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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-10-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 1060 of 2010

1. CHINNASAMY

S/o Komarasamy Gounder, Cusba

Munduvlampatti Village, Dharapuram

Taluk, Erode Dist.

Appellant/Plaintiff

Vs

1. PALANISAMI(died)

S/o Venkatachala Gounder, Cusba

Munduvlampatti Village, Dharapuram

Taluk, Erode Dist.

2.SAROJINI

W/o Somasundaram, Cusba

Munduvlampatti Village, Dharapuram

Taluk, Erode Dist.

3.DHAMOTHARAN

S/o Somasundaram, Cusba

Munduvlampatti Village, Dharapuram

Taluk, Erode Dist.

4.GOWRI

W/o Chinnasamy, Cusba

Munduvlampatti Village, Dharapuram

Taluk, Erode Dist.

5.VALLIAMMAL

W/o Saminathan, Cusba



Munduelampatti Village, Dharapuram
Taluk, Erode Dist.

6.PUSHPAVATHI

W/o. Late Palanisamy, 180, Kuppan
Veetu Thottam, Munduelampatti
Village, Dharapuram Taluk, Tiruppur
District - 206.

7.Kausikan P

S/o. Late Palanisamy, 167,
Munduelampatti Village, Dharapuram
Taluk, Tiruppur District - 206.

8.Sagunthala Devi

W/o. Thangavel, 187, Mettankattu
Thottam, Kumarasamy Kottai,
Mambadi, Tiruppur District - 106.

[r1 died, rr6 to 8 are brought on record as lrs of the
deceased r1 vide court order dated 04/07/2025 made in
cmp.nos.3978,3980 and 3981 of 2025 in sa.no.1060 of
2010(cvkj)]

Respondent(s)

PRAYER

This second appeal is filed under Section 100 of Code of Civil Procedure, against the judgement and decree passed in A.S.No.13 of 2009 dated 09.04.2010 on the file of the Subordinate Judge Court, Dharapuram confirming the judgement and decree passed in O.S.No.70/1999 dated 29.12.2008 on the file of the District Munsif Court, Dharapuram.

For Appellant(s): Mr.N.Ponraj

For Respondent(s): Mr.R.PRuban Chakaravarthy for
M/s.S.Kaithamalai Kumaran For
RR2 And 3



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C.Ramaraj For RR6 To 8

RR4 And 5 - Exparte

JUDGEMENT

This second appeal has been preferred, challenging the judgement of the learned Subordinate Judge Court, Dharapuram, dated 09.04.2010 made in [A.S.No.13](#) of 2009, confirming the judgement and decree passed in [O.S.NO.70/1999](#) dated 29.12.2008 on the file of the District Munsif Court, Dharapuram.

2. The appellant is the plaintiff who has filed the suit for declaration in respect of the 1/3rd right in the well in [S.No.672/2](#) and the consequential permanent injunction restraining the defendant from interfering with his enjoyment of his 1/3rd right in the Well. The defendants 4 and 5 remained ex parte.

3.The short facts pleaded by the plaintiff in his plaint:

The defendants 1, 4, and 5 are brothers and sisters. The 2nd defendant is the 1st defendant's brother's wife. The 3rd defendant is 1st defendant's brother's son and the brother of the 1st defendant, namely Somasundaram is no more and defendants 2 and 3 are the legal heirs of the deceased Somasundaram. The suit property belongs to the plaintiff by virtue of a Sale deed dated 29.11.1975. The suit properties are the defendants' family properties. The plaintiff has purchased the suit property from the 1st defendant and his deceased brother,



Somasundaram. The plaintiff has purchased 1 acre in S.No.672/1 from the the 1st defendant and his brother, and the rest of the portions in S.No.672 were retained by the 1st defendant and his brother. The survey number of the suit property was originally 672. When the plaintiff has purchased a portion of the suit property, it is inclusive of 1/3rd right in the suit Well and the motor pump set, etc.

