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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.535 of 2011

and

M.P(MD)Nos.3 and 4 of 2011

Selvakumaran @ Selvakumar ... Appellant/3rd Party

Vs.

1.A.Kennady ... 1st Respondent/Writ Petitioner

2.The Tamil Nadu Generation and Distribution

Corporation Ltd.,

represented by its

Junior Engineer (Operation and Maintenance),

Kallakudi,

Tiruchirappalli District.

...2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 30.03.2011 made in W.P(MD)No.3721 of 2011, on the file of this Court.

Prayer in WP(MD). 3721/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to effect change of electricity service connection bearing Nos.A.35, A.36 and A.467 for the building bearing Survey No.273/13C3C, Main Road, Dalmiapuram, Tiruchirappalli District.

For Appellant : Mr.V.Meenakshi Sundaram

For R - 1 : Mr.T.Antony Arulraj
for Mr.I.Irulappan

For R - 2 : Mrs.Parameswari
for Mr.S.M.S.Johny Basha

JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

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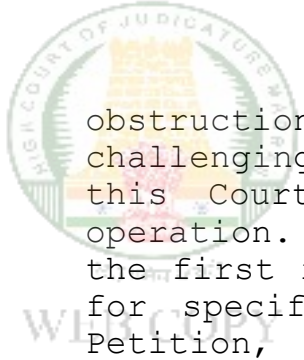
The appellant is the third party to the Writ Petition in W.P.(MD)No.3721 of 2011 filed by the first respondent.

2.The first respondent/writ petitioner filed the above said Writ Petition praying for issuance of Writ of Mandamus directing the second respondent herein to effect change of Electricity Service Connection bearing Nos.A35, A.36 and A.467 in respect of the building bearing Survey No.273/13C3C, Main Road, Dalmiapuram, Tiruchirapalli District. The writ petition came to be disposed of at the admission stage itself, by issuing an order of direction directing the concerned authority to consider the representation of the petitioner, dated 15.03.2011, in the light of the fact that as the sale deed itself came to be executed by the Court, there cannot be any impediment to consider the said request and time frame has also been stipulated as to the consideration of the said representation. The appellant/third party, after obtaining leave from this Court, has filed this Writ Appeal.

3.Mr.V.Meenakshi Sundaram, learned counsel appearing for the appellant has drawn the attention of this Court to the typedset of documents as well as the affidavit filed in support of M.P.(MD)No.3 of 2011 and made the following submissions:-

(a) The property in question originally belonged to one Muthusamy Udayar and he died leaving behind his wife Velammal and daughters, namely Dhanalakshmi, Tamilselvi and Manimegalai and son Sathiamoorthy. The appellant had purchased the said property from them through a registered sale deed, dated 20.07.2009 and subsequent to the said purchase, the revenue records also got mutated in this regard. The first respondent/writ petitioner said to have entered into an agreement of sale dated 15.07.2009 with Sathiamoorthy, son of late Muthusamy Udayar alone and based on the said agreement of sale, filed a suit for specific performance in O.S.No.448 of 2010 on the file of the Court of the Subordinate Judge, Tiruchirapalli and obtained an ex-parte decree, dated 06.09.2010. Thereafter, he levied execution in E.P.No.410 of 2010.

(b) It is also the case of the appellant that at the time of purchase of the property through a registered sale deed, dated 27.07.2009, there were tenants in some portions and they had also attorned tenancy in his favour and he himself in occupation of one of the portion of the premises and at the time of the Execution Petition by the first respondent/writ petitioner, notices were received by the tenants and they have also filed objections for



obstruction and all the applications came to dismissed and challenging the same, C.R.P.(MD)No.1080 of 2013 was filed before this Court and it was entertained and interim orders are in operation. The appellant, on becoming aware of the fraud played by the first respondent/writ petitioner by securing an ex-parte decree for specific performance and subsequent filing of the Execution Petition, filed O.S.No.321 of 2011 on the file of the Court of the Subordinate Judge, Tiruchirappalli and declared that he is the absolute owner of the property in question and further to declare the ex-parte decree obtained in O.S.448 of 2010 as void and unenforcable and also for other consequential reliefs. The suit, after contest, came to be dismissed and challenge made to the said Judgment and Decree in the form of Appeal Suit, which was ended in dismissal. Aggrieved by the same, the appellant/writ petitioner filed S.A(MD)No.374 of 2014 and the same is pending.

(c) The primordial submission of the learned counsel appearing for the appellant that the first respondent/writ petitioner is aware of all the above said proceedings, in the affidavit filed in support of the Writ Petition, has totally suppressed the said proceedings and obtained an order at the admission stage itself and taking advantage of the said order, started ascertaining his rights and therefore, the appellant is constrained to file this appeal after obtaining order.

4.Per contra, the learned counsel appearing for the first respondent/writ petitioner would submit that challenge made by the appellant, in the form of Civil proceedings, came to be dismissed before the trial Court as well and the lower Appellate Court and Second Appeal is also pending. Admittedly, the first respondent/writ petitioner got his right and title through sale deed executed by the Subordinate Court, Tiruchirapalli and in execution of the decree in O.S.No.448 of 2010, unless and until the said sale deed is set aside in the manner known to law, it is not open to the appellant to claim that he is the owner of the property and since the prayer sought by the appellant is very limited, the learned Judge had rightly passed the order and prays for dismissal of this Writ Appeal.

5.The learned standing counsel appearing for TANGEDCO would submit that electricity connection as of now stands in the name of the first respondent/writ petitioner.

6.This Court has considered the rival submissions made on either side and perused the materials placed on record.

7.In the considered opinion of this Court, the first respondent/writ petitioner did not adopt the fair practice while filing the Writ Petition and it is for him to choose which facts he should plead. In the considered opinion of this Court, the facts extracted above may have a bearing with regard to the disposal of the Writ Petition and if those facts have brought to the knowledge of the learned Judge, the Writ Petition would not have been disposed of in favour of the petitioner.



8.It is a well settled position of law that this Court in exercise of jurisdiction under Article 226 of the Constitution of India, also exercising equity and admittedly, the first respondent/writ petitioner has failed to approach this Court with clean hands and as such, he is not entitled to get any indulgence from this Court. In the light of the reasons assigned above the impugned order disposing of the Writ Petition with the positive direction, warrants interference.

9.In the result, the Writ Appeal is allowed and the order dated 30.03.2011 made in W.P(MD)No.3721 of 2011 is set aside.

10.In the light of the submissions made by the learned counsel appearing for the first respondent/writ petitioner that while drafting affidavit such facts have been disclosed and also considering the fact that Second Appeal filed by the appellant is also pending disposal, this Court is not inclined to award any costs. It is also made clear that the observations made herein are only for the disposal of this Writ Appeal and it also a settled position of law that a civil litigation have to be disposed of on its own merits. This Court also hope and trust that in future the first respondent/writ petitioner would act in a fair manner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Junior Engineer (Operation and Maintenance),
The Tamil Nadu Generation and Distribution Corporation Ltd.,
Kallakudi,
Tiruchirappalli District.

+One cc to M/s.S.M.S.Johnny Basha, Advocate, SR.No.45681

+One cc to Mr.I.Irullappan, Advocate, SR.No.45791

ta/ps

RL/4C/4P/JC/SAR1/27/2/2018

W.A(MD) No.535 of 2011

and

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