

THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,
VELLORE DISTRICT.

Present: Tr.K.Karthick Asath, B.A.,B.L.,(Hons),LLM.,
District Munsif,
Gudiyattam.

Friday, this the 13th day of March 2026

O.S.No.215/2015
(CNR.No.TNVL10-000328-2015)

R. Gopal

.... Plaintiff

// Versus //

1. Raji Gounder (Died)
2. R. Govindasamy
3. R. Venkatesan
4. Salammal (Died)
5. Kasthuri
6. Valliammal
7. Jayaprakash
8. Sivagami
9. Kubendiran (Died)
10. Shyamala

.... Defendants

This suit came up before this court on 04.03.2026 for final hearing in the presence of Thiru.K.M.Boopathi, Advocate for the plaintiff and Thiru.K.Moganaraju, Advocate for the 2nd defendant and the 3rd defendant set exparte on 04.11.2015 and the 4th defendant set exparte on 03.08.2018 and the defendant 6, 8 to 10 are set exparte on 13.04.2023 and the 7th defendant set exparte on 07.06.2023 and upon perusing the case records and having stood over for consideration till this day, this court delivered the following.

JUDGMENT

Suit filed Under Order 7, Rule 1 & 2 and Section 26 of Code of Civil Procedure to declare the right and title of his 1/4th share over the suit B schedule mentioned property and consequential permanent injunction restraining the defendants 2 and 3, their men, agents and servants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit B schedule mentioned property by taking water in the borewell through change over switch in S.C.No.50 and divide the suit B schedule mentioned property into 4 equal shares and allot one such share to the plaintiff and put the plaintiff is in separate possession and enjoyment of the same and directing an appointment of advocate – commissioner for making an amicable and feasible partition without detriment to any of the shares over the suit B schedule mentioned property and for cost.

1. The Brief averments of the Amended plaint :-

Originally the suit schedule mentioned properties are belonging to the 1st defendant who is the father of the plaintiff and defendants 2 and 3. The 1st defendant voluntarily executed registered settlement deed dated 20.07.1998 infavour of the plaintiff. In that settlement deed the 3rd item is the B schedule suit property. The B schedule suit property is a land to an extent of 0.40 cents including a well and 7 HP motor pumpset and service connection NO.50. In that the plaintiff is having as 1/4th share. Due to insufficient water in the well the plaintiff dug a new borewell in the B schedule mentioned property by its own funds with the consent of defendants. The plaintiff enjoying the said borewell but on 20.08.2015 the

defendants 2 and 3 prevented the plaintiff from enjoying the service connection No.50 situated in the B schedule mentioned property hence he filed the present suit for declaration and consequential permanent injunction and also for partition.

2. The Brief Averments of Written Statement filed by the 2nd defendant:-

The 2nd defendant denied all the averments in the plaint. The defendant admitted that the 1st defendant executed three settlement deeds infavour of three sons. In the B schedule suit property all 3 sons and 1st defendant Raji Gounder as 1/4th share in it. All the 3 sons jointly spent money to dug borewell in the B schedule property. While giving letter to electricity board for change over switch the plaintiff obtained signatures of the defendants in blank papers and they never executed consent agreement dated 24.11.2003 for enjoying change over switch to the borewell by the plaintiff alone. The defendants never denies the 1/4th share right of the plaintiff in the B schedule property. The plaintiff not come with clean hands hence pleased to dismiss the suit.

3. Issues:-

On the basis of plaint and written statement filed by both parties the following issues were framed on 01.02.2021.

- i) Whether the plaintiff has right and title of 1/4 share over the suit 'B' schedule mentioned property ?

- ii) Whether the plaintiff is entitled for the permanent injunction as prayed for in the suit?
- iii) Whether the plaintiff is entitled for the division of 1/4 share over the 'B' schedule property ?
- iv) To what other reliefs plaintiff is entitled for ?

4. Evidence :-

On plaintiff side the plaintiff Gopal examined himself as PW1 and marked Ex.A1 to Ex.A5 and one Siranjevi examined as PW2. On defendants side 2nd defendant Govindasamy examined himself as DW1 and marked Ex.B1 to Ex.B3.

