

SA(MD).No.92



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on 23.03.2026 | Judgment pronounced on 30.04.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.92 of 2023 and
CMP(MD).Nos.2215 and 2216 of 2023 and 12939 of 2025 and
Cont P(MD).No.1526 of 2023

1.Chinnaraj
2. Aatchimuthu

.. Appellants / plaintiffs
in S.A(MD).No.92 of 2023
Petitioners in Contempt Petition

Vs.

1. Iyyer
2.Duraipandi
3.Thangapandi @ Pillaiyan
4.Mottaikida @ Chinnappan

.. Respondents / defendants
in S.A(MD).No.92 of 2023
Respondents in Contempt Petition

Prayer in SA(MD).No.92 of 2023: Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 09.09.2022 passed in A.S.No.56 of 2018 before the Additional Sub Court, Dindigul confirming the Judgment and Decree dated 16.03.2018 passed in O.S.No.44 of 2015 on the file of the District Munsif Court, Nilakottai.

Prayer in Cont P(MD).No.1520 of 2023 : This petition filed under Section 11 of the Contempts of Courts Act to punish the Contemnors / Respondents herein for their deliberate and Willful disobedience of the order of this Court dated 22.02.2023 passed in CMP(MD).No.2215 of 2023 in SA(MD).No. 92 of 2023.



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SA(MD).No.92



For Appellants in Second appeal : Ms.K. Shwathini

Petitioners in Cont. P

for Mr.G. Prabhurajadurai

For Respondents 1, 3 and 4 in Second Appeal

/ respondents in Cont. P.

: Mr.B. Rajesh Saravanan

For 2nd respondent

: No appearance

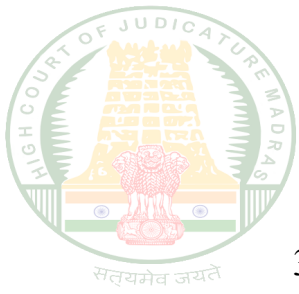
JUDGMENT

The plaintiffs, who suffered concurrent findings before the trial Court as well as the First Appellate Court, are the appellants in the present Second Appeal.

2. On 22.02.2023, the above Second Appeal was admitted on the following substantial questions of law:

1. Whether the Courts below are right in dismissing the suit in its entirety when there is an undisputed fact that the plaintiffs and defendants are having equal share in the common well?

2. Whether the documents marked under Ex.A2 to Ex.A9 will prove the possession of the plaintiffs with respect to the suit schedule properties and whether the Courts below are right in dismissing the suit without substantiating the claim of the defendants?



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3. I have heard Ms. K. Shwathini, for Mr. G. Prabhu Rajadurai, learned counsel for the appellants, and Mr. B. Rajesh Saravanan, learned counsel for the respondents 1, 3, and 4.

4. The following facts are necessary to adjudicate the Second Appeal.

5. The case of the plaintiffs:

(i) A larger extent of lands comprised in S.No.602/9, to an extent of 3.49 acres out of 4.99 acres, bearing Patta No.1087 (new patta Nos.2041 to 2044), and S.No.730/3, to an extent of 15 cents, bearing Patta No.435, in Silukkuvarpatti Village, Nilakkottai Taluk, Dindigul District, which is the subject matter of the suit property, originally belonged to one Atchimuthu. The mother of the plaintiffs and the defendants purchased the said property by a registered sale deed dated 06.04.1972 for valuable consideration. The mother of the parties, namely Chinnammal, died intestate, and her legal heirs were in possession and enjoyment of the said property. A common well situated in S.No.602/9G forms part of the property under common enjoyment. Electricity connection was obtained by the mother, Chinnammal, in her name. The legal heirs, including the plaintiffs, were in enjoyment. The defendants are adjoining



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landowners who have purchased an extent of 1.5 acres from one Yannaikutti Servai, and they are also having a right over the common well and are drawing water to their lands for irrigation. The plaintiffs contend that since the defendants are having a lesser extent of land, permitting them to draw water for two days would suffice, and the plaintiffs, being entitled to a larger extent of about 3½ acres approximately, are entitled to draw water for the remaining five days.

