

(2002) 01 MAD CK 0082
In the Madras High Court
Case No : SA. No. 874 of 1990

Shanmugham, Kandasamy Gounder and Easwaran	APPELLANT
Vs	
Rathinaswamy Gounder, Kumaraswamy Gounder, Nataraja Gounder, Chinnaswamy, Sivagami and Thangamani	RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Citation : (2002) 01 MAD CK 0082

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : V. Nicholas, for the Appellant; V. Manohar, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—The defendants 1, 2 and 4 are the appellants.

2. Brief facts are as follows:-

The plaintiff filed the suit for declaration of his right to take water from the new well from his land through the common channel and for permanent

injunction. The plaintiff and the defendants 1 to 7 are the descendants of a common ancestor and they owned joint family properties. Partition took

place among the parties on 7.8.1938, in which, the plaintiff got lands in S.No.274/2 and 275/4 among other lands. Two wells in S.Nos.277 and

275 were kept in common and each branch had 1/8th share in these wells and also the right to take water through the common channel to irrigate

their respective lands. The plaintiff has been making use of the common channel to irrigate his lands. Likewise, the defendants were also making

use of the common channel to irrigate their lands. The common wells were not properly maintained and it dried up also. Electricity connection was

also cut off. Hence, the sharers have dug well separately in their own lands, but, have been making use of the common channel to take water and

irrigate their respective lands as per the rights provided in the partition that took place in 1938.

3. The defendants in the written statement have admitted the right of the plaintiff to take water from the common wells through the common channel, but resisted the claim of the plaintiff to take water from the new well through the common channel.

4. The trial court accepted the case of the plaintiff and decreed the suit and the same was also confirmed by the lower appellate court. Aggrieved

by the same, the defendants 1, 2 and 4 have preferred this second appeal.

5. The second appeal was admitted on the following substantial questions of law:-

i. Whether the courts below are correct in granting a decree to the plaintiff to take water from his private well through the common channel when a

co-owner of a common channel cannot use it for the purpose of taking water from a well which does not belong in common to the owners of the

common channel?

ii. Whether the courts below are correct in permitting the plaintiff to take water through the common channel from a newly dug up private well of

the plaintiff?

iii. Whether the courts below are correct in allowing the plaintiff to use the common channel when such user would damage the cart-track in the

lands of the defendants and thereby affect their rights?

Question Nos.(i) and (ii) are similar and overlapping.

6. Admittedly, the plaintiff and the defendants 1 to 7 claim their right through a common ancestor. The rights of the parties in the old wells, suit

channel and the cart-track and thrashing floor are admitted and they are all kept common for the beneficial, use and enjoyment of all the parties

concerned according to their respective shares. The fact that the water in the common wells dried up and all the parties concerned have dug up

new well in their respective lands and have been taking water through the common channel is also not in dispute. The plaintiff's new well is also

situated in the lands, which was allotted to the share of the plaintiff's branch in the partition, which took place in the year 1938. As such, the

parties, who have got the right to take water to their respective lands, maintained co-ownership in the suit channel. As such, the plaintiff is entitled to take water from the new well through the common channel. "Such use of the common channel, by no stretch of reason, can be said to interfere with the right of the plaintiff in any way. Nor can it be said that the said user of the channel by the plaintiffs would, in any way, damage or weaken the channel. Unless the defendants prove that such use by the plaintiffs in any way interferes with their rights or that the common channel is being or is likely to be damaged or injured or weakened they cannot prevent the plaintiffs from making use of the common channel during their turn of taking water through the common channel. Taking water from their exclusive well, which is most advantageous and beneficial for the plaintiff and the same cannot be obstructed by the defendants." The above said view of mine derives support from the case of Subbiah Goundan Vs. Ramaswamy Goundan and Others, . In fact the said decision was cited before the Supreme Court in the case of Ayyaswami Gounder and Others Vs. Munnuswamy Gounder and Others, and the apex court accepted the view of the High Court and stated that "The defendants indeed are adopting a "dog in the manger" policy. Although they do not stand to be prejudiced or put to any detriment on their own pleadings, they seek to prevent the plaintiffs from irrigating their lands through the common channel from their exclusive well. There is no other source of irrigation for the plaintiffs." It was further observed in para 16 that "There is yet another reason why we would be reluctant to encourage the defendants to stop the plaintiffs from irrigating their fields from their own exclusive well through the common channel. In these days of scarcity when every effort is being made at all levels to increase the agricultural production to feed the country's teeming millions it would not be desirable to allow the defendants to create any hurdle in the irrigation of the plaintiffs' plots through the common channel from their exclusive well. Thus, neither the law nor expediency warrants a conclusion as desired by the defendants." Thus the law has been clearly laid by the Supreme Court.

7. The ruling of the Apex Court cited supra is squarely applicable to the case on hand and therefore, I am not persuaded to accept the case of the defendants, in preventing the plaintiff from making use of the common channel to irrigate his lands from his new private well, as it would hamper

plaintiff's agricultural operations, in turn, it would reduce the agricultural production of the plaintiffs. As such, I am in complete agreement with the views taken by the courts below, that the plaintiff is entitled to have a declaration that he is entitled to take water from his new private well through the common channel to his lands and the same cannot be prevented by the defendants. The questions raised are answered in favour of the plaintiffs.

8. In the result, the second appeal is dismissed. No costs.