5. Arguments:-

5.1. The plaintiff side Argument:-

The plaintiff counsel argued that the plaintiff filed suit for declaration, permanent injunction and for partition against the defendants. The suit property belonging to 1st defendant Raji Gounder. The said Raji Gounder executed registered settlement deed Ex.A1 dated 20.07.1998 infavour of the plaintiff. On that the A schedule property and 1/4th share in B schedule suit property is allotted to the plaintiff. After settlement deed the plaintiff took possession and patta also transferred in the name of the plaintiff for proving the same patta and adangal are marked as Ex.A2 and Ex.A3. In the B schedule suit property there is a common well situated while there is insufficient water the plaintiff decided to dig a borewell for cultivating the A schedule property. On that the plaintiff handed over his

share in the another service c No.99 infavour of the defendants 1 to 3 visa versa the defendants 1 to 3 executed Ex.A5 consent deed for change over switch infavour of the plaintiff inrespect of the service connection No.50 in the B schedule suit property. On that the plaintiff dug borewell in the common property and peacefully enjoying the same till 20.08.2015 but the defendants 2 and 3 are interfere in the plaintiffs enjoyment in the service connection No.50 on that the plaintiff filed the present suit. He further argued that the 2nd defendant also admitted the plaintiff right of 1/4th share in the B schedule property. In the written statement the 2nd defendant stated that in a blank paper signatures of defendants are obtained by the plaintiff but in contra in his cross examination DW1 admitted that the Ex.A5 executed for the purpose of change over switch in service connection No.50. Hence against the 2nd defendant adverse inference has to be drawn. At the time of argument the plaintiff advocate highlighted three citations to prove his case. He further argued that the plaintiff side proved his case by adducing evidence and marking documents hence prayed to decreed the suit.

5.2. 2nd defendant side argument:-

The 2nd defendant counsel argued that the B schedule property is left by the 1st defendant for the purpose of common enjoyment hence it cannot be divided. The plaintiff failed to prove the execution of Ex.A5 deed by examining necessary witnesses. The plaintiff failed to examine the attested witness also. The Ex.A5 is forged by the plaintiff. As per Section 101 of Evidence Act the plaintiff as to prove his case. The plaintiff himself failed to produce necessary documents to prove that borewell is dug by the

plaintiff from his own fund. The PW2 himself admitted that the borewell was dug by plaintiff and 3rd defendant Venkatesan also hence the borewell dug in the common property should be considered as undivided share. He further argued that while the 1st defendant died in the year 2016 but the plaintiff failed to amend his share in the prayer. The alleged borewell was not shown as property in the B schedule property but plaintiff claimed relief in respect of the borewell. The 2nd defendant also a co-owner for the B schedule property and joint patta also issued in favour of him on that the plaintiff cannot claim for permanent injunction against the co-owner. For filing the suit the plaintiff stated false cause of action. On that the plaintiff failed to prove his case hence prayed to dismiss the suit.

6. Discussion:-

This court after considering the argument of both side and perusing the pertinent records this court proceed to delineate the findings based on the following discussion.

Issue No.1:- Whether the plaintiff has right and title of 1/4 share over the suit 'B' schedule mentioned property ?

6.1. On perusing the available records the plaintiff claiming right and title of 1/4 share in the suit B schedule mentioned property. The 1st defendant is the father of the plaintiff. The defendants 2 and 3 are brothers of the plaintiff. Suit properties and other properties belonging to the 1st defendant. The 1st defendant executed registered settlement deed dated 20.07.1998 in favour of the plaintiff. The said settlement deed filed

and marked as Ex.A1 on the side of the plaintiff. As like that on the same day the 1st defendnat executed another settlement deed infavour of the 2nd defendant and the same filed and marked as Ex.B1 on the side of the 2nd defendant. The 1st defendant also executed another sale deed infavour of the 3rd defendant on 20.07.1998.

6.2. It is further submit that through the Ex.A1 settlement deed the A schedule suit property is allotted to the plaintiff. Along with that the B schedule suit property is commonly allotted to plaintiffs and defendants 2 and 3 by giving 1/4th share. The 1st defendant also holding 1/4th share in the B schedule suit property. On perusing the Ex.A1 and Ex.B1 settlement deeds it is clearly stated that the plaintiff and defendants 1 to 3 are having 1/4th share in the 40 cents land in new S.No.413/2A2. It is further submit that the 2nd defendant also admitted in his written statement that the plaintiff had 1/4th share in the B schedule suit property. At the time of cross examination the 2nd defendant admitted the plaintiffs 1/4th share. On that as per the Ex.A1 and admission of the contesting 2nd defendant the plaintiff right of 1/4th share over the undivided common B schedule suit property is considerable and the plaintiff also proved the same.