3.1. The plaintiff has been in enjoyment of the same from the date of his purchase. S.No.672 has been subsequently subdivided into 672/1 and 672/2. There is no other Well in the property other than the suit Well. During the subdivision, the Well was found to be in S.No.672/2, but when the plaintiff purchased the property, the survey number had been wrongly mentioned as 672/1 instead of 672/2 while describing his right over the Well.

3.2. The 1st defendant's brother's wife, who is the 2nd defendant herein the suit in OS.No.97/1985 for claiming partition, in which a preliminary decree has been passed. On 29.10.1998 the Advocate Commissioner visited the suit property pursuant to the preliminary decree and measured the same with the help of a surveyor. Only at that point of time, the plaintiff came to know that the Well is situated in S.No.672/2. Even in the suit filed by the 2nd respondent for partition in OS.No.497/1985 before the Dharapuram Munsif Court, it has been mentioned that the parties have got their respective shares in the Well. When the defendants 1 and 2 tried to sell their portion in S.No.672/1 and 672/2 to third parties, as though they had got their ½ share in the suit Well. Though the plaintiff has the right to enjoy the suit Well, he has been denied and hence he



has filed this suit to declare his 1/3rd entitlement in the suit well and for a consequential permanent injunction.

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4. The written statement of the defendants 2 and 3 is, in brief:

The sale in favour of the plaintiff on 25.11.1975 is not valid, as the 2nd defendant is not a party to the same. The plaintiff has got no right whatsoever in the suit well. It is false to state that there is no other well on the suit property. If there is any error in the description of the property in the sale deed obtained by the plaintiff, he ought to have obtained a rectification deed, but he cannot file a suit for declaration. It is false to state that the defendants 4 and 5 have got no share in the suit property. If the plaintiff accepts that the defendants 4 and 5 have got the title deed to the suit property through their father, the late Venkatachala Gounder, then the sale in favour of the plaintiff itself is not valid. The defendants 4 and 5 have got no interest in the suit property, and hence they are unnecessary parties. Hence, the suit is barred for mis-joinder of parties.

5. The statement of the 1st defendant is, in brief:

The total extent of the suit property in [S.No. 672](#) is 10 acres 50 cents. One Venkatachala Gounder purchased 4 acres 25 cents in the year 1925, and on which there is a Well. The said Venakatachala Gounder died intestate during the year 1961, leaving his son and the wife and son of his predeceased son, Somasundaram D1, and his daughters, D4 and D5. So the 1st defendant has got 3/8 share, the 2nd defendant has got 3/8 share, and the 5th defendant has got 1/8 share. While so, the sale in favour of the plaintiff in respect of 1 acre by



including 1/3 share in the Well itself is not possible. Hence the plaintiff does not have 1/3 share in the Well at any point in time.

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5.1. The plaintiff has failed to produce any document to establish that Survey Nos. 672/1 and 672/2 were originally part of a single Survey No. 672. It is evident that while purchasing the suit property, the survey number has been wrongly mentioned as 672/1. Further, the suit has not been properly valued in accordance with law. The plaintiff has also not substantiated his claim for a 1/3rd share in the well situated in the suit property. Hence, the plaintiff is not entitled to the 1/3rd right in the well as claimed by him.

6. The additional written statement of the 1st defendant is, in brief:

The whole of the property in [S.No. 672](#) has been divided as 672/1 [6 acres 25 cents] and [S.No.672/2](#) [4 acres and 25 cents]. The 1st defendant's father, Venkadeppa Gounder @ Venkatachala Gounder, has purchased 4 acres and 25 cents in [S.No. 672/2](#) through a sale deed, dated 1.10.1925. An extent of 4 acres and 25 cents on the western side belonged to one Iyyasamy Gounder, and an extent of 2 acres on the northern side of the properties belonged to Venkatachala Gounder and Iyyasamy Gounder, measuring 2 acres belonging to Kandhasamy Gounder. The property belonging to Kandasamy Gounder is in [S.No. 672/1](#). The said Kandhasamy Gounder sold 1 acre in [S.No. 672/1](#) and another extent of 27 cents in the same survey number in favour of the 1st defendant's father, Venkatachala Gounder, on 30.7.1941. He retained 73 cents for himself. Those properties have been subdivided as 672/1 B measuring 1 acre, 672/1 F measuring 27 cents and 672/1 E measuring 73 cents.



