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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 214 of 2021

and

C.M.P(MD)Nos. 3465 & 3076 of 2021

1. K.Arasangam

2. K.Ayya Thevar

... Appellants

Vs.

S. Navaneethan

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to allow this Second Appeal and set aside the Judgment and Decree, dated 28.02.2019 made in A.S.No.1 of 2017 on the file of Sub Court, Periyakulam, reversing the Judgment and Decree, dated 11.11.2016 made in O.S.No.214 of 2013 on the file of the District Munsif Court, Periyakulam and dismiss the suit with costs.

For Appellants : Mr.H.Thayumanaswamy

For Respondent : Mr.V.George Raja, for
M/s.Ajmal Associates

JUDGEMENT

This Second appeal is filed to set aside the Judgment and Decree, dated 28.02.2019 passed in A.S.No.1 of 2017 on the file of Sub Court,



Periyakulam, reversing the Judgment and Decree, dated 11.11.2016 passed in O.S.No.214 of 2013 on the file of the District Munsif Court, Periyakulam.

2. The defendants are the Appellants and the plaintiff is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The plaintiff has filed a suit in O.S.No.214 of 2013 for declaration and claiming 1/4th share in the Well and consequential injunction restraining the defendants not to interfere in the 1/4th share of the Well. The said suit was dismissed. Against the same, the plaintiff had preferred an Appeal Suit in A.S.No.1 of 2017 and the same was also allowed. Aggrieved over the same, the defendants had preferred the present Second appeal.

4. The contention of the defendants is that even though, the plaintiff has sought 1/4th share in the Execution petition, the entire extent was not handed over to the plaintiff and the plaintiff is only entitled to a lesser extent of land. In such circumstances, the 1/4th share in the Well cannot be granted. This Court directed the parties to settle the issue since 1/4th share in the water can be divided as per their needs. But the plaintiff and the defendants



declined to disclose their needs, but started raising different issues. Hence this Court proceeded further to hear the case on merits.

5. The only contention of the defendants is that the plaintiff is claiming rights over the property when the sale agreement is inconsistent with delivery of property in the execution petition. It is seen that the plaintiff had entered sale agreement with one Rajapandian to purchase 2 acres 34 cents of land, but when sale deed was not executed. Hence the plaintiff had preferred O.S.No.340 of 2005 for specific performance and the said suit was allowed. The plaintiff had filed execution petition in E.P.No.34 of 2010 and the properties were delivered to the plaintiff. The Appellant Court had rendered a categorical finding that in the sale agreement marked as Ex.A1 it has been stated that the properties in S.No.1029/1, 1078/1, 1079/3 the plaintiff is entitled to 1/4th share. And in the delivery warrant marked as Ex.A.6 it has been stated that the Village Administrative Officer had confirmed that the Well is situated in S.No.1078 /1, 1079/3 and based on the same the plaintiff is entitled 1/4th share in the Well. Therefore, this Court is confirming the order passed by the First Appellate Court.



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6. Even according to the defendants the plaintiff is entitled to 1/4th share in the Well. But the defendants are in possession of larger extent of lands and hence sharing of water of 1/4th is not appropriate. Hence the defendants had filed an undertaking affidavit wherein it is stated that the defendants would permit the plaintiff to draw water only to 2 to 4 hours that too based on the availability of water.

7. By taking all the facts / factors into consideration, this Court is issuing the following directions:

- (i) Since four persons are there and each are entitled to 1/4th share, the four persons shall take water “each day one person” from Monday to Thursday.
- (ii) On Friday two persons and on Saturday two persons are entitled to take water.
- (iii) On Sundays none of the person is entitled to take water.
- (iv) These directions shall be scrupulously followed by the parties, without any deviations.

8. With these directions, this Second Appeal stands dismissed and the judgment passed by the Appellate Court in A.S.No.1 of 1 of 2017 on the file



of Sub Court, Periyakulam, is hereby confirmed. No Costs. Consequently,
connected miscellaneous petitions are closed.

28.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1. The Sub Court, Periyakulam.
2. The District Munsif Court, Periyakulam.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
S.A(MD)No. 214 of 2021

28.03.2024