
(2001) 01 MAD CK 0107

In the Madras High Court

Case No : S.A. No. of 1357 and C.M.P. No. 14269 of 1999

Mookammal and another

APPELLANT

Vs

Chitraputra Karayalar and another

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Transfer of Property Act, 1882 — Section 8

Citation : (2001) 01 MAD CK 0107

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : T.M. Hariharan, for the Appellant; C. Nagarajan and Mr. V. Rangabashyam R3 in S.A. No. 1358 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—Being aggrieved by the concurrent Judgment of the two courts below S.A. No. 1357 of 1999 has been preferred by the plaintiff in O.S. No. 185 of 1986 on the file of the District Munsif Court. Tenkasi while S.A. No. 1858 of 1999 has also been preferred by the same plaintiff's being aggrieved by the dismissal of their suit O.S. No. 68 of 1998 concurrently by the two courts below. As the two suits and the appeals arising out of the two suits have been disposed of by a common judgment these two appeals are also being disposed of by common judgment. Heard Mr. T.M. Hariharan learned counsel appearing for the appellants in both the appeals. Mr. G. Nagarajan learned counsel appearing for the respondent's No. 1 and 2 and Mr. V. Rangabashyam, learned counsel appearing for the 3rd respondent.

2. In these appeals Notice of Motion was ordered by this Court. At the stage of notice of motion with the consent of counsel for either side the appeals have been taken up for final disposal.

3. The parties will be referred as arrayed before the trial Court for convenience.

4. Suit O.S. No. 185 of 1986 had been instituted by the plaintiffs 1 and 2 seeking

the relief for declaration of title to the suit well and the adjacent land and for injunction forbearing the 1st defendant from taking water to the III schedule property. The said suit came to be dismissed and the plaintiff preferred A.S. No. 19 of 1991 in the file of the Principal Subordinate court, Tenkasi. The said appeal also came to be dismissed and hence the plaintiffs have preferred the Second Appeal No. 1357 of 1999.

5. Suit O.S. No. 68 of 1988 had been instituted by the same plaintiffs seeking the relief of permanent injunction against the Electricity Board and its subordinates from giving electricity connection to the defendants 4 and 5 in the suit well and for consequential relief. The said suit came to be dismissed. The dismissal of the suit also came to be confirmed by the judgment in A.S. No. 83 of 1990 on the file of the Principal Sub-court and being aggrieved S.A. No. 1358 of 1999 had been preferred by the plaintiffs.

6. Mr. T.M. Hariharan while admitting that the suit property is identical and the reliefs prayed for also relate to the same property and the difference being to grant injunction against the Electricity Board and its subordinates from giving connection to the contesting defendants as according to the plaintiff's, the plaintiffs are the exclusive owners of the suit property, namely well and have the exclusive right to draw water from the well.

7. The Learned Counsel for the appellants raised the following question of law.

Whether Ex. B2 which conveys an undivided right of irrigation from the first Schedules in favour of the first respondent without a corresponding sale of the lands is valid? and whether such rights conferred under Ex. B2 create any right of irrigation? and whether such a sale or confirmation of right is valid in law?

8. Mr. G. Nagarajan, learned counsel for the contesting respondents and Mr. V. Rangabashyam, learned counsel appearing for the Electricity Board sought to sustain the judgment of the two courts below contending that it is a concurrent finding of fact and that a valid right had been conferred under Ex. B2 which is valid and the plaintiffs cannot seek the relief of injunction.

9. The two courts below on the interpretation placed on Ex. B2 held that the plaintiffs are not the exclusive owners of the suit well and that contesting defendants have acquired 1/3rd right including the right to draw 1/3rd water from the suit well to irrigate their lands. Ex. B2 had been considered by the two Courts below and it has been held to be a valid document.

10. The Learned Counsel for the plaintiffs/appellants is unable to point out either a pleading or any material evidence to show that Ex. B2 is vitiated or that the same is invalid. The learned counsel mainly contended that disassociating the lands, there could be no alienation of 1/3rd share in the well including the plaintiffs' predecessor. Here and now it has to be pointed out that such a contention had been advanced on a misconception of law.

11. As seen from Ex. B2 dated 27.2.1956 the plaintiffs' father had conveyed the

1/3rd share in the well with a right to draw 1/3rd water in the suit well, which includes the adjacent lands, piccato, channel vari and with the right to draw 1/3rd water. The said document had not been challenged as one having been executed under vitiating circumstances, and it is not as if Ex. B2 came into existence under vitiating circumstances nor the validity of the same can be gone into. Ex. B2 has been found to be a valid document and it is not vitiated. The contesting defendants have purchased the properties comprised in 3rd schedule on 14.10.1957 after acquiring under Ex.B2 sale deed 1/3rd share in the suit well with the right on the surrounding lands as well as the right to draw 1/3rd water from the suit well.

12. There is no illegality in such conveyance nor it could be held such a conveyance is invalid. A right has been conferred by the sale of 1/3rd right in the well with a right to draw 1/3rd water from the suit well to the other lands, which is valid in law and such an assignment or conveyance cannot be held to be invalid.

13. The learned counsel for the appellants sought to contend that the right to draw water cannot be dissociated with the adjacent lands and such alienation of the suit well in part along with the right to draw water is invalid. This contention has been advanced on a misconception of the legal position and it cannot be sustained at all.