6.1. So the sale deed in favour of Venkatachala Gounder dated 30.7.1941 only relates to S.No.672/1. So the plaintiff who had purchased one acre in S.No.672/1 through the sale deed dated 29.11.1975 does not have any right in the well. As the 1st defendant's father himself did not have any right in respect of the well for the property purchased by him in survey No. 672/1, the suit property pertaining to S.No. 672/2, has got no connection to the suit property. The 73 cents in S.NO.672/1 retained by Kandhasamy Gounder, which has been subdivided into No.672/1 E, has got a well which belongs to him exclusively.

6.2. In the sale deed dated 13/7/1941, Kandhasamy Gounder has not given any share in the well to the 1st defendant's father, Venkatachala Gounder. So the plaintiff cannot acquire any title in respect of the well. The original owner himself does not have any right over the well. The property purchased by the plaintiff is not comprised in the sale deed dated 1.10.1925.

7. On the basis of the above pleadings the trial Court has framed the following issues:

“1.வாதி வழக்குரையில் கோரியுள்ள விளம்புகை பரிகாரம் பெறத்தக்கவரா?

2. வாதி வழக்குரையில் கோரியுள்ள நிலைக்கால உறுத்துக் கட்டளை பரிகாரம் பெறத்தக்கவரா?

3.வேறு என்ன பரிகாரம்?

18.09.2006 ல் வணையப்பட்ட கூடதல் எழுவினாக்கள்

1. தாவா அவசியமான தரப்பினர்களை சாவாவில் சேர்க்காத சோகத்தில் பாதிக்கப்பட்டுள்ளதாக 1ம் பிரதிவாதி கூறவது சரியா?

2. க.ச.672.2 காலை கிணற்றில் 1.3 பாகம் என விளம்புகை பரிகாரம் கேட்க வாதிக்கு எவ்வித பாத்தியமும் உரிமையும்

இல்லை என 1ம் பிரதிவாதி கூறவது சரியா?”



8. During the course of the trial, on the side of the plaintiff, one witness has been examined as PW.1, and Ex.A1 to Ex.A5 were marked. On the side of the defendants, three witnesses have been examined as DW.1 to DW.3, and Ex B1 has been marked.

9. After the conclusion of the trial and considering the evidence available on record, the Trial Court has dismissed the suit, and the first appeal filed by the plaintiff in A.S.No.13 of 2009 has also been dismissed by confirming the judgement of the trial court. Aggrieved over the same, the plaintiff has filed the second appeal by raising the following substantial questions of law:

“(i) Whether a suit for declaration based on document would be maintainable if there is a material error in the document and the suit had been filed without seeking rectification of the error in the document?”

10. The learned counsel for the appellant submitted that the owners have conveyed 1/3rd right in the well knowingly. Even though the S.No. has been wrongly described as S.No. 672/1 instead of 672/2, the intention is very clear as to the conveyance. It is an admitted fact that in both the survey numbers, i.e., 672/1 and 672/2, there is only one well. Hence the purchaser, namely the plaintiff, has a right in the well which cannot be denied. The question of executing a rectification deed does not arise in the present case. As per Section 26 of the Specific Relief Act, 1963, rectification of an instrument can be sought only when it is proved that a mistake has occurred due to fraud or mutual error between the parties. In such circumstances, the proper remedy available to the



plaintiff is to file a suit for specific performance, seeking a direction for the execution of a rectification deed.

