

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.01.2019
PRONOUNCED ON: 12.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1237 of 2007
&
MP.No.2 of 2007

Sundaram(died)

- 1.Ammani
- 2.Sankar
- 3.Ganesan
- 4.Kamalam

... Appellants

(cause title accepted vide
order of this Court dated 30.10.2007
made in M.P.No.1 of 2007
in SA.SR.No.72710 of 2007)

Vs.

- 1.The Tamil Nadu Electricity Board
though its Superintending Engineer,
Salem Town, Salem Taluk.

- 2.The Executive Engineer,
(Operation and Maintenance),
Rasipuram, Namakkal District.

- 3.The Assistant Executive Engineer,
(Sub-Station), Rasipuram South,
Namakkal District.

- 4.The Junior Engineer,
(Sub Station) (South),
Rasipuram Taluk,
Namakkal District.

... Respondents/defendants

Prayer:- This Memorandum of Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 13.11.2006 passed in A.S.No.19 of 2000 on the file of the Sub-Court, Namakkal reversing the judgment and decree dated 28.06.1999 passed in O.S.No.325 of 1996 on the file of the District Munsiff Court, Rasipuram.

For Appellants	: Mr.P.Jagadeesan
For Respondents	: Mr.S.R.Shanmugadoss for Mr.V.Viswanathan

J U D G M E N T

This Second Appeal has been filed by the legal representatives of the plaintiff against the judgment and decree passed by the learned Subordinate Judge, Namakkal in A.S.No.19 of 2000. The deceased plaintiff has filed a suit in O.S.No.325 of 1996 on the file of the learned District Munsiff, Rasipuram for the relief of permanent injunction restraining the defendants and their men from dis-connecting the service connection No.419, which stands in the name of the plaintiff. The learned District Munsif, Rasipuram by the judgment and decree dated 28.06.1999, has allowed the said suit with cost. Aggrieved by the same, the defendants/respondents herein have filed an appeal in A.S.No.19 of 2000 on the file of the learned Subordinate Judge, Namakkal. The learned Subordinate Judge, Namakkal by the judgment and decree dated 13.11.2006, has allowed the said appeal and dismissed the suit filed by the deceased plaintiff. The learned Subordinate Judge has also directed the parties concerned to pay their respective costs. Feeling aggrieved, since the plaintiff died, the legal representatives of the plaintiff have filed the present Second Appeal.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3. The averments made in the plaint, in brief, are as follows:

The land in which the service connection No.419, is situated was belonging to the plaintiff. The said land was allotted in favour of the plaintiff as per the partition happened between him and his family members on 02.11.1979. After the allotment of the said property, the plaintiff dig a well in the year 1994 in the said property and he obtained an Electricity Service Connection in S.C.No.419 for the above said well and thereby, he irrigating the entire lands belonging to him. On 07.12.1996, the third defendant issued a notice to the plaintiff to produce patta, chitta and rough sketch pertaining to the land in which, the service connection was effected. The notice issued after two years from effecting the service connection is not valid in law. When the above said act questioned with the fourth defendant, he threatened the plaintiff as if the document relating to the service connection was not produced, the service connection effected in the name of the plaintiff would be disconnected. Since the first to third defendants were the Superior Officers of the fourth defendant, they were also added as parties to the suit proceedings. Hence, the plaintiff has filed the above suit for the relief of permanent injunction.

4. The averments made in the written statement filed by the third defendant and adopted by the defendants 1, 2 and 4, in brief, are as follows:

The fourth defendant was having the right to verify the documents at any time. The notice issued to the plaintiff was a legally valid one. At the time of obtaining the service connection, the plaintiff submitted a false document issued by the Village Administrative Officer before the Tamilnadu Electricity Board, as the well was situated within his patta land. In fact, the disputed service connection was provided to the well situated at S.No.493, which was a Government Poramboke land, for which, the Tahsildar, Rasipuram issued a certificate on 12.02.1997. After obtaining service connection unauthorisedly, the plaintiff changed the same to the bore well situated in his field. Without getting any permission from the Tamilnadu Electricity Board, the plaintiff was not having any right to change the service connection from the well to bore well. Despite notice issued to the plaintiff, no reply was given by the plaintiff and projected his case before the Court with clean hands and therefore, they prayed to dismiss the suit.

5. The trial Court, based on the above said pleadings framed the necessary issues and tried the suit. During trial, on the side of the deceased plaintiff, the plaintiff himself has examined as PW1 and 8 documents were marked as Exs.A1 to A8 on his behalf. On the side of the defendants, three witnesses were examined as DW1 to 3 and Six documents were marked as Exs.B1 to B6, on their behalf. Apart from that the Report and Plan submitted by the Advocate Commissioner were marked as Exs.C1 & C2. The learned District Munsiff, Rasipuram having considered all the materials placed before him has held that there was no evidence for establishing the fact that the plaintiff was produced a false certificate. Further, the learned District Munsiff has held that the cross examination of DW1 to 3 proved that the disputed service connection was given to the well now situated in the plaintiff's property and finally, he allowed the suit with cost. Aggrieved by the same, the defendants have filed an appeal in A.S.No. 19 of 2000 on the file of the learned Subordinate Judge, Namakkal. The learned Subordinate Judge, Namakkal after going through the relevant materials placed before him has found that as per the entries available in Ex.C1, a Report submitted by the Advocate Commissioner, there was a possibility for effecting the service connection to the well situated in the poramboke land. Further, the learned Subordinate Judge held that since the relief of permanent injunction is a discretionary one and also holding that the plaintiff has not approached this Court with clean hands, allowed the appeal by set asiding the judgment and decree dated 28.06.1999 passed by the learned District Munsiff, Rasipuram. Aggrieved by the same, the legal representatives of the plaintiff have preferred the present Second Appeal.

6. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

''Is not the findings of the lower
appellate Court that the plaintiff obtained

the suit electricity connection by way of fraud and misrepresentation is perverse and based on presumptions and assumptions?

7. The learned counsel appearing for the appellants would submit that before giving Agricultural service connection to any common public, the authorities concerned, who are working in the Tamilnadu Electricity Board shall verify the documents, relating to the well situated in any land and in any survey number etc., to which, the service connection will be provided. Specifically, only after satisfying with the title and possession of the well, the service connection will be given to the farmers. More over, before effecting the service connection, it is the duty of the Officers concerned to visit the field, in which, the well was situated and thereafter, after preparation of estimate and after putting electricity polls, the service connection will be given to the applicants, who applied for agricultural service connection. But in this case, after adopting all formalities, the above said service connection was effected in favour of the deceased plaintiff. Now, without producing any document, which was already submitted to the Tamilnadu Electricity Board by the plaintiff, merely based on the Report i.e., Ex.C1, the defendants were set up a case as the plaintiff, after producing the false certificate obtained the service connection.

8. On the other hand, the learned counsel appearing for the Tamilnadu Electricity Board would contend that if really the plaintiff approached the trial Court with clean hands, it is very easy for him to produce the relevant documents pertaining to the electricity service connection to his well. The non production of documents now asked by the defendants will show that the plaintiff has not approached this Court with clean hands. Accordingly, the plaintiff prayed for dismissal of this Appeal. Further, the learned counsel has submitted that the learned Subordinate Judge, Namakkal, after considering the above facts only set aside the judgment and decree passed by the learned District Munsif, Rasipuram in favour of the plaintiff.

9. It is an admitted fact that the suit property in S.No.491/4 and the electricity service connection No.419-tarif 5 were situated in Chandrasekarapuram Village, Rasipuram Sub Registration District, to an extent of 3.07 acres. It is also an admitted fact that an extent of 3.07 acres in S.No.491/4 of Chandrasekarapuram Village, Rasipuram Sub Registration District is belonging to the plaintiff. As of now, in the above said well, the bore well and the agricultural service connection in S.C.No.419-tarif 5 are also within the above said land. It is further admitted by the either side that the above said service connection was effected in favour of the plaintiff in the year 1994 based on

the application submitted by the plaintiff. The only dispute is that whether the service connection was effected to the bore well or to the open well. In this case, the application submitted by the plaintiff before the Tamilnadu Electricity Board was marked as Ex.B1. In the said application, it was mentioned by the plaintiff that the service connection was required to the well situated to the extent of 14 feet into 12 feet. Alongwith the above numbers, the other numbers pertaining to the extent of land in other Survey number was mentioned. The said numbers are surveyed on 01.04.1993 by the Village Administrative Officer. So also according to the certificate issued by the Village Administrative Officer, there was a well to the extent of 14 feet into 12 feet situated in S.F.491.4. During the time of trial, the Village Administrative Officer, Alavaipatti has been examined as DW2. DW2 has categorically stated in his evidence that on 23.03.1997, the plaintiff Sundaram, requested him to issue a certificate to his land and upon his request, he issued a certificate alongwith Topo Sketch. The certificate issued by the Village Administration Officer was marked as Ex.B5 and the Topo Sketch was marked as Ex.B6. He specifically stated in his evidence that in S.No.491/4 there was a well and the same was belonging to the plaintiff. Further, as per Exs.B5 & Ex.B6, the Village Administration Officer, confirmed the same. The contents of Exs.B5 & 6, confirmed the above said evidence. According to DW2 and Exs.B5 and 6, a well was situated inside the field of the plaintiff. In the evidence given by DW1, DW3, who were the Junior Engineers of the Tamilnadu Electricity Board, it is seen that before effecting service connection, the land in which, the well was situated was inspected and only thereafter, the service connection was effected. So also the witnesses examined on the side of the defendants were also deposed evidence in favour of the plaintiff. The Officer, who effected the service connection to the plaintiff's land himself admitted that at the time of effecting the service connection there was a well in the field, which was belonging to the plaintiff.

10. In the said circumstances, on going through Exs.C1 & C2, which were the Report and Plan submitted by the Advocate Commissioner it is seen that in a filed belonging to the plaintiff there was a well and one bore well. Further, the distance between the well and the bore well is about 25 metres. However, it was noted in the Commissioner's report that the service connection effected to the well was now changed to the bore well, it shows that without any permission to change over the service connection, the plaintiff shifted the motor from the open well to bore well. DW3 has admitted in his evidence that the agricultural service connection can be changed according to the wishes of the owner subject to the terms and conditions. At most, if the plaintiff changed the service connection without getting any permission from the Electricity Board, it amounts to violation of terms and conditions pertaining to the Tamilnadu Electricity Board.

11. Accordingly, the plaintiff has proved that the open well has also situated in his field. But without considering these aspects, the first Appellate Court has held that initially the service connection was effected to the well situated at S.F.No.419, which was the Government Poramboke land. Further, as rightly pointed out by the counsel appearing for the appellant/plaintiff, at the time of effecting service connection, the authorities of Tamilnadu Electricity Board were necