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S.A.No.475 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.No.475 of 2004

Alagu

... 1st Defendant/
1st respondent/appellant

Vs.

1.Chinnaiah (Died)

...Plaintiff/Appellant/
Respondent

2.Karuppannan

3.Periayya

4.The Tahsildar,
Melur Taluk,
Melur.

5.The Assistant Director,
Survey & land, Madurai-20.

6.The District Collector,
Madurai District,
Madurai.

...Defendants 2 to 6/
Respondents 2 to 6/Respondents

7.Sushila

(7th respondent is brought on record
as LR of the deceased 1st respondent
vide Court order dated 22.10.2024
made in C.M.P(MD)No.14047,
14052 & 14056/2024)



S.A.No.475 of 20

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 14.06.2004 made in A.S.No.13/1999, on the file of the III Additional Sub-Court, Madurai reversing the judgment and decree dated 16.10.1998 made in O.S.No. 119/97, on the file of the District Munsif Court, Melur.

For Appellant : Mr.P.T.S.Narendravasan

For Respondents : Mr.S.Nedumaran

JUDGMENT

The appellant, who is the first defendant, filed the present appeal against the judgment and decree, dated 14.06.2004 made in A.S.No.13/1999, on the file of the III Additional Sub-Court, Madurai reversing the judgment and decree, dated 16.10.1998 made in O.S.No. 119/1997, on the file of the District Munsif Court, Melur.

2. For the sake of convenience, the appellant and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiff respectively.

3. The plaintiff, who is the first respondent in the present appeal, filed a suit in O.S.No.119/1997 before the District Munsif Court, Melur, for permanent injunction and mandatory injunction.



4. On analyzing documentary and oral evidence, the learned District Munsif, Melur has dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal before the III Additional Sub-Court, Madurai which is taken on file in A.S.No.13/1999. Considering the pleadings, evidences, judgment and decree of the trial Court, the learned III Additional Sub-Judge, Madurai has allowed the appeal by setting aside the judgment and decree of the trial Court. Aggrieved over the same, the first defendant has filed the present appeal.

5. The case set-up by the plaintiff in the plaint is as under:-

(i) The suit property and other items of properties originally belonged to the family of Periayyakonar, the third defendant and other members of his family. The plaintiff and the defendants 1 & 2 and another one Chinnasamy are the sons of Periayya Konar (D3). Puliammal, Chinnammal and Indira are the daughters of Periayya Konar. The properties have been divided by Periayya konar and his sons and daughters by means of a registered partition deed, dated 07.03.1977. Eversince the date of partition, the properties allotted to each member have been in possession and enjoyment of each member. The properties mentioned in 'A' schedule in the partition deed, dated 07.03.77 have been allotted to D3. The properties mentioned in the



'B' schedule have been allotted to the first defendant. The properties mentioned in the 'F' schedule in the partition deed have been allotted to Karuppan, the second defendant herein. The properties mentioned in 'G' schedule in the partition deed, dated 07.03.77 have been allotted to the plaintiff. The plaintiff is in exclusive possession and enjoyment of the properties mentioned in 'G' schedule in the partition deed. The suit property has been allotted to plaintiff in the partition and the plaintiff is in possession and enjoyment of the suit property till now. There is a well in the suit property. The suit property along with the well has been allotted to plaintiff in the partition. Patta 422 has been transferred in the name of the plaintiff. The plaintiff has title to the suit property and therefore patta 422 was exclusively given to the plaintiff for the suit property and the plaintiff has paid Kist for the suit property. Efforts were made to erect a room and to install motor, pump-set in the well in the suit property and the work was completed at the expenses of the plaintiff i.e., from and out of the income from the plaintiff's properties. This work was completed only after partition. Patta Pass book has been issued in the name of the plaintiff.