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10.1. In the instant case, the intention of the parties is very clear, and there is no fraud, and hence, the plaintiff can file a suit for declaration without any relief in respect of rectification. As per Sec. 95 of the Evidence Act, the appellant is entitled to let him give oral evidence. In respect of the meaning and intention of the parties as per Sec. 95 of the Indian Evidence Act, the language used in the document is plain. But it does not convey its meaning with reference to the existing facts that can be supplemented by giving evidence. In respect of the above contention, he cited the judgement of this Court held in *Marimuthu, S Vs. G. Kumarasamy and others*, reported in *1996 -2 -LW- 243*, wherein, it is held that Section 26 of the Specific Relief Act is only an enabling provision for a specific relief, and it does not mean that the plaintiff does not have any other relief.

11. The learned counsel for the defendant submitted that the 1st defendant's father purchased 25 cents in the year 1925 in [S.No. 672](#); thereafter, in the year 1941, he also purchased 1 acre 27 cents in S.No. 672//1 from Kandhasamy Gounder. It is evident that only an extent of 1 acre has been sold in Survey No. 672/1. There is no well situated in Survey No. 672/1, and the reference to the well in the said survey number is only a wrong description found in the sale deed. The 1st defendant and his sister-in-law do not have any right, title, or interest over the well belonging to the plaintiff. It is false to state that the plaintiff has been in enjoyment of the well from the year 1975.



DISCUSSION

12. The fact that the appellant has purchased the property from the 1st defendant is not in dispute. The property in S.NO.672/1 is a larger extent of 2 acres that originally belonged to one Kandhaswamy Gounder. Even the appellant did not have any quarrel about the Kandhaswamy Gounder's entitlement for 2 acres. The 1st defendant's father, Venkatachala Gounder, has purchased 1 acre and 27 cents out of 2 acres from Kandhaswamy Gounder by virtue of a sale deed dated 30.7.1941. The balance of 73 cents has been retained by the Kandhaswamy Gounder himself.

13. So far as the sole transaction done by the Kandhaswamy Gounder in respect of S.No.672/1 is concerned, he has not conveyed any right in the well in favour of his purchasers. Subsequent to the death of the 1st defendant's father, the appellant/plaintiff has purchased 1 acre from the 1st defendant through Ex. A2 sale deed dated 29.11.1975. Apart from the land, there is also a mention about 1/3rd right in a well, and its survey number is mentioned as 672/1. Obviously, there is no well in S.No.672/1.

14. The Well is actually situated in S.No. 672/2. The 1st respondent's father has purchased 4 acres 25 cents in S.No.672/2 by virtue of a sale deed dated 1.10.1925 from its owner, Ramaiya Gounder. The whole extent of lands in S.No. 672 measures 10 acres 50 cents, in which 6 acres 25 cents is subdivided in 672/1 and 4 acres 25 cents in S.No. 672/2. So the 1st defendant's father has purchased 4 acres and 25 cents in S.No. 672/2. Only in the above survey number, there is a Well.



15. Now the contention of the appellant is that even though there is no well in S.No. 672/1, in the sale deed Ex. A2, 1/3 right in the other well in S.No. 672/2 has been conveyed to him just in order to irrigate his 1 acre purchased by him in S.No. 672/1, but there is a mistake in describing the survey number with reference to the well. It is submitted that instead of mentioning the survey number for the well as 672/2, it has been wrongly mentioned as 672/1.

16. At no point in time subsequent to the sale deed the appellant claimed that there is a mistake in the description of the survey number pertaining to the well and that it needed to be rectified. It is stated by the appellant that when the advocate commissioner visited and measured the well and other lands in respect of the preliminary decree passed in a partition suit filed by the second defendant in O.S. No. 497/1985, he came to know that the well is situated in S. No. 672/2.

17. As the parties to the preliminary decree in O.S. No. 497/1985 have arrived at an understanding to divide the suit property into equal halves, the appellant was prompted to file the suit seeking declaration of 1/3 right in the well. According to the appellant, there is only one well in respect of the property of the 1st defendant's father in S.NO.672/2 and 672/1. The total extent owned by the 1st defendant's father in both survey numbers is 4 acres 25 cents and 1 acre 27 cents, respectively.

