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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal Nos.47 of 2015 and 993 of 2011
and
M.P.Nos.1 of 2015 and 1 of 2011

S.A.No.47 of 2015

S.Saminathan .. Appellant /3rd Defendants
- Vs -

Ganesan (Died),
1. Mangai
2. Vimala
3. Senthilkumar
4. Hari

.. Respondents/Plaintiffs

Prayer in S.A.No.47 of 2015:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 08.07.2009, made in A.S.No.42 of 2006 on the file of the learned Prl.Subordinate Judge, Krishnagiri confirming the Judgment and Decree dated 07.10.2003, made in O.S.No.205 of 1995 on the file of the learned District Munsif - cum - Judicial Magistrate, Uthangarai, Krishnagiri District.

For Appellant	: Mr.A.Rajesh Kanna
For Respondents	: Mr.S.Mukunth for M/s.Sarvabhauman Associates

S.A.No.993 of 2011

S.Saminathan .. Appellant/Plaintiff
- Vs -

1. The Assistant Engineer (O & M),
TNEB Perambut, Tirupattur,
North Arcot Ambedkar District,
(Vellore District)
2. The Assistant Engineer, (O & M),
TNEB Tirupattur,
North Arcot Ambedkar District,
(Vellore District)



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3. The Executive Engineer, (O & M),
TNEB Perambut,
North Arcot Ambedkar District,
(Vellore District)

4. The Superintending Engineer,
TNEB Tirupattur Electricity Distribution Circle,
Tirupattur, North Arcot Ambedkar District
(Vellore District)

Ganesan (Died),

5. Mangai

6. Vimala

7. Senthilkumar

8. Hari

.. Respondents/Defendants

Prayer in S.A.No.993 of 2011:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 08.07.2009, made in A.S.No.43 of 2006 on the file of the learned Prl Subordinate Judge, Krishnagiri confirming the Judgment and Decree dated 07.10.2003, made in O.S.No.198 of 1995 on the file of the learned District Munsif - cum - Judicial Magistrate, Uthangarai.

For Appellant : Mr.A.Rajesh Kanna

For Respondents 1 to 4 : Mr.V.Viswanathan

For Respondents 5 to 8 : Mr.S.Mukunth

for M/s.Sarvabhauman Associates

C O M M O N J U D G M E N T

There are two appeals, since parties are common and issues are common and since they arise out of common judgment, they are heard together and they are disposed of by means of this common judgment.

2. The appellant in both the appeals Mr.S.Swaminathan is the plaintiff in O.S.No.198 of 1995 and the third defendant in O.S.No.205 of 1995. The appellant filed the suit in O.S.No.198 of 1995 against five defendants. The defendants 1 to 4 are the officials of the Tamil Nadu Electricity Board and the 5th defendant is his brother Mr.Ganesan. Mr.Ganesan is the plaintiff in O.S.No.205 of 1995 in which the defendants 1 and 2 are the TNEB officials. O.S.No.198 of 1995 was filed by the appellant seeking mandatory injunction to direct the defendants 1 to 4 / TNEB officials to disconnect the electricity service connection No.17 attached to the Well in S.No.18/1C at Egoor Village, Uthangarai Taluk.

3. Mr.Ganesan, the 5th defendant in O.S.No.198 of 1995 filed O.S.No.205 of 1995 for perpetual injunction to restrain the TNEB officials from disconnecting the electricity service connection.



4. The Trial Court by common judgment dismissed the suit in O.S.No.198 of 1995 and decreed the suit as prayed for in O.S.No.205 of 1995. As against the same, the appellant herein filed two appeals in A.S.No.42 of 2006 and A.S.No.43 of 2006. Both the appeals were jointly heard and by common judgment and decree dated 08.07.2009 the lower appellate Court dismissed both the appeals and as against the same the appellant has filed these two second appeals before this Court.

5. These two second appeals came up for admission today and I have heard the learned counsel on either side and perused the records carefully.

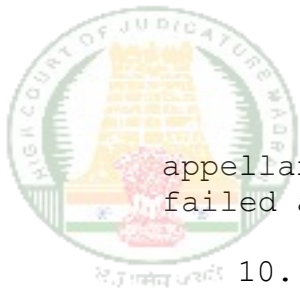
6. The case of the plaintiff Mr.S.Saminathan in O.S.No.198 of 1995 is as follows:

According to the plaintiff the electricity service connection No.17 attached to the well in S.No.18/1C stands in his name. The 5th defendant Mr.Ganesan, according to him, has got no right whatsoever over the same. Therefore, according to him, his request for disconnection of the electricity service connection should have been carried out by the TNEB officials, since it was not done, he filed the said suit.

7. Mr.Ganesan the plaintiff in O.S.No.205 of 1995, claims that it is true that the said electricity service connection is in the name of the appellant Mr.S.Saminathan, but it does not belong to him. According to him, when they were in the joint family set up, the electricity service connection in question was obtained in the name of the appellant because he was the eldest male member in the joint family. In the family partition that took place between the appellant and Mr.Ganesan the suit property was allotted along with the electricity service connection only to Mr.Ganesan. Thus, though the electricity service connection stands in the name of the appellant, he has got no right over the same and he cannot insist for disconnection.

8. The Trial Court took up the case in O.S.No.205 of 1995 for trial and disposed of the same by decree and judgment dated 28.06.1999 and as against the same, an appeal was filed in A.S.No.73 of 1999 and the same was allowed, the decree and judgment of the Trial Court was set aside and the matter was remanded back to the Trial Court to be tried along with O.S.No.198 of 1995.

9. Accordingly, O.S.No.198 of 1995 and O.S.No.205 of 1995 were tried together. On the side of the respondent Mr.Ganesan, was examined as P.W.1 and as many as 5 documents were exhibited. On the side of the appellant herein, 5 witnesses were examined seven documents were exhibited. Having considered all the above, the Trial Court dismissed the suit in O.S.No.198 of 1995 and decreed the suit in O.S.No.205 of 1995. The appeals preferred by the



appellant herein against the judgment and decree of the Trial Court failed and that is how he is before this Court with these appeals.

10. The learned counsel for the appellant would submit that the Courts below have not appreciated the facts properly. The electricity service connection stands in the name of the appellant and thus he has got every right to ask for disconnection. The learned counsel would further submit that Mr.Ganesan has got nothing to do with the electricity service connection.

11. In my considered opinion, these two questions have been dealt with by the Courts below and they have given a concurrent finding that the appellant has got no right whatsoever to ask for disconnection of the electricity service connection. The Courts below have held that though it stands in the name of the appellant, it was obtained in his name because he was the eldest male member of the joint family and in the partition, the same was allotted to Mr.Ganesan. This is essentially a finding on facts and there is no legal question involved at all. Thus, I do not find any substantial question of law warranting admission of these second appeals. The findings of the Courts below that the electricity connection was obtained in the name of the appellant as he happens to be the eldest male member of the joint family and that it was now allotted to Mr.Ganesan in the family partition cannot be stated to be perverse so as to interfere with. I do not find any merit at all in these two appeals.

12. In the result, both the second appeals fail and the same are accordingly dismissed. Consequently the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

1. The Principal Subordinate Judge,
Krishnagiri.

2. The District Munsif - cum - Judicial Magistrate,
Uthangarai.

3. The Section Officer,
V.R. Section,
High Court, Madras.

1 cc to Mr.Muralidharan ,Advocate, SR.No.18623

1 cc to Mr. M/s.Sarvabhauman Asst.,Advocate, SR.No.18450

S.A.Nos.47 of 2015 and 993 of 2011
and M.P.Nos.1 of 2015 and 1 of 2011