7. Issue No.2:- Whether the plaintiff is entitled for the permanent injunction as prayed for in the suit ?

7.1. In the present suit the Plaintiff also claimed for consequential permanent injunction against the defendants 2 and 3 by restraining them from interfering with the peaceful possession and enjoyment of plaintiff

for the B Schedule property by taking water in the borewell through change over switch in S.C.No.50. In respect of present issue the case of the plaintiff is that due to insufficient water in the common well the plaintiff dug a new borewell in the common undivided B schedule property by his own funds with the consent of the defendants 1 to 3 for that the plaintiff used the service connection no.50 with change over switch in the year 2003 itself and the defendants executed consent agreement on 24.11.2003 on that the plaintiff has every right to enjoy the S.C.No.50 through change over switch to borewell. But the defendants 2 and 3 prevented the plaintiff from using the S.C.No.50 in the B schedule property hence the plaintiff claimed permanent injunction against the defendants 2 and 3.

7.2. The defendants 2 and 3 denied the plaintiff case and stated that all three sons of 1st defendants decided to dug borewell in the common B schedule property and all sons jointly spent money for dug the borewell. At the time of obtaining permission for change over switch the plaintiff obtained signature in the blank papers and no consent agreement is executed on 24.11.2003. The plaintiff has no absolute right in the borewell. On considering the above pleadings the plaintiff claimed that he dug the borewell in B schedule property and using the S.C.No.50 for watering the A schedule property on that the defendants 2 and 3 are having no right in the borewell and S.C.No.50 hence prayed for consequential permanent injunction against them.

7.3. For proving the above pleadings the plaintiff filed the consent agreement dated 24.11.2003 as Ex.A5. In that only one witness is signed.

In the document it is stated that the plaintiff given his share in S.C.NO.99 in S.No.121/3 infavour of the defendants hence the defendants given their share in S.C.No.50 in S.No.413/2A2 infavour of the plaintiff. While the defendants strongly denied the contents of the Ex.A5 burden upon the plaintiff to prove the Execution of the Ex.A5.

7.4. It is further submit that in the Ex.A5 space left for two witnesses but only one witness is signed in the document. Even that witness is not examined by the plaintiff. While the plaintiff claiming separate right over the S.C.No.50 and the borewell dug in the common 40 cents in the B schedule property by denying the defendants 2 and 3 has no right or title in the suit property, then he has to claim declaration of title against them. The Ex.A5 not disclose any release of share or consent for dug borewell in the common property. The 2nd defendant also specifically denied the same in cross. The plaintiff failed to prove that the said Ex.A5 is came into force, on that he exclusively enjoying the service connection No.50. The plaintiff not filed any document to prove that the borewell only dug by him. The plaintiff examined one Siranjeevi as PW2. The plaintiff witness himself deposed that the borewell is dug by the plaintiff and the 3rd defendant Venkatesan and both of them utilised the water. The relevant portion of PW2 evidence is follows,

"அந்த ஒப்பந்தத்தில் நான் சாட்சி கையெழுத்து போடவில்லை என்றால் சரிதான். நான் சொல்வது போல் கோபால் மட்டும் போர்வெல் போடவில்லை என்றாலும் நான்கு பேரும் சேர்ந்து தான் போர்வெல் போட்டார்கள் என்றால் கோபால் மற்றும் வெங்கடேசன் சேர்ந்து போர்வெல் போட்டு தண்ணியை அனுபவித்து வந்தார்கள்."

On considering the PW2 Evidence he admit the right of other defendants in the B schedule property and admitted that the borewell dug by the other defendant also and utilised by all them.

7.5. It is further submit that it is settled principle of law that any development made in the undivided property should be considered as joint family property. On that even the alleged borewell dug by the plaintiff alone in the common suit B schedule property then it is considered as dug for the benefit of joint family. Mere digging of borewell in common land will not provide exclusive right over the borewell. As decided issue No.1 the plaintiff only having 1/4th share in the B schedule property and other defendants each having 1/4 share. The alleged borewell is not shown as property in the B schedule suit property. It is further submit that defendants also shown as co owner in the Ex.A2 joint patta and as above discussed that the defendants also having 1/4th share in the B schedule suit property as co owners then the plaintiff can not entitled for permanent injunction against the co owners. The citations highlighted by the plaintiff counsel is not relevant for the facts of the case.