18. Even if it is presumed that the well is common for the whole of the property owned by the 1st defendant's father, i.e., the total extent of 4 acres 25 cents + 1 acre 25 cents = 5.52 acres, the appellant, who had purchased 1 acre alone from the 1st defendant's father, cannot have a 1/3 right in the Well. So it is



obvious that there is no mistake that occurred in describing the survey number pertaining to the well. But it only clarifies that there is no well in S.NO. 672/1 as mentioned in the sale deed Ex. A2.

19. The learned counsel for the appellant submitted that the courts below had observed that the appellant ought to have filed the suit seeking the relief of specific performance for rectifying the mistakes crept in the instrument under Sec. 26 of the Specific Relief Act. It is further submitted that the situation under Sec. 26 would arise only when any mistake has arisen through fraud or mutual mistake of the parties. But the vendor of the appellant is very clear as to what had to be conveyed to the appellant, and hence the plaintiff has filed the suit for declaration. In support of his above contention, he cited the judgement of this Court held in *Marimuthu, S Vs. G. Kumarasamy and others*, reported in 1996 -2 -LW- 243. In the said judgement, in paragraph No.53, it is held that Sec. 26 of the Specific Relief Act is only an enabling provision, and it is not the only remedy for the plaintiff, and hence, it does not take away the plaintiff's right to seek other reliefs, including declaration and permanent injunction.

20. The paragraphs No.53 & 54 of the above judgement are extracted below for better appreciation:

“53. Issue Nos. 3 and 10:— Learned counsel for the first defendant submitted that the relief of rectification of document (relief (b) is barred by limitation and the same cannot be granted. The further submission is that if the document could not be rectified, the declaratory relief also cannot be granted. The



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further argument is that when the title deed makes mention of only a particular extent and so long as the document cannot be rectified or stands as 890 sq. ft., the plaintiff cannot get a larger area. According to me, the said submission cannot be accepted. S. 26, Specific Relief Act is only an enabling provision and that is not the only remedy by which plaintiff can claim title to the property. Rectification of instrument is only to correct the mistakes that have crept therein. If the plaintiff is in a position to prove that the intention of the parties was to convey a larger area and in fact he obtained title to the same, the mistake that has crept in will not affect his right. Even without rectification of a document, if the plaintiff is in a position to prove the real intention of parties at the time of executing the document, the relief could be granted.

54. In Banerjee's Law of Specific Relief Ninth Edition (1992), commenting on S. 26 of the Specific Relief Act, (at page 373), the learned Author says thus:—

"The section is only an enabling one. It entitles a party to a contract, a transferee to seek relief by rectification, but rectification is not the only remedy. Thus he can sue for a declaration that the property belongs to him without seeking rectification, in which case he can avail himself of the provisions of Sections 95 to 97 of the Evidence Act. The fact that the section is not made use of cannot deprive the purchaser of the rights conveyed to him by his sale Suit for declaration of title can be maintained without



rectification of Khasra number maintained in the sale deed."

Learned Author has further down said:

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"S. 26 does not take away the jurisdiction of the court to declare title to property, even without rectification. A decree for declaration of title can be granted even without rectification of the title document, if without, seeking relief of rectification of the mistake in the document, the plaintiff can prove his title to the property."

In AIR 1918 Calcutta 809 (Asitulla v. Sadatulla and another), a Division Bench of the Calcutta High Court held thus:—

"A plaintiff who was a co-vendee of land along with the defendants but whose name was omitted from the conveyance by the fraud of the defendants, who were entrusted with the preparation and execution of the document, can by a suit recover possession of his share even though the limitation period of rectification of the conveyance by insertion of his name, by a suit properly framed for the purpose, has elapsed."
(Emphasis supplied).

In AIR 1923 Calcutta 53 (Nandiram alias Nandi Lal Agrani v. Jogendra Chandra Dutta and others), it was held thus:

"Where there was a mutual clerical error in the description of properties in a mortgage deed and the same had extended into judicial proceedings and got automatically embodied in the decree, held that notwithstanding the mortgage had merged in the decree, the document was still capable of rectification."



