

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

A.S No.374 of 2010

1. The Inspector
Hindu Religious and Charitable Endowment Board
Arni
 2. The Joint Director
Hindu Religious and Charitable Endowment Board
Arni
 3. The Commissioner
Hindu Religious and Charitable Endowment Board
Chennai - 34
 4. The Assistant Commissioner
Hindu Religious and Charitable Endowment Board
Tiruvannamalai ... Appellants/Defendants 6 to 9
- v.
1. T.Ponnusamy ... Respondent/Sole Plaintiff
 2. The Superintending Engineer
Tamil Nadu Electricity Board
Arni ... Respondents/Defendants 1 to 5
 3. The Executive Engineer
Tamil Nadu Electricity Board
Arni
 4. The Junior Engineer
Tamil Nadu Electricity Board
Kattukanallur
 5. The Assistant Executive Engineer
Tamil Nadu Electricity Board
Kannamangalam
 6. The Ramanatha Eswarar Temple
Kattukanallur Village
Represented by its Trustee
Sundaresan ... Respondents

Appeal filed under Section 70(2) of the Code of H.R. & C.E. Act 22 of 1959, against the judgment and decree dated 24.12.1999 made in O.S.No.8 of 1999 on the file of Additional District Munsif of Arni.

For Appellants : Mr.R.P.Prathap Singh
Govt. Advocate (HR & CE)

For Respondents : R1 - Died
Mr.V.Viswanathan - for R2 to R5
No appearance - for R6

JUDGMENT

Challenging the judgment and decree passed in O.S.No.8 of 1999 on the file of Additional District Munsif Court, Arni, the defendants 6 to 9 have filed the above appeal.

2. The 1st respondent-plaintiff filed the suit in O.S.No.8 of 1999 for mandatory injunction directing the defendants 1 to 4 to provide electricity service connection to the suit Well.

3.The brief case of the plaintiff is as follows:-

(i) According to the plaintiff, he is a cultivating tenant in respect of the suit land belonging to the 5th defendant temple. He applied for service connection for effecting the service connection to the suit Well. The 5th defendant gave No Objection Certificate on 09.10.1984. On 14.06.1996, the Electricity Board issued orders providing service connection to the plaintiff. At that stage, the 9th defendant instructed the Electricity Board and stopped them from giving the service connection. The plaintiff also purchased 5 H.P. Motor, which was not put to use and became rust and useless. Now, the plaintiff is using oil engine.

(ii) The 2nd defendant informed the plaintiff that unless he gets No Objection certificate from the 9th defendant, the service connection will not be given. The plaintiff also gave a Lawyer's notice to the defendants on 06.08.1998 stating that the service connection is only for the benefit of the temple and also in the name of the temple. In these circumstances, the plaintiff filed the suit.

4.The brief case of the 9th defendant is as follows:-

According to the 9th defendant, the tenancy of the temple property must be done only by public auction. The plaintiff was not inducted as tenant in the public auction, therefore, the

service connection should not be granted to him. A Well cannot be dugged in the temple land without the permission of the Hindu Religious and Charitable Endowment Department. Merely because the plaintiff is a cultivating tenant that does not mean that he can get the service connection. In these circumstances, the 9th defendant prayed for dismissal of the suit.

5. Before the trial court, on the side of the plaintiff, P.W.1 was examined and 16 documents, Ex.A-1 to Ex.A-16 were marked and on the side of the defendants, D.W.1 was examined, however, no document was marked.

6. The Trial Court after taking into consideration, the oral and documentary evidences let in by the parties, decreed the suit.

7. Aggrieved over the judgment and decree of the Trial Court, the defendants 6 to 9 have filed the above appeal.

8. Heard Mr.R.P.Prathap Singh, learned Government Advocate appearing for the appellants and Mr.V.Viswanathan, learned counsel appearing for the respondents 2 to 5..

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the plaintiff is in possession and enjoyment of the property by cultivating the suit land. For getting the service connection for the Well in the suit land, he applied for the service connection with the Electricity Board. The 9th defendant took a plea that the land belongs to the temple and any tenancy made in favour of the plaintiff without conducting public auction is invalid. However, the defendants did not dispute that the plaintiff is the cultivating tenant in respect of the suit land. When the plaintiff is cultivating the suit land, he is entitled to get the service connection for the suit land. That apart, he has specifically stated in the plaint that he is going to get service connection only in the name of the temple, viz., the 5th defendant. Merely because the land was leased out to the plaintiff without conducting a public auction will not deprive the plaintiff from getting the electricity connection for the suit Well.

10. The plaintiff has clearly established that he is a cultivating tenant in respect of the land which was also not disputed by the defendants. Even the 5th defendant has given consent for granting service connection to the plaintiff. That apart, the plaintiff has filed the suit seeking for the relief only as against the defendants 1 to 4 and the suit was also decreed only against the defendants 1 to 4. There was no decree

passed against the defendants 6 to 9. Though the defendants 1 to 4 have not filed any appeal, the defendants 6 to 9 have filed the appeal when no decree was passed against them. The Trial court, after taking into consideration, the oral and documentary evidences let in by the parties, rightly decreed the suit.

11. In these circumstances, I do not find any ground to interfere with the judgment and decree of the Trial Court. The appeal liable to be dismissed. Accordingly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj
To

1. Additional District Munsif Court
Arni
2. The Superintending Engineer
Tamil Nadu Electricity Board
Arni
3. The Executive Engineer
Tamil Nadu Electricity Board
Arni
4. The Junior Engineer
Tamil Nadu Electricity Board
Kattukanallur
5. The Assistant Executive Engineer
Tamil Nadu Electricity Board
Kannamangalam
6. The Section Officer,
VR Section, High Court, Madras - (2 Copies)

+1cc to the Government Pleader, S.R.No.85655

A.S No.374 of 2010

VGI (CO)
CS/02/01/18