



S.A(MD)No.1220 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1220 of 2005

M.Sebastian

... Plaintiff/Appellant
Appellant

Vs.

M.Savarimuthu

... Defendant/Respondent
Respondent

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 17.02.2005 passed in A.S.No.125 of 2003 on the file of the Sub Court, Thiruchirapalli, confirming the judgment and decree, dated 27.09.2002 passed in O.S.No.1040 of 1990 on the file of the Additional District Munsif, Thiruchirapalli.

For Appellant : Mr.C.Dhanaseelan

For Respondent : Mr.P.Rajagopalan
for Mr.R.Devaraj



S.A(MD)No.1220 of 2005

JUDGMENT

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The plaintiff in the suit is the appellant herein.

2. The suit is filed for bare injunction restraining the respondent / defendant from interfering with plaintiff's possession and enjoyment of the suit property, namely, the electric motor pump set with electricity service connection No.559 installed in common Well situated in S.F.No. 247/11 in Navalur Panchayat, Trichy District. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the plaintiff has come forward by way of this Second Appeal.

3. According to the plaintiff, he, the defendant and two others were brothers. In the year 1985, there was a partition among the brothers in the presence of Panchayatars and each of the brothers had been allotted with a separate shares. The Well mentioned in the suit schedule was kept as a common property for all the four brothers. In the year 1985, plaintiff purchased oil engine and installed the same in the suit Well and had been cultivating the property allotted to his share. Subsequently, on 07.03.1989, plaintiff purchased the electric motor and installed the same



S.A(MD)No.1220 of 2005

in the place of oil engine. The service connection for the electric motor stands in the name of the plaintiff in service connection No.559.

Thereafter, on 17.07.1989, the earlier partition among the brothers had been reduced into writing and a registered partition deed was entered into. The defendant requested the plaintiff to sell the land allotted to him and plaintiff refused to accept to the said demand. Aggrieved by the same, the defendant attempted to interfere with the plaintiff's possession and enjoyment of the electric motor installed in the suit Well. Hence, he was constrained to file a suit for bare injunction.

4. The suit was resisted by the respondent / defendant on the ground that, the partition of the family properties had taken place only on 17.07.1989 by way of registered partition and before that, the brothers had been in common enjoyment of the family properties. The electric motor pump set was installed in the common Well only on behalf of all the family members. The service connection was also obtained in the name of the plaintiff as he happened to be the senior most member of the family. It was also asserted by the defendant that he had been taking water from the suit Well utilizing the electric motor pump set as well as the service connection No.559 and again sought for dismissal of the suit.



S.A(MD)No.1220 of 2005

WEB COPY

5. Before the Trial Court, the plaintiff was examined as P.W.1 and the scribe of alleged Muchalika entered between the parties earlier was examined as P.W.2. On behalf of the plaintiff, 13 documents were marked as Exhibits A.1 to A.13. The defendant was examined as D.W.1 and the electricity card has been marked as Exhibit B.1.

6. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that, the plaintiff failed to prove partition by way of Muchalika in the year 1985 and also came to the conclusion that, the electricity motor and service connection were obtained for benefit of all the members of the family and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.125 of 2003 on the file of the Sub Court, Tiruchirappalli. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.



S.A(MD)No.1220 of 2005

7. At the time of admission, this Court had formulated the following substantial question of law by an order, dated 23.01.2006:

“i. Whether the Courts below are legally correct in presuming that the suit property is a common property by ignoring the undisputable evidentiary value of Exhibits A.1 to A.4 and A.13?

ii. Whether the Courts below are legally correct in presuming a purchase of a electric motor and obtaining E.B connection for it in the individual name of one member of a Christian Family as the one on behalf of the other members of the same family?”

8. The learned Counsel appearing for the appellant elaborating the substantial question of law submitted that, in order to prove the earlier partition in the year 1985, the plaintiff examined P.W.2 and the Courts below failed to take into consideration, the evidence of scribe of Muchalika. The learned Counsel for the appellant also submitted that the bill for purchase of electric motor in the name of plaintiff was marked as Exhibit A.2 and the notice issued by the Bank in respect of the loan obtained by the plaintiff for purchase of oil engine was marked as Exhibit A.1. Those material documents have not been considered by the



S.A(MD)No.1220 of 2005

Courts below while considering the question whether the motor pump set and electricity service connection belonged to the plaintiff individually.

9. The learned Counsel appearing for the respondent submitted that the plaintiff failed to produce the Muchalika of the year 1985 to prove the alleged partition pleaded in the plaint. It is the specific submission of the learned Counsel that partition in the family had taken place only on 17.07.1989 and any installation of the motor pump set and service connection in the name of senior member of the family cannot be treated as his individual property, when the family lands were enjoyed in common at the time of purchase. The learned Counsel for the respondent also submitted that the defendant produced the electric card from his custody and marked the same as Exhibit B.1. The said fact would probabalize the case of the defendant that he has been cultivating the lands by utilizing the motor pump set installed in the common Well and the suit electricity service connection.