(ii) In the partition, dated 07.03.77, 'B' schedule properties in the partition deed have been allotted to the first defendant. The first defendant was given permission or license to take water from the well



in the suit property for his lands bearing survey numbers 118/1A having an extent of 47 cents, S.No.118/3B having an extent of 14 cents, S.No.117/16 having an extent of 18 cents and S.No.116/2 having an extent of 09 cents only. The first defendant has no right or title to the suit property including the well in the suit property, except to take water from the well to his lands as mentioned above. The properties mentioned in 'F' schedule were allotted to D2. The second defendant was also permitted to take water from the well in the suit property for his land bearing survey numbers 114/2 having an extent of 74 cents only. The first and second defendants are only given permission to take water from well for their Nanja lands as mentioned in the partition deed. The defendants 1 to 3 have no right or title to the suit property including the well.

(iii) At the time of partition, the plaintiff was a minor and the third defendant managed the properties of the plaintiff and made improvements in the properties of the plaintiff from and out of the income from the properties of the plaintiff. Similarly, the third defendant erected pump-set room and put up motor to draw water from the well, from and out of the income from the plaintiff's properties. Since the plaintiff was the minor electrical service connection was obtained in the name of D3. After attaining majority,



the plaintiff took possession of his properties including the suit property and the plaintiff is in possession and enjoyment of all his properties till now. The plaintiff has paid tax and kist for his properties. Patta has been given to plaintiff for his properties. The plaintiff has paid electricity charges for motor and pump-set till now. Since the electric service connection is in the name of the plaintiff's father (D3) the plaintiff is taken steps to get the transfer of the service connection in his name.

(iv) Though the first defendant was given permission to take water from the well in the suit property, the first defendant did not take water so far. The first defendant is the Thalaiyari of the Village and he is very influential with the revenue and survey Departments. In January 1997, the first defendant openly threatened the plaintiff several times that he would get the transfer of patta in his name for the suit property and will interfere with the plaintiffs possession and enjoyment in the suit property. Then the plaintiff sent petitions to the District Collector, Madurai and the Assistant Director of Survey Madurai to take action against D1 and not to transfer the patta to D1. These petitions were received by the concerned authorities and the plaintiff has not received any reply so far from the concerned authorities. But the first defendant openly challenged and threatened



the plaintiff that he would get the transfer of patta in the name of D1 soon for the suit property. D1 also openly challenged and declared that Revenue and survey officers agreed to help D1 to transfer the patta in the name of D1 also. The plaintiff sent petitions to D5 and D6 to take action and requested them not to transfer the patta in the name of D1. The plaintiff was directed to contact D5 and the plaintiff was asked by D5 to get a decree from Civil Court.

(v) The first defendant will get the transfer of patta for the suit property illegally and he will interfere with the plaintiffs possession and enjoyment in the suit property, unless he is restrained by an order or decree for permanent injunction. Therefore, this suit is filed for permanent injunction restraining the first defendant and his men from interfering with the plaintiff's possession and enjoyment in the suit property and for mandatory injunction to restrain the defendants 4,5 & 6 from transferring the patta 422 in the name of D1. D2 has the permission to take water for his land. The electric service connection is in the name of D3. Therefore, the defendants 2 & 3 are added as parties to get a binding adjudication. The plaintiff issued notice to the D4 to D6 under Section 80 of Civil Procedure Code and D4 to D6 received the same and they did not send any reply. Plaintiff is not interfering with the right of the first defendant from taking water to



irrigate his lands as stated in the partition deed. Therefore, he filed a suit.

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6. The defence set-up by the third defendant in the written statement is as under:-

The suit is not maintainable. The suit property and other items of properties belonged to the family of the third defendant and that there was a partition by means of the registered partition deed, dated 07.03.1977. The allegation in the plaint that at the time of partition, the plaintiff was a minor and that the third defendant improved the well and put up pump room and obtained electric connection from out of the funds of the plaintiff i.e, from the income from the plaintiff's lands and that patta has been transferred in the name of the plaintiff and that the plaintiff is in possession and enjoyment of the suit property including the well and that patta has been transferred in the name of the plaintiff and that the plaintiff is in possession and enjoyment of the suit property including the well and that defendants No.1 and 2 are entitled to take water from the well for their lands as stated in the partition deed, dated 07.03.1977 and that the defendant No.1 was given permission to take water from the suit well for his nanja lands bearing survey numbers 118/1A 0.47 cents 118/3B-0.14 cents, 117/16-0.18 cents and 116/2-.0.09 cents and that defendant No.