(ii) The said suit was resisted by the defendants, contending that the documents under which the plaintiffs and the defendants claim clearly bestow an equal right of enjoyment of the common well, and therefore, the plaintiffs cannot arbitrarily seek a declaration that they are entitled to draw water for five days.

6. Before the trial Court, the first plaintiff examined himself as PW.1, and the second plaintiff examined himself as PW.2. On the side of the plaintiffs, Exs.A1 to A14 were marked. On the side of the defendants, the fourth defendant examined himself as DW.1, and Exs.B1 to B4 were marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

7. The trial Court dismissed the suit, finding that the plaintiffs are not



entitled to a declaration, that they are entitled to draw water for five days from the common well.

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8. Aggrieved by the dismissal of the suit, the plaintiffs preferred A.S. No. 56 of 2018 before the Additional Sub Court, Dindigul. The said appeal, on contest, came to be dismissed by judgment and decree dated 09.09.2022. Challenging the said adverse judgment, the present Second Appeal has been filed.

9. Ms. K. Shwathini, learned counsel for the appellants, would state that even though both the plaintiffs and the defendants have been given a right of common enjoyment in respect of the well, when the plaintiffs are admittedly owning a larger extent of 3.5 acres, in contrast to 1.5 acres owned by the defendants, equity would certainly demand that the plaintiffs are proportionately given a better right of enjoyment of the common well. The learned counsel would further state that the requirement is, in fact, one of easement of necessity, and further, the electricity service connection is admittedly standing in the name of the plaintiffs' mother, and the defendants have been permitted to use the said electricity supply for drawing water from the common well to serve their agricultural lands.



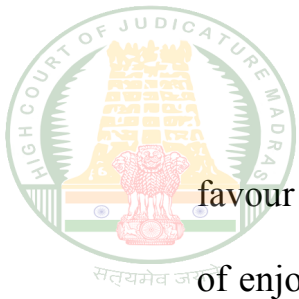
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10. Ms. K. Shwathini, learned counsel for the appellants, also invited my attention to the Commissioner's report as well as the sketch to fortify her contentions that the plaintiffs' are entitled to draw water for irrigating the larger extent of lands, and that such right cannot be restricted based merely on the common rights bestowed on the plaintiffs and the defendants under the respective sale deeds.

11. Ms. K. Shwathini, learned counsel for the appellants, also relied on the following decisions in support of her submissions:

1. The judgment of this Court reported in **1969 SCC 216** in the case of ***Sivarama Pillai and others vs. Marichami Pillai.***
2. The judgment of this Court reported in **Vol.29 Law Weekly, page No. 613** in the case of ***Prydimarri Butchi Venkatrama Sastri (deceased) and another vs. Suri Venkattanarasayya and others.***
3. The judgment of this Court reported in **2000 (1) LW 470** in the case of ***Kasi Naidu vs. Govindarajan and others.***

12. Per contra, Mr. B. Rajesh Saravanan, learned counsel for the respondents / defendants, would state that the plaintiffs have been using the well to draw water for irrigating their lands, and the registered documents in



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favour of the plaintiffs as well as the defendants clearly set out a common right of enjoyment. He would therefore contend that the plaintiffs cannot unilaterally and arbitrarily claim a larger right, and rightly the Courts below have found that the plaintiffs cannot be granted such a declaratory relief. He would therefore state that the Second Appeal lacks merit and deserves to be dismissed.

13. I have carefully considered the submissions advanced by the learned counsel appearing for the parties. I have also gone through the judgments of the trial Court as well as the First Appellate Court. I have further carefully gone through the pleadings and the oral and documentary evidence available on record, as well as the judgments on which the learned counsel for the appellants has placed reliance.

14. It is an admitted position that the plaintiffs and the defendants are neighbouring landowners. Both the plaintiffs and the defendants, under their respective registered sale deeds, have been given a common right of enjoyment of a well situated in S.No.602/9G. It is also an admitted position that the electricity service connection in respect of the said common well stands in the name of the mother of the plaintiffs, Chinnammal. However, it is to be noted that the electricity service connection is a free service, and electricity supply is provided free of cost by the Government. It is also not in dispute that the



plaintiffs have been permitting the defendants to draw water using the said electricity supply standing in the name of their mother, Chinnammal.

