

Palaniammal and ors. Vs. Tilakavathi

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Court : Chennai

Decided On : Jan-04-2012

Judge : V.Periya Karuppiah, J.

Appeal No. : Second Appeal No.197 of 2005

Appellant : Palaniammal and ors.

Respondent : Tilakavathi

Advocate for Pet/Ap. : Mr.Gowthaman, Adv.

Judgement :

This appeal has been preferred by the appellants against the judgment and decree passed by the learned first appellate Court in A.S.No.359 of 2002, dated 29.09.2004 in reversing the judgment and decree passed by the trial Court in O.S.No.1167 of 1992 dated 27.03.1997 in dismissing the suit.

2. The appellants are the defendants and the respondent is the plaintiff.

3. The brief facts of the plaintiff's case before the trial Court would be as follows:

The suit properties are situated at Senthamnagalam Pachchudayanpatti village. The plaintiff purchased the said property for a consideration of Rs.72,000/- from one S.P.Perumal and others on 05.11.1992. The said Perumal and others had the title to the suit property by virtue of the sale deed dated 22.01.1985 obtained from

one Chinnasamy and others for a sum of Rs.31,500/-. The said vendors Chinnasamy and others got the property from one Jeganathan and Ramachandran and others. The first defendant had purchased the property through a sale deed dated 16.11.1988 for a sum of Rs.75,000/- including = right in the suit well, 5 HP electric motor and the electricity connection obtained for the said well. The plaintiff has = right in the suit well, the electric motor and the electricity connection. The sale deed obtained in favour of the plaintiff on 05.11.1992 would confer = right in the suit well, electricity connection No. A-650 and the electric motor, namely, Balasubramanian motor bearing No.13905 and the pumpset installed in the said well. The plaintiff and his predecessor in title and the first defendant were accustomed to bale out water from the suit well on alternate days. The defendants had claimed exclusive right in the electric motor pumpset installed in the suit well due to some inimical attitude had with the plaintiff. Having said so, the defendants had restrained the plaintiff and thereby caused inconvenience to the plaintiff from irrigating nanja land measuring 0.50 acre and the punja land measuring 0.15 acre for the cultivation of chillies from 15.11.1992 onwards. The explanation regarding the right of the plaintiff was not heeded by the defendants. Therefore, the plaintiff had approached the court to seek for a declaration that he is entitled to = right in the suit well and the 5 HP electric motor installed with the pumpset bearing No.13905 and in the electricity connection and also entitled to bale out water from the said well with the help of the electric motor on alternate days and also to grant permanent injunction against the defendants from in any way enjoying such right by the plaintiff in the suit well, electric motor pumpset and the electricity connection and for costs.

4. The case of the defendants would be as follows:-

The claim of the plaintiff that she is entitled to = right in the suit well and 5 HP electric motor and electricity connection is correct. However, the electric motor in the name of Balasubramanian bearing No.13905 installed in the electricity connection No. A-650 was not available at any time. The previous vendors of the plaintiff were not co-operative with the first defendant and therefore, the first defendant herself had installed electric motor and had deepened the eastern part of the well with her own expenses and entered lease agreement with one Pandian

and was in enjoyment of the suit well with the electric motor and the electricity connection exclusively. The plaintiff after her purchase on 05.11.1992 asked the defendants that she would be given only = right in the electricity connection and the electric motor pumpset and she had relinquished the same for pecuniary consideration and accordingly on 07.12.1992, there was a Muchalika of compromise and accordingly, a sum of Rs.10,000/- was agreed to be given to the plaintiff and in consideration thereof, the defendants are entitled to get new electricity connections and installed the motor for themselves. Apart from that, it was agreed that the plaintiff was given right in the northern 'Kamalavari' and right in the western half of the well and she can deepen the western part of the well and install oil engine on the said western part of the well and accordingly, the parties are enjoying the suit property. The suit has been filed by the plaintiff with the evil advice of the persons, who are not interested in the welfare of both parties and the defendants are much prejudiced. The plaintiff did not irrigate the nanja field or the chilly field from the water in the well. There is no cause of action for the suit. Therefore, the suit has to be dismissed with costs.

5. The trial Court had framed necessary issues and entered trial. After appraising the evidence, it had come to the conclusion of dismissing the suit with costs. Aggrieved upon the judgment and decree passed by the trial Court, the plaintiff preferred appeal before the first appellate court in A.S.No.359 of 2002 and the first appellate Court had, after hearing the arguments of both sides, come to the conclusion of setting aside the judgment and decree passed by the trial Court, and allowed the appeal and thus the suit filed by the plaintiff before the trial Court was decreed. Aggrieved upon the reversal judgment passed by the first appellate court, the defendants have preferred this Second Appeal.

6. During the pendency of the Second Appeal, the second appellant died and the appellants 3 to 6 were impleaded as legal representatives of the second appellant / second defendant.

7. On admission of this appeal, this Court on 21.01.2006 framed the following questions of law:-

1) Whether the learned Additional District Judge was justified in granting a decree after having found the Electric Motor pumpset No.13905 is not fixed in the well as claimed by the plaintiff ?

2) Whether the learned Additional District Judge was justified in decreeing the suit in the absence of any plea or evidence ignoring the specific plea of the plaintiff ?