7.6. While the plaintiff claiming relief of consequential permanent injunction based on the declaration of title for 1/4th share in the B schedule suit property then the plaintiff only entitled for permanent injunction against the 3rd parties. The plaintiff cannot seek for permanent injunction against the co sharers who are all having 2/4th share in the B schedule suit property. As claimed by the plaintiff he entitled only for the undivided 1/4th share in the B schedule suit property hence he cannot specifically

pray for permanent injunction in respect of service connection No.50 and borewell. While the plaintiff side specifically denying the right and title of defendants 2 and 3 in respect of S.C.No.50 and borewell in his pleadings and cross examination but the plaintiff failed to specifically claim for declaration in respect of S.C.No.50 and borewell. Hence the injunction claimed by the plaintiff as consequential to the declaration of undivided 1/4th share in the B schedule suit property is not maintainable. As discussed above the plaintiff is not entitled for the permanent injunction as prayed in the suit.

8. Issue No.3:- Whether the plaintiff is entitled for the division of 1/4 share over the 'B' schedule property ?

8.1. It is further submit that as discussed and decided the issue No.1 that the right of 1/4th share of the plaintiff is considered then he also entitled for the division of 1/4th share in the B schedule suit property. But in the pendency of suit the father of 1st plaintiff and defendants 2 and 3 namely Raji Gounder (1st defendant) is subsequently died on 09.02.2016. While the 1st defendant deceased Raji Gounder also having 1/4th share in the common B schedule suit property the legalheirs of Raji Gounder are entitled for his share. On that the defendants 4 to 10 are impleaded in the suit. The 4th defendant is the wife of deceased Raji Gounder. The 5th defendant is the daughter of Raji Gounder. The defendants 6 to 10 are the legalheirs of predeceased son of Raji Gounder namely Chokkalingam. At the time of pending suit the 4th defendant/wife of Raji Gounder is died on

19.04.2019 and 9th defendant Kubendiran son of predeceased son Chokkalingam also died on 31.03.2025.

8.2. On that the 1/4th share to be devolved to the class-I legalheirs. On that the plaintiff, defendants 2, 3, 5 to 10 are entitled for the 1/4th share of deceased Raji Gounder. Hence the 1/4th share to be divided into 5 equal shares and the sons and daughter of Raji Gounder namely plaintiff, defendants 2, 3, 5 are each entitled for 1/20 shares and the legal heirs of predeceased son Chokkalingam namely defendants 6 to 10 jointly entitled for 1/20 share in the B schedule suit property. While the plaintiff and defendants 2 and 3 are already having 1/4th share in the B schedule property then along with the shares devolved from their fathers 1/4th share the plaintiff and defendants 2 and 3 are each entitled for 6/20 share in the B schedule suit property. As discussed above the plaintiff is entitled for 6/20 share in the B schedule suit property.

9. Issue No.4:- To what other reliefs plaintiff is entitled for ?

As already discussed and decided the issue No.3 infavour of the plaintiff on considering the nature of the suit the plaintiff is not entitled for any other relief.

10. Result :-

As a result, this suit is partly decreed,

1) On that preliminary decree passed hence it is directed to divide the suit B schedule mentioned property into 20 equal shares and allot

6 share to the plaintiff and hand over the separate possession to the plaintiff within 2 months from the date of decree,

2) The suit for consequential permanent injunction is dismissed.

3) On considering the relationship between the parties the plaintiff is directed to incurred the suit cost.

Dictated to Steno typist directly, typed by him in the desktop, corrected and pronounced by me in the open Court on this the 13th day of March 2026.

Sd/- K.Karthick Asath,
**District Munsif,
Gudiyattam.**

Plaintiff side Witnesses :-

PW1 Gopal

PW2 Siranjeevi

Plaintiff side Exhibits :-

Ex.A1 20.07.1998 Original registered settlement deed
(D.No.3157/1998)

Ex.A2 - Computer Patta (2 Nos.)

Ex.A3 - Kist receipts (4 Nos.)

Ex.A4 - Adangal extract issued by VAO

Ex.A5 24.11.2003 Consent Agreement

Defendants side witnesses:-

DW1 Govindasamy

Defendants side Exhibits :-

Ex.B1 20.07.1998 Copy of Settlement deed

Ex.B2 - Computer Patta (2 Nos.)

Ex.B3 - Kist Receipt

Sd/- K.Karthick Asath,
District Munsif,
Gudiyattam.