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15. The primordial argument of Ms. K. Shwathini, learned counsel for the appellants, is that when the plaintiffs are owning 3.5 acres, in contrast to 1.5 acres owned by the defendants, equity demands that the plaintiffs should be given a better right of enjoyment to draw water, and only under such circumstances, the suit was filed claiming a right to draw water for five days, which would be proportionate and equitable, taking into consideration the extent of lands held by the plaintiffs and the defendants.

16. Though the persuasive arguments of the learned counsel for the appellants are based on equity, when the registered documents conferring rights on both the plaintiffs and the defendants clearly indicate that the rights to draw water from the common well are to be enjoyed equally, I do not see how equity can come into play to confer a declaratory relief in favour of the plaintiffs, which would run contrary to the stipulations in the registered documents in favour of both the plaintiffs and the defendants. The question of easement of necessity also does not arise, since the parties, while purchasing their respective lands, were aware of the rights available to them, and it is not as if the plaintiffs have no right to draw water from the common well. Therefore, I do not see any



necessity to apply the principle of easement of necessity as contended by the learned counsel for the appellants.

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17. Coming to the decisions on which the learned counsel for the appellants has placed reliance, in the *Pydimarri Butchi Venkatarama Sastri case*, the Division Bench of this Court was dealing with a case where the use of water in a tank was in dispute. An attempt was made by the defendants to convert a part of their dry lands into wet lands by using the water of the tank, and in such circumstances, the plaintiffs approached the Court seeking an injunction to restrain the defendants from illegally using the water. It was in that factual background that the Division Bench held, taking into consideration the custom in the village that the water from the tank was being used for cultivating 53 acres of wetland, that such enjoyment of water was independent, and consequently held that the plaintiffs were entitled to an injunction, since there was unauthorized use of water by the defendants. I do not see how this decision can be applied to the facts of the present case, where the rights of the plaintiffs and the defendants have been crystallized under registered sale deeds, and they have common rights insofar as the enjoyment of the well is concerned.

18. In *Sivarama Pillai's case*, this Court, after discussing the gist of the case laws placed, starting from AIR 1929 Madras 25, held that the defendants



were not entitled to take water for irrigating lands other than those attached to the common source. In fact, this Court also held that such a fetter would equally apply to the plaintiffs as well, and that the common well can be used only for the purpose of irrigating the lands inseparably connected to the well.

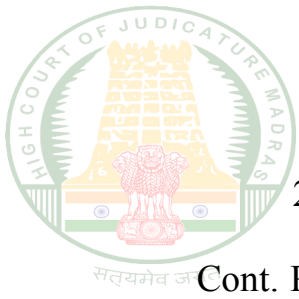
19. In *Kasi Naidu's case*, this Court held that when a well is set apart for the common use of neighbouring landowners, the purpose is only for irrigating the lands allotted to the respective owners and for the beneficial and profitable enjoyment of such lands. It was further held that it does not matter what label the parties give to such rights in the well, whether it be a particular share in the well or a right to take water by turns, then the ultimate object is only to confer a valuable right, as a source of irrigation. In fact in the said decision this Court also observed that nothing would prevent the parties from entering into an arrangement for convenient use of water from the common well. However, all these decisions are to the effect that parties are not permitted to draw water for irrigating lands other than those for which the common well was intended. Hence, I am unable to apply the ratio laid down in any of the above decisions to the facts of the present case, where the rights of the parties have already been clearly defined in their respective sale deeds, and therefore, the plaintiffs are equally bound by the right of equal and common enjoyment of the well.



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20. Ms. K. Shwathini, learned counsel for the appellants, would also contend that the electricity service connection stands in the name of the mother of the appellants, and at least the defendants can make a separate service connection in their names so that there would be no disputes in future. She would further submit that at least the trial Court ought to have moulded the relief and not dismissed the suit in its entirety, as the plaintiffs were certainly entitled to draw water on an equal basis along with the defendants.