8. Heard Mr.Gowthaman, learned counsel for the appellants. No appearance for the respondent.

9. The learned counsel for the appellants would submit in his arguments that the reversal judgment of the first appellate court was contrary to law. He would further submit that the judgment of the trial court was based upon evidence produced before the said court and for no valid reason, it has been set aside by the first appellate court. He would further submit in his argument that the arrangement in between the parties to enjoy = right in the well and the relinquishment of the plaintiff's right to the electric motor and electricity connections as entered into between the plaintiff and the defendants ought to have been accepted by the first appellate court. He would further submit that the Commissioner's report would go to show that the plaintiff's specific case that the electric motor bearing No. 13905 and the name Balasubramanian was not found fitted in the well and the report would go to show the falsity of the case of the plaintiff and the probability of the defendants' case. He would further submit in his argument that the claim of the plaintiff over the non-existing right, namely, electricity connection bearing No. A-650 or the motor, namely, Balasubramanian bearing No.13905, cannot be sustained. The said plea of the plaintiff over the right in the electricity connection and the electric motor ought not to have been allowed by the first appellate Court, when the trial Court had come to the conclusion of non-existence of the electricity connection and the electric motor pumpset in the suit well through the report of the Commissioner. He would further submit in his argument that the reliefs sought for by the plaintiff were not supported by any plea, but it was granted by the first appellate court on surmises. He would further request the court that the judgment and decree passed by the first appellate court in setting aside the well considered judgment and decree of the trial court is not in accordance with law. He would,

therefore, request the Court to set aside the judgment passed by the first appellate court and to restore the judgment and decree of the trial court and thereby, to dismiss the suit filed by the plaintiff.

10. I have also perused the court records.

11. On paying anxious consideration to the arguments advanced by the learned counsel for the appellants, I could see that the appellants are the defendants, who are claiming = right in the suit well, electricity connection and the electric motor pumpset. Similarly, the plaintiff is also claiming = right in the suit well, electricity connection and the electric motor pumpset. The case of the plaintiff would be that she is entitled to the said right from the date of her purchase of the said property, namely, 05.11.1992 along with = right in the well, electric motor pumpset and the electricity connection. But the defendants would state in their pleadings that even though the plaintiff was having = right in the suit well, electricity connection and the electric motor pumpset, the plaintiff had relinquished her right over the electricity connection and electric motor pumpset and she agreed to enjoy her = right in the suit well restricted to its western half and in case of deepening the well, she has agreed to deepen the well on the western side only, in consideration of payment of Rs.10,000/-. However, the said plea of the defendants has not been established by adducing cogent evidence. It is the case of the defendants that the plaintiff had, after receiving the sum of Rs.10,000/- for the relinquishment of the electricity connection and the electric motor pumpset and the mode of enjoyment of her = right in the suit well, installed oil engine and was using the same. No doubt, it is true that the said fact has not been spoken to before the trial court nor the commissioner has not noted any oil engine installed at the suit well. At the same time, the description given by the plaintiff in the plaint that the electric motor was named as Balasubramanian and the electricity connection bearing No.A-650 was also not noted by the Commissioner as existing in the suit property. In these circumstances, the trial Court had dismissed the suit filed by the plaintiff, since she has not established her case.

12. However, the first appellate court had interfered with the judgment of the trial court by saying that the right in the suit well, electricity connection and the electric

motor pumpset for the plaintiff as well as the defendants have been admitted in the pleadings and the documents, namely, sale deed dated 16.11.1988 given right to the defendants and the sale deed dated 05.11.1992 given right to the plaintiff and they would show that each of them are entitled to = right in the suit well, electricity connection bearing No.A 650 and the electric motor pumpset fitted to that. In the said circumstances, the plea raised by the defendants that the right in the electricity connection and the electric motor pumpset was relinquished except an agreement of retaining the western half of the suit well has to be established only by the defendants. But the said plea was not established before the trial Court. Per contra, it has been argued that the Commissioner has not noted the electric motor, namely, Balasubramanian fitted with the electricity connection and therefore, the plea of the plaintiff that she is entitled to = right in the said motor pumpset cannot be sustained. The said argument could not be accepted because, the Commissioner has inspected the suit well and noted the particulars only after filing of the suit. It is a well settled law that the Commissioner's report cannot be used for gathering evidence for the purpose of the case. The admitted case of both the parties to the effect that the plaintiff is entitled to = right in the suit well, electricity connection and the electric motor pumpset has not been disproved by the defendants, by adducing cogent evidence regarding the relinquishment after receiving a sum of Rs.10,000/-. In the said circumstances, I could see that the first appellate court was right in granting the decree for the electric motor pumpset bearing No.13905 as fitted in the suit well and the same cannot be disturbed. The plea of the plaintiff was certain to the effect that she is entitled to = right in the suit well, electric motor pumpset and the electricity connection installed in the suit well.

13. The plaintiff has also prayed for baling of water from the suit well in alternate days with the defendants. In a case like this, where the parties have exercised their = right in the suit well, suit well cannot be divided into two and one party can deepen the well on one side and another party can deepen the well on other side. The springs in the well will help the party who has deepened the well, whereas the springs of the well will not be available for the party, who has not deepened the well. In such contingency, the party, who has not deepened the well will be the sufferer. Therefore, the concept of dividing the suit well itself is not conducive for the parties and the theory of deepening of well on one side after relinquishing the

right in the electricity connection and the electric motor by the plaintiff in favour of the defendants cannot be held sustainable. In the said circumstances, I find that the questions of law framed by this court in this Second Appeal are not germane for consideration in favour of the appellants, since the first appellate court had correctly considered the situation and law and had reached the conclusion by setting aside the judgment and decree passed by the trial court. Therefore, I am of the considered view that the judgment and decree of the first appellate court are not liable to be set aside and accordingly, the Second Appeal is dismissed without costs.

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