1 is not entitled to take water for any other lands except the Nanja lands mentioned in the partition deed. But though the first defendant was given permission to draw water from the well defendant No.1 never drew water for the past 20 years. The third defendant made improvements in the well by putting up side bores spending huge amount from and out of the plaintiff's money. This was done only after partition. Since the plaintiff was a minor, the third defendant managed and improved the plaintiff's properties including the well. After the plaintiff attaining majority, the third defendant handed over possession and enjoyment of the properties to the plaintiff. The third defendant got the electric service connection for the pump-set in his name since the plaintiff was the minor. The third defendant spent money for all these purpose from out the plaintiff's funds. But the electricity charges are paid by plaintiff though the service connection is in the name of the third defendant.

7. The defendants 1 & 2 also filed counter affidavit by denying all the averments made in the plaint. Hence, they prayed for dismissal of the suit.

8. Before the trial Court, the plaintiff himself was examined as P.W.1 and Ex.P1 to Ex.P.51 were marked. On the side of the



defendants, D.W.1 to D.W.4 were examined and Ex.D1 to Ex.D22 were marked.

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9. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had dismissed the suit.

10. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal before the III Additional Sub-Court, Madurai which is taken on file in A.S.No.13/1999.

11. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had allowed the appeal by setting aside the judgment and decree of the trial Court.

12. Challenging the said reversal judgment and decree passed by the first appellate Court, the first defendant has filed the present appeal.

13. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:



"a) Whether the first appellate Court is right in granting the relief of permanent injunction in favour of the respondent/plaintiff, namely one of the co-owners, against the appellant/defendant another co-owner, who is entitled to take water from the well situate in the suit property as per the partition deed, dated 07.03.1977, under Ex.A1?

(b) Whether the relief sought for the entire extent of 88 cents is maintainable, particularly when the dispute is only with regard to 4 cents of land, in which the well is situated and more over, admittedly there is no dispute for the remaining extent?

14. The learned counsel appearing for the appellant would submit that the lower appellate Court had erred in reversing the well considered judgment rendered by the trial Court without assigning any valid reasons for the same. The lower appellate Court erred in finding that the first defendant has no right or interest over the well and pump-set motor situated in S.No.117/10 allotted to the share of the plaintiff, particularly, when the defendants 1 & 2 and plaintiff are jointly entitled to take water from the well to irrigate their respective lands as per the partition deed, dated 07.03.1977. The lower appellate Court has failed to note that absolutely there is nothing to show that plaintiff has got absolutely right in the well and pump-set



motor, on the other hand, the recitals in the partition deed is very clear that the defendants 1 & 2 are entitled to take water from the well to irrigate their lands. The lower appellate Court has failed to see that merely because the well is situated in 88 cents allotted to the plaintiff as per the partition deed, the plaintiff cannot claim any absolute right in the well. The lower appellate Court erred in finding that the third defendant, as guardian, dug condemned well and put up pump-set motor in plaintiff's land and hence, the plaintiff has got title to the suit property. The lower appellate Court has failed to see that at the time of partition itself, there was sufficient water in the well and hence, it has been specifically mentioned in the partition deed that the defendants 1 & 2 are entitled to take water from the well situated in the survey number allotted to the share of the plaintiff. The lower appellate Court has failed to see that the Account Note Book marked as Ex.B.18 is purely created for the case. The third defendant in his evidence stated that the said account was written by his grand-son and during the relevant period third defendant grand-son aged only 8 to 10 years. Moreover, the entire account has been written by a single person at one stretch is not believable. Since the plaintiff being a minor, the third defendant carry out the works in the year 1986 & 1987 and maintained the accounts on behalf of the plaintiff, particularly, during 1988, the plaintiff was aged about 25 years and



absolutely there is no chance for third defendant to carry out maintenance and developmental work in the well and the account produced by him is created for the case. The lower appellate Court has failed to see that no receipt has been produced either by the plaintiff or by the third defendant to show that the plaintiff has spent amount for deepening the well and for putting bore well in the suit property.