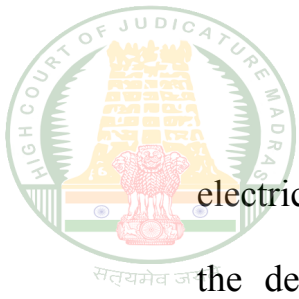
21. There is merit in the said submissions made by the learned counsel for the appellants. Mr. B. Rajesh Saravanan, learned counsel, however, would state that though the electricity service connection stands in the name of the mother of the appellants, it is only a free service line provided by the Government, and therefore, it does not matter in whose name the service connection stands. He would further submit that, admittedly, exercising rights under the registered sale deeds, both the plaintiffs and the defendants have been drawing water equally, and there is no difficulty in that regard. He would also submit that the defendants have no objection to a clarification that the plaintiffs and defendants are entitled to draw water from the common well on alternate days, and that one day in a week may be set apart for non-use by either party, which can be utilized for servicing the electricity supply line, motor pumpsets, etc.



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22. Pending the Second Appeal, a Contempt Petition was also filed in Cont. P. (MD). No.15 of 2026, alleging violation of the interim order passed in C.M.P. (MD). No.2215 of 2023, dated 22.02.2023. However, in the course of arguments, it was brought to my notice by both sides that though the contempt petition was filed alleging violation of the order restraining the defendants from drawing water by using a separate motor and the electricity connection obtained by the appellants. Even prior to the interim order, the defendants had already installed a separate motor, and they are not using the motor pumpset of the appellants, except for using the electricity service connection standing in the name of the mother of the appellants. Thus, I do not find any wilful disobedience of the injunction order granted by this Court dated 22.02.2023 so as to entertain the contempt petition.

23. Before parting, I would like to observe that the defendants have already installed a separate motor pumpset in order to avoid future disputes between the parties. They can always seek a fresh electricity service connection in their names, which is in any event a free service provided by the Government. If any such application is made by the defendants, the appellants shall cooperate by issuing the necessary consent or no objection, since it is their electricity service line that is presently being used by the defendants. If such an application is made and the defendants are successful in obtaining a new



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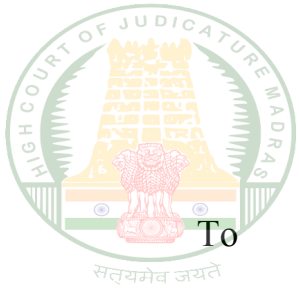
electricity service connection in their names, there may not be any necessity for the defendants to use the electricity supply standing in the name of the appellants' mother. It is needless to state that till such time, the defendants get a service connection in their name, they will be entitled to with the service connection standing in the name of the appellants' mother. As regards the drawing of water, it is needless to state that the appellants and the defendants are entitled to equal rights to draw water from the common well, and it would be just and equitable that they draw water on alternate days, leaving Sunday or any other mutually agreeable day as a rest day, which can be utilized for servicing the motor pumpset and ensuring that they are maintained in proper working condition.

24. The substantial questions of law are answered against the appellants and accordingly the Second Appeal is dismissed, confirming the Judgment and Decree dated 09.09.2022 passed in A.S. No.56 of 2018 on the file of the Additional Sub Court, Dindigul. No costs. The contempt Petition is also closed. Consequently, the Miscellaneous Petitions are closed.

30.04.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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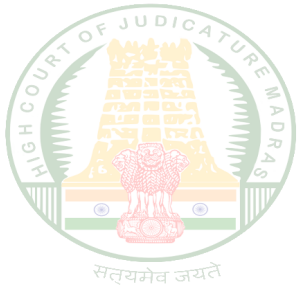
To

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1. The Additional Sub Court, Dindigul.
2. The District Munsif Court, Nilakottai.



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P.B.BALAJI.J.

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Pre-delivery Judgment made in
SA(MD) No.92 of 2023 and
CMP(MD).Nos.2215 and 2216 of 2023 and 12939 of 2025 and
Cont P(MD).No.1526 of 2023

30.04.2026