
(1912) 08 MAD CK 0013
In the Madras High Court

Rama Iyengar

APPELLANT

Vs

M. Kasinivenda Iyengar

RESPONDENT

Date of Decision : 16-08-1912

Acts Referred:

Citation : 16 Ind. Cas. 746

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The Subordinate Judge's judgment is entirely unsustainable: He begins it with the observation: ""it is meaningless to talk of the share in a well

situate in another's property or an easement to take water in to the extent of a share."" We are quite unable to understand the Subordinate Judge's

difficulty in realising that there may be ownership in a well in different persons though it might stand on property belonging to one of them only.

2. The plaintiff's case clearly was based on ownership of a portion of the well. We cannot hold that the plaintiff was bound by the Pleader's

acquiescence in the view of the law taken by the Subordinate Judge, that there can be no part ownership in a well. The Subordinate Judge ought to

have dealt with the case on the footing on which it was put forward by the plaintiff.

3. The Subordinate Judge was also mistaken in supposing, that the plaintiff claimed title under a gift to his grandmother. On the other hand, the

defendant admitted in the Munsif's Court that Chellam K. Janaki sold the share of her husband, Kuppana Iyengar, in the well in question to the

plaintiff's grandmother. No reference is made to this admission in the judgment of the Subordinate Judge. Again, the Subordinate Judge says, there

is no justification for assuming that Exhibit H recognises the right of the family to one half of the well in question, because he thinks that a half share could not have been allowed to the branch of the family descended from Kuppana Iyengar through his second wife. But it is quite possible that at the time when the compromise decree, Exhibit H, was passed, the parties acted on the footing that the sons by one wife would be entitled to an equal share with the sons by another. The Subordinate Judge was apparently of opinion that Exhibit H did not refer to the family of the parties at all. It is, to say the least, extraordinary, then, that all the names in that document should be the names of members belonging to the family He admitted Exhibits V, VI and VII in evidence in appeal. The result of this was to introduce confusion into the facts of the case, for, as pointed out by the Subordinate Judge, Exhibit V tends to show that the family continued undivided in 1864. There must be some explanation of the difference in the position of the family as disclosed by Exhibits H and V. This explanation the Subordinate Judge was not in a position to have, because he did not give an opportunity to the plaintiff to rebut this inference suggested by Exhibit V. We do not know why Exhibit V, was not filed in the Court of first instance by the defendant. The Subordinate Judge says, the admission of Exhibits V VI and VII was not objected to by the plaintiff. We do not, therefore, go to the length of holding that he ought not have admitted these documents at all. But an opportunity ought to have been given to the plaintiff to adduce fresh evidence on the points on which Exhibits V, VI and VII had a bearing. The Subordinate Judge was, also, apparently of opinion that Exhibits D and E were not admissible in evidence against the defendant. He also observes that Exhibit E was not proved. But we observe that, although it was acted on by the District Muusif, no objection was taken to its admission in the memo, of appeal in the lower Appellate Court. Transactions by a party dealing with the property to which he lays a claim, are important evidence of his title and sometimes they constitute the only evidence available. The question with which the Subordinate Judge mainly dealt with was the plaintiff's right to an easement. That was not the right claimed by the plaintiff. The Subordinate Judge, no doubt, makes some observations on the question of title, but these observations are also vitiated by the other errors we have pointed out. On the whole, we consider it necessary that the whole appeal should be re-

heard.

4. We set aside the decree of the Subordinate Judge and remand the appeal for fresh disposal according to law. As additional evidence has been

already received in appeal, both parties must have leave to adduce fresh evidence. The costs in this Court will abide the result.