



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

SA(MD)Nos.506 & 507 of 2016

SA(MD)No.506 of 2016

1.K.Dhanam
2.K.Anbalagan
3.K.Srinivasan
4.K.Anandan
1,2,4&5 /

.. Appellants /Appellants

Defendants 1, 2, 4 & 5/Defendants 1, 2, 4 & 5

Vs.

1.K.Mahalingam alias Dharmalingam
2.Sethuraman
3.K.Mahendran
4.K.Chandran
4 /

.. Respondents 1 to 4 /R 1-

Plaintiffs 2 to 5.

5.The Executive Engineer
(Maintenance and Operation)
Tamil Nadu Electricity Board,
Srirengam, Tiruchirapalli.

6.K.Balakrishnan
7.Baghyalakshmi
8.Kalyani
8 /

... Respondents 5 to 8 / R5-

Defendants 6 to 9

9.K.Manivannan (died)
10.Vijayalakshmi
11.Manoj Prabakaran
12.Santhosh Sivam

... Respondents / Proposed
Respondents.

*(Cause title accepted vide order
dated 1.4.2016 in CMP(MD)No.2986/16
in SA SR(MD)No.25577/14)

Second Appeal filed under section 100 of CPC against the
Judgment and decree dated 10.10.2013 made in A.S.No.16 of 2013 on
the file of the Second Additional Subordinate Judge,



Tiruchirapalli, confirming the judgment and decree dated 17.07.2012 made in O.S.No.1089 of 2005 on the file of the Principal District Munsif Court, Tiruchirapalli.

SA(MD)No.507 of 2016

1.K.Dhanam
2.K.Arulmani
3.K.Anbalagan
4.K.Srinivasan
5.K.Anandan

.. Appellants /Appellants 1 to 3, 5&6 /
Plaintiffs 1 to 3, 5&6

Vs.

1.K.Balakrishnan
2.Baghyalakshmi
3.K.Mahalingam alias Dharmalingam
4.Kalyani
5.Sethuraman
6.K.Mahendran
7.K.Chandran

.. Respondents / Respondents /
Defendants

8.M.Manivannan (Died)
9.Vijayalakshmi
10.Manoj Prabakaran
11.Santhosh Sivam

.. Respondents 9 to 11/ Proposed 8th
Respondents.

*(Cause title accepted vide order
dated 1.4.2016 in CMP(MD)No.2987/16
in SA SR(MD)No.25578/14)

Second Appeal filed under section 100 of CPC against the Judgment and decree dated 10.10.2013 and made in A.S.No.17 of 2013, on the file of Second Additional Subordinate Judge, Tiruchirapalli, confirming the Judgment and decree dated 17.07.2012 made in O.S.No.676 of 2008 on the file of the Principal District Munsif Court, Tiruchirapalli.

For Appellants : M/s.N.Krishnaveni

JUDGMENT

S.A(MD)No.506 of 2016 has been filed against the Judgment and Decree, dated 10.10.2013 passed in A.S.No.16 of 2013, on the file of the learned II Additional Subordinate Judge, Tiruchirapalli, by confirming the Judgment and decree, dated 17.07.2012 made in O.S.No.676 of 2008 on the file of the Principal District Munsif Court, Tiruchirapalli, for granting



mandatory injunction for giving electricity service connection to the suit property.

2. S.A.(MD)No.507 of 2016 has been filed by the appellants / plaintiffs against the Judgment and decree, dated 10.10.2013 and made in A.S.No.17 of 2013 on the file of the learned II Additional Subordinate Judge, Thiruchirapalli, confirmed the Judgment and decree, dated 17.07.2012 made in O.S.No.676 of 2008, on the file of the learned Principal District Munsif, Thiruchirapalli, filed by the plaintiffs, for declaration of title and injunction.

3. The respondents, as plaintiffs, have filed a Suit in O.S.No.1089 of 2005 stating that the suit property was purchased by one Pitchai Muthu Raja. His wife is Ponnammal, They are having a son by name, Kandasamy and two daughters viz., Akkandi and Kamaladevi. Pitchai Muthu Raja's daughter Akandi married the first plaintiff. The plaintiffs 2 to 5 are the sons of first plaintiff. The first defendant is none other than the wife of deceased Kandasamy. Their children are defendants 2 to 5. They have also one son viz., Balakrishnan, who has not claiming any right over the suit property and hence, he has not impleaded. Kamaladevi is another daughter of Pitchaimuthu Raja. Kamaladevi married one Muthukumar. Now, she is residing at Thiruvalarsolai. The house property has been purchased by Pitchai Muthu Raja. Plaintiffs are in possession and enjoyment of the suit property. The plaintiffs want electricity service connection for their house. The defendants 1 to 5 protesting for giving electricity service connection, since the plaintiffs are not having any right over the suit property. The plaintiffs are in possession and enjoyment of the property. Hence, they issued notice. After issuance of notice, they filed a suit for mandatory injunction, directing the 6th defendant to provide electricity service connection. In that, they have stated that the defendants have no right in the property. They have taken appropriate legal proceedings.

