintiff failed to establish the common right pleaded by her in respect of suit 'B' schedule property. I do not find anything to interfere with the said factual conclusion reached by the Courts below and hence, the Second Appeal is devoid of any substantial questions of law for consideration. Accordingly, the Second Appeal stands dismissed. No costs.

NCC : Yes / No
Index : Yes / No
cmr

05.06.2024



WEB COPY



S.A.(MD)No.903 of 2008

To

- 1.The Subordinate Judge, Kuzhidurai.
- 2.The First Additional District Munsif, Kuzhithurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.903 of 2008

S.SOUNTHAR, J.

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S.A.(MD)No.903 of 2008

05.06.2024