10. The plaintiff came to the Court with a specific allegation that family properties were divided in the year 1985 itself and after allotment of separate share to him, he purchased the motor pump set and obtained



S.A(MD)No.1220 of 2005

service connection in his own name for the purpose of irrigating the properties allotted to his share. However, the Muchalika said to have been entered into between the parties has not been produced by the plaintiff. When he was examined as P.W.1, he deposed that Muchalika was produced before the Court in a connected case. Later he deposed that, he was not aware where the Muchalika was available as of now. Thereafter, he answered that the original of the Muchalika was submitted with Madura Bank for obtaining a loan. Therefore, the evidence of plaintiff with regard to the availability of original Muchalika is very very shaky. If it is filed in a connected suit, the plaintiff could have very well obtained the certified copy and produced the same before the Court. Likewise, if the original Muchalika is available with the Bank, he could have filed an application to send for the documents in time. The plaintiff, for the reasons best known to him, has not taken any steps to produce the original Muchalika to prove partition in the year 1985. Therefore, the plaintiff is guilty of suppressing the best evidence available and in such circumstances, adverse inference shall be drawn against him. When P.W.1 was confronted with the question in cross-examination that, the partition had taken place only under Exhibit A.11, registered partition deed and parties were allotted with separate share under the document,



S.A(MD)No.1220 of 2005

answered expressing his ignorance. There was no assertion by him that partition had taken place in the year 1985 itself. The second witness of plaintiff, namely, P.W.2, in his cross-examination, clearly deposed that the original of the Muchalika was available with the plaintiff and the same had been handed over to him at the time of partition. However, plaintiff failed to produce the original Muchalika before the Court. Hence, the plaintiff is guilty of suppression of best evidence available with him. Therefore, this Court is inclined to take adverse inference against the plaintiff with regard to the partition pleaded by him.

11. The learned Counsel for the appellant vehemently contended that electricity service connection stands in the name of plaintiff and the same probalilize his case. The learned Counsel for the respondent replied by saying that electricity service connection was obtained in the name of the plaintiff as senior most member of the family. Therefore, the service connection stands in the name of the plaintiff is not only for his benefit and it is also for the benefit of other members. Here again the plaintiff has not taken any steps to produce the official records like application submitted by the plaintiff for getting electric service connection with the Electricity Board. If the same is produced before the



S.A(MD)No.1220 of 2005

Court, it will throw light in the question whether the application was filed before the Electricity Board in his individual capacity or the application was accompanied with the no objection certificate from the other brothers.

12. Here again the plaintiff failed to file application to send for the official records relating to service connection. When the plaintiff failed to prove the 1985 partition pleaded by him, the presumption is parties enjoyed the family property in common till partition by registered document under Exhibit A.11. Purchase of electricity motor in the name of the senior member or obtaining service connection in the name of the senior member will not confer any exclusive right to him, when the agricultural lands were kept as common properties. Therefore, the Courts below on proper appreciation of evidence available on record, came to the conclusion that plaintiff failed to prove 1985 partition pleaded by him and dismissed the suit. I do not find any perversity in the said conclusion reached by the Courts below. Accordingly, the substantial question of law No.1 framed at the time of admission is answered against the appellant.



S.A(MD)No.1220 of 2005

13. A faint attempt was made by the learned Counsel for the appellant by submitting that the parties are Christian and hence, the principles of Hindu law cannot be made applicable to the parties. The plaintiff was examined as P.W.1, in the preamble portion of the evidence, after name and address of the witness, his religion was mentioned as Hindu. The same has not been objected to the appellant herein before the Trial Court. However, the religion of D.W.1 has been mentioned as Christian. Therefore, there is no concrete evidence available on record with regard to the personal law applicable to the parties. It appears the said point was not seriously urged by the parties before the Courts below. In any event as per the evidence available on record, the partition had taken place in the family only on 17.07.1989. The installation of the electric pump set and obtaining of electric service connection were prior to the partition. In such circumstances, merely because the purchase receipt for electric motor pump set and the electric service connection stands in the name of senior member of the family, we cannot come to the conclusion, it is his individual properties, when the lands of the family were kept common. In such circumstances, the second question of law is also answered against the appellant.



S.A(MD)No.1220 of 2005

14. In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below. There shall be no order as to costs.

27.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Sub Court,
Thiruchirapalli.
- 2.The Additional District Munsif,
Thiruchirapalli.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.1220 of 2005

S.SOUNTHAR, J.

BTR

Judgment made in
S.A(MD)No.1220 of 2005

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