4. The second defendant filed a written statement, which was adopted by defendants 1 and 3 to 5, stating that Door Nos.108, 109 and 110 not form part of one block. Her mother-in-law's name has been wrongly mentioned as Ponnammal. There is no ancestral income. The defendants' father Kandasamy entered into service in 1950 and earned good salary. The properties in Door Nos.108 and 111 have been purchased by him under Separate sale deeds, in the name of his father, in the interest and benefit of the family of defendants 1 to 5. They are in possession from the date of purchase. The property was let out to 3rd party with the knowledge of Pitchai Muthu Raja and plaintiffs 2 to 5. Pitchai Muthu never sold the property to the 3rd party. So, the defendants' father Kandasamy alone was the owner of the property. The first plaintiff's wife Akkandi Ammal got married in the year 1950 and left to Sri Lanka and



residing there. Except Kandasamy, no one has got right over the property. Hence, the plaintiffs are not entitled to any service connection, since the plaintiffs are not the owner of the property. Hence, he prayed for dismissal of the Suit.

5. Likewise, the plaintiffs, as appellants herein, have filed a Suit in O.S.No.676 of 2008, for declaration of title and also for permanent injunction, restraining the respondents from altering the physical features of the suit property and also mesne profits stating that the property has been purchased out of the income derived from the first plaintiff's husband and other plaintiffs 2 to 6 father Kandasamy. After the death of Pitchai Muthu Raja on 17.11.1967, the property tax has been changed in the name of Kandasamy. Akkandi Ammal returned from Sri Lanka in the year 1975 and Kandasamy has given accommodation for her, on humanitarian consideration. Now, the plaintiffs, taking advantage of the same, have filed a suit, claiming title. Hence, prayed for dismissal of the suit.

6. The 7th defendant filed a detailed written statement, which was adopted by defendants 2 and 4 to 6 stating that the Suit properties are belonged to Pitchai Muthu Raja. He given the property to his wife and from that date onwards, she is in possession of the suit property. The suit has been filed as a counter blast to the Suit in O.S.No.1089 of 2005.

7. Both the suits have been tried jointly by the trial Court and decreed the Suit in O.S.No.1089 of 2005, directing the 6th defendant, to grant electricity service connection and the Suit in O.S.No.676 of 2008, filed by the appellants/plaintiffs was dismissed, in which it was stated that the property has been purchased in the name of Kandasamy, as per the Document Ex.A9, on 07.05.1956 by one Palaniyandi Vagaiyara in favour of Pitchai Muthu Raja. So, the appellants/plaintiffs are not entitled to declaration of title, since Kandasamy died intestate leaving behind his two daughters and a son, as his legal heirs. In that, even though P.W.1 another sister Kamalam was examined, in which, she has stated that the property has been given in the name of Kandasamy. He is in possession and enjoyment of the suit property and that factum was not accepted by the trial Court. The trial Court has held that the property is not absolutely belonging to the appellants/plaintiffs. So, they are not entitled to recovery of possession and mesne profits and since the defendants are joint owners, they are not entitled to any injunction. The trial Court decreed the suit in O.S.No.1089 of 2005 in favour of the respondents/plaintiffs and has granted mandatory injunction by directing the 6th respondent / Executive Engineer, TNEB, Srirengam, Tiruchirappalli, to give electricity service connection, within a



8. Against which, appeals have been preferred. The lower appellate Court has also concurred with the findings of the trial Court and held that admittedly, the suit property was purchased in the name of Pitchai Muthu Raja, who died intestate leaving behind his legal heirs. The appellants / plaintiffs are the joint owners along with others legal heirs of Pitchai Muth Raja. So, they are not entitled to declaration of title and also injunction. Against which, the present second appeals have been preferred.

9. The learned counsel appearing for the appellants would submit that the deceased Kandasamy has entered in service in 1950. The property has been purchased in the name of Pitchai Muthu Raja, out of the income from the Kandasamy. That factum was not considered by the courts below. Hence, the appellants prayed for admission of the appeal.

10. But, admittedly, Ex.A9 stands in the name of Pitchai Muthu Raja, who died in the year 1967. Kandasamy retired from service in the year 1987. During the life time of Pitchai Muthu Raja, the property was not dealt with by him. But, it is admitted by the appellants/plaintiffs that the first plaintiff's wife Akkandi Ammal repatriated from Sri Lanka, on humanitarian grounds, the suit property was given to her, for their residential purpose. So, she is in possession and enjoyment of the property and entitled to service connection. The trial Court has rightly considered this aspect and granted decree of mandatory injunction. There is no substantial question of law arisen in this S.A.(MD)506 of 2016, for consideration. Hence, this Second Appeal is dismissed, at the admission stage itself. No costs.

11. Insofar as S.A.(MD)No.507 of 2016 is concerned, both the Courts below have considered Ex.A9, sale deed, executed in favour of Pitchai Muthu Raja and held that the both appellants and respondents are co-owners along with Kamalam and another daughter. In such circumstances, the suit has been dismissed, on the ground that no declaration has been granted against the co-owners and also injunction has been granted against the co-owners. In such circumstances, the right has been only vested to the appellants/plaintiffs to file a suit for partition and not for declaration of title and recovery of possession and that factum was rightly considered by the courts below. There is no substantial question of law arisen, for consideration and hence, the second appeal in S.A.(MD)No.507 of 2016 is also dismissed at the stage of admission. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-II)



To

1. The II Additional Subordinate Judge,
Tiruchirapalli

2. The Principal District Munsif,
Tiruchirapalli.

+ 2 CC TO M/S.N.KRISHNAVENI, ADVOCATE IN SR No. 34349,34350

MPK

TE/SKS-RR:19/07/2016:5P/5C

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28.06.2016