14. Section 6 of the Transfer of Property Act provides that property of any kind may be transferred except otherwise provided by the Act or by any other law for the time being in force 1/3rd right in the well and the concomitant right to draw 1/3rd water is a transferable right and it cannot be held that it is a non-transferable right. Section 8 of the Transfer of Property Act provides that a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof or such part or fraction as is being transferred.

15. Therefore, it is clear that by Ex. B2 the contesting defendants have acquired 1/3rd share in the suit well, which includes specifically the right to draw 1/3rd water for themselves for being taken away to irrigate some other land and there is no restriction for water being taken to irrigate some other lands. Such a right has been conferred as seen from Ex. B2 including the right to draw and take water to irrigate the lands unconnected with well through vari, channel as the case may be. The right to draw 1/3rd water has also been conveyed or assigned or transferred in favour of the contesting defendants and it is futile on the part of the plaintiffs to contend that such a right cannot be conveyed at all.

16. Consequent to the contesting defendants purchasing the 1/3rd share in the well and adjacent or surrounding land and acquiring right to draw 1/3rd water in the well, they are entitled to draw water and take the same to the land of their choice. On the date of Ex. B2 the plaintiffs alone were exclusively entitled to and they have retained 2/3rd share in the well and parted away 1/3rd share in the

well with proportionate right to draw 1/3rd water from the well and with the right on the land where the well is located as well as surrounding the well in favour of the contesting defendants. As a consequence, the plaintiffs cease to be the exclusive owner of the suit well or adjacent land and their exclusive right to draw water from the suit well. The resultant position being the defendants are entitled to 1/3rd share in the well with 1/3rd right to draw water as conveyed under Ex. B2. The conveyance includes the 1/3rd right to draw water in the suit well to some other land and such a conveyance or assignment or transfer cannot be held to be invalid or void or inoperative and the learned counsel for the appellants is unable to point out any provision of law, which prohibits or invalidates such transfer or assignment of such rights or privileges. Ex. B2 has been executed for a valuable consideration and the validity of the same has not been challenged.

17. The learned counsel for the appellant relied upon the Division Bench Judgment of this Court in (Pydimarri Butchi) Venkatarama Sastri and Another Vs. (Suri) Venkatanarasayya and Others, wherein a division Bench of this court held that ownership of water is not independent of ownership of and one co-owner using water for other and which results in damage to the other sharers, they can sue for damages as well as for injunction to restrain unauthorised use. If a co-owner makes an unauthorised use of property the other co-owner may sue for injunction. The Division Bench further held that immemorial usage must be implied on the agreement that the water of the tank was to be used for the connected wet ayacut only and not for other land. However, this is not the case here. Hence the Division Bench judgment relied upon by the counsel for the appellant has no bearing at all.

18. The learned counsel referred to the judgment of Satyanarayana Rao, J. in Nanjappa Goundan v. Peria Ramaswami Goundan and others (1951 11 MLJ 343= 64 L.W. 927), wherein the learned judge held that the rights in the well cannot be dissociated from the land to which the well was attached and any diversion by a party of the water for irrigating other lands will constitute an infringement of the right of the other party who will, therefore be entitled to a decree restraining the taking of the water from the well to other lands. This pronouncement also in no way advances the contention of the learned counsel for the appellant as among the co-owners, the co-owners are bound to draw water for the purpose of the lands for which the co-owners have been sharing the water and for the purpose of cultivation and not to any other land which was not attached to the well at any point of time. In other words water rights from a well owned or shared by co sharers or co-owners cannot be taken away to irrigate lands not connected with the well as such user would diminish or interfere with the rights of other co-owners or co sharers. Such is not the case in this case.

19. The learned counsel for the appellant also relied upon a decision in Sivarama Pillai and others v. Marichami Pillai (1971 1 MLJ 376.) K.S. Ramamurti, J. as he then was while following the judgment of Satyanarayana Rao, J. in Venkatarama Sastri v. Venkatanarasayya (cited supra) held that when a well or some source of

irrigation of lands belong to several persons the rights in the well cannot be dissociated from the lands and irrespective of the question of damage the co-owners would be entitled to injunction on the simple ground that the latter has no right to use water for irrigating other lands and the right to take water from the well is inseparably connected with the lands. Such is not the case here.

20. In the very same judgment it has been held that there is no need to prevent the parties from entering into an arrangement which would be very unusual and extraordinary and such arrangement is merely a division of water in the well in the abstract with right to use the water in any manner they liked to irrigate any lands they liked and it is for the parties to plead and establish such as unusual agreement. In the present case, under Ex. B2 the contesting defendants have validly acquired 1/3rd share in the land where the well is located along with the adjacent land and a right to draw 1/3rd water from the well. This would mean that the defendants have validly acquired right and the plaintiffs having parted away 1/3rd right in the well cannot seek the relief of injunction as Ex. B2 is binding on them. In the circumstances, the substantial questions of law advanced by the plaintiffs cannot be sustained at all and the same have to be rejected as misconception of law on the subject and on facts. Hence the Second Appeals fail and they are dismissed. Consequently, the connected C.M.R is also dismissed. No costs.