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The decision in AIR 1918 Calcutta 809 (supra) was followed by this Court in the decision reported in AIR 1938 Madras 589 = 47 L.W. 661 (Tetali Sooramma v. Kovvuri Venkaya and others), and their Lordships held thus:

"... But it is contended that a different rule ought to apply in the case of a plaintiff, i.e., if he wants to get a relief on the basis of mutual mistake, it is his duty to institute a suit for rectification within three years from the date when the mistake came to his knowledge under Art. 96 of Sec. 2, Limitation Act and no relief could be given if he allows his claim for rectification to be barred. It seems to us that this contention is not tenable. Art. 96 will be applicable only if the plaintiff wants to file a suit for rectification of a deed and prays only for that relief. But, if the plaintiff sues for possession of property or for a declaration of title in regard to property or, as in this case, for sale of property on the basis of the mortgage executed in his favour and if the relief regarding rectification is only formal or incidental or not necessary for awarding the main relief prayed for, then Art. 96 will have no application. In a case decided in 28 C.L.J. 197 it was held by Mukherjee and Walmsley JJ, that:

'Title may be established without rectification of an instrument even though the time to secure a rectification of the instrument has elapsed, and that it is open to a party to give evidence to prove that his name has been omitted from the document by fraud or mistake.'

It seems to us that this is the correct principle and especially where the rights of third parties have not been intervened. So long as it is open to the parties to adduce oral evidence on the ground of mutual mistake in regard to misdescription of property, and a court can give effect to the real intention of the parties, we do not see why any question of limitation should arise at all when the substantial relief prayed for by the plaintiff is not rectification of the deed but some other relief which he is entitled to claim under the law on the basis of the transaction which he seeks to enforce. Rectification in such a case is not necessary. Following the



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decision in 28 C.L.J. 197, we think that even though the right of the plaintiff to sue for rectification of the mortgage deed is barred by limitation, still he is entitled to the relief for sale of the property which was agreed to be mortgaged and that the decision of the lower court is therefore correct."

21. It is further submitted that as per Sec. 95 of the Indian Evidence Act, when the language used in a document is plain by itself but it is unmeaning to the reference of the existing facts, the peculiar circumstances can be rectified by letting in oral evidence.

22. As per Sec. 91 of the Indian Evidence Act, when any terms of the contract or disposition of the property have been done by virtue of a written document, the said fact can be proved only by the very production of the original instrument, and the production of the above documentary evidence would exclude the oral evidence in respect of the written document. This is in accordance with Sec. 92 of the Indian Evidence Act. But there are certain extraordinary circumstances which have been provided under the proviso to Sec. 92 during such occasions, the oral evidence can be admitted. But the situation in hand does not fall within the exceptions as enlisted under the proviso to Sec. 92. The provision of Sec.92 of the Evidence Act is given below:

“92. Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:



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Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso (2). —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts. ”

23. As per Sec. 93 of the Indian Evidence Act, when the language used in the document on the face of it is ambiguous or defective , no evidence may be adduced to explain its meaning or to supply the defects. Sec. 94 states that when the language used in the document is plain in itself and that it applies accurately to the existing facts, evidence cannot be given to show that it was meant to

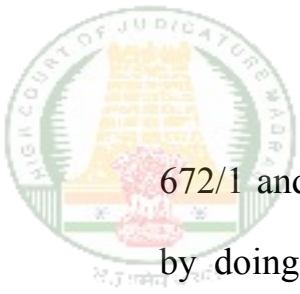


apply such facts.

24. But one more exception to let in evidence even while producing oral evidence would be under Section 95. So according to Sec. 95, when language used in the document on its face conveys no meaning with reference to the existing facts, then such peculiar circumstances can attract oral evidence. So it is claimed by the appellant that the situation has been rectified by him by adducing oral evidence as to the mistake caused in his sale deed in respect of the survey number pertaining to the Well.

25. It is right to state that the recitals of the conveyance with regard to 1/3 right in the well in [S.No 672/1](#) do not convey any meaning, in view of the fact that there is no well in [S.No. 672/1](#); so conveying 1/3rd right of the well in [S.No. 672/1](#) does not convey any meaning. By so saying, the appellant/plaintiff tried to justify adducing evidence to the effect of construing the Survey No. 672/1 as 672/2. Even that evidence cannot clarify the confusion because the appellant/plaintiff has not been conveyed with any lands pertaining to [S.No. 672/2](#) in order to give him any right in the well in [S.No. 672/2](#). All that was conveyed to him was 1 acre in [S.No 672/1](#). 1 acre 75 cents has been purchased by the 1st defendant's father in [S.No. 672/1](#) without any right in the well from Kandhasamy Gounder. So, the 1st defendant being the legal heir of his father cannot pass right in respect of a well in other survey number. In other words, the vendor of the appellant cannot convey title in respect of any right in a well, over which the vendor himself did not have any right.

26. Even if the appellant takes up a stand that both the survey numbers



672/1 and 672/2 have been jointly enjoyed by the 1st defendant and his father, by doing irrigation with the well in S.NO. 672/2, such convenience can be available for the owners of the same family (i.e) the 1st defendant's father, and thereafter the legal heirs of the 1st defendant. If the first defendant intended to convey any such right in any well in the other survey number when he executed a sale deed in favour of the third party in respect of survey number 672/1 which does not have well, then the vendor would have mentioned such intention in the recitals of the sale deed. But in the Ex. A2 sale deed there is no such recitals present to presume such an intention on the part of the vendor.

27. It has already been observed that the original owner could have used the well in survey No. 672/2 for a portion of the lands in S.No. 672/1 and 672/2, measuring 5 acres 32 cents. In such case, for a person who has purchased 1 acre, which is less than 1/5th of the 5 acres 32 cents, cannot presume to have got conveyed with 1/3 right in the well in S.No. 672/2. So the above aspect will also improbabilise the appellant's claim over the well.

28. So the evidence adduced by both the parties in clearing the confusion in compliance of Sec. 95 of the Indian Evidence Act would only favour the version of the defendants. The version of the defendant is that the 1st defendant, who is the vendor of the Ex.A2 sale deed, could not have conveyed any right in the Well S.No.672/1, because he himself did not have any right over the Well in the said survey number. Even by taking advantage of Sec. 75 of the Evidence Act, the facts and surrounding circumstances of the case do not give any preponderance of probabilities in favour of the appellant. So it is right for the



courts below to deny the relief sought by the plaintiff.

29. A person can have a right under law to file a suit for declaration without seeking the relief of rectification of an error in the document. But, it should be first established that there is actually an '*error*' and not a '*misdescription*'. An '*error*' is a mere mistake in describing a certain thing which can be due to commission or omission of any small details. Errors are mostly amenable for correction.

30. But '*misdescription*' is giving some other description than what is actually intended to be described. Misdescription cannot be equated with minor errors and claimed that by mere correction of the same itself, the entitlement issue can be resolved. It depends on the facts of each case and hence no generality can be given. It requires a case specific or situation specific appreciation. In the instant case the facts and evidence on record would show that there is no '*error*' in the sale deed and the addition about a right in a well is a '*misdescription*' by addition. **The substantial question of law is answered accordingly with this explanation.**

In the result, the Second Appeal stands **dismissed** and the judgement and decree of the learned Subordinate Judge Court, Dharapuram dated 09.04.2010 in A.S.No.13 of 2009 which confirmed the judgement and decree of the District Munsif Court, Dharapuram dated 29.12.2008 in O.S.No.70/1999 is confirmed. No costs.

13-10-2025

Jrs



SA No. 1060 of 2010



Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes

To

1. The Subordinate Judge Court, Dharapuram

2. The District Munsif Court, Dharapuram.



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SA No. 1060 of 2010



R.N.MANJULA J.

jrs

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