15. He further submitted that the lower appellate Court has failed to see that the service connection for the motor pump-set continues to be in the name of third defendant. If the plaintiff has got absolute right in the suit property, the plaintiff would have taken steps to transfer the service connection in his name. The very fact will establish that the plaintiff and defendants 1 and 2 have joint right in the suit property. The lower appellate Court has failed to see that the dispute is only with regard to a smaller extent i.e., 4 cents in which the well, motor room, motor pump-set located, but the plaintiff filed the suit to the entire extent 88 cents allotted to his share, as if the first defendant is trying to interfere and taking steps to obtain joint patta. The lower appellate Court erred in finding that there was no recitals about the motor pump set, service connection in the partition deed and hence at the time of partition, there was no motor pump-set and



service connection for the well. The lower appellate Court has failed to see that the motor room and motor pump set erected by the third defendant by obtaining loan while the defendants 1 to 3 and plaintiff lived jointly. The lower appellate Court erroneously granted a decree for mandatory injunction directing the defendants 4 to 6 not to transfer patta in the name of defendants 1 and 2, particularly, when there is no cause of action. The lower appellate Court has failed to see that the defendants 4 to 6 in their written statement categorically stated that the third defendant made an endorsement in the proceedings stating that he is not pressing, since the third defendant and plaintiff going to file a Civil suit against the first defendant. While the fact being so, absolutely there is no necessity for the relief of mandatory injunction. The lower appellate court has failed to see that the first defendant approached the authorities only to issue joint patta in the name of plaintiff, first and second defendant only in respect of the well, pump-set motor room, service connection and pump-set motor to an extent of 4 cents and not for the entire 88 cents. The lower appellate Court has failed to see that the plaintiff, first and second defendant jointly entitled to take water from the well and hence, nothing wrong in obtaining joint patta in respect of the well and motor room situated in the suit property.



16. The learned counsel appearing for the respondents would submit that the first appellate Court after hearing both sides and upon re-appreciating the evidence available on record, had rightly allowed appeal and there is no interference is required. Hence, he prayed for dismissing the appeal.

17. I have heard the learned counsel for the appellants and the respondents and also perused the materials on record carefully.

18. The learned counsel appearing for the appellant and the respondents would submit that the plaintiff and the defendants are the family members and they have compromised the matter between them orally. In view of the above, this Court has issued the following directions.

19. The appellant has got 1/3 share in the well for supply of water for irrigation and 2/3 for the other family members. Therefore, the appellant is permitted to draw the water weekly two days and the respondents 2, 3 & 7 are permitted to draw the water weekly for 5 days. This will be in rotation. For switching on the motor, the same will be done by the respondents. It could be mentioned in the patta that water can alone be shared between the parties and there cannot



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be any right over the well. For the maintenance of the well, the appellant has to pay a sum of Rs.100/- for every month to the respondents 2,3 & 7 respondents and the same will be accounted and the respondents 2,3 & 7 are utilise the said amount for maintenance of the said well. If at all the said amount is not sufficient, they can show the account to the appellant and the expenses shall share it among themselves. Since the appellant was not drawing the water for all those years, and hence, the expenses for digging the well cannot be claimed from the appellant irrespective of drawing the water. In view of the settlement arrived between the parties, there is no necessity to answer the substantial questions of law.

20. In view of the settlement made between both parties, the Second Appeal is disposed of. However, there shall be no order as to costs.

22.10.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The III Additional Sub-Court,
Madurai.
- 2.The District Munsif Court,
Melur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.475 of 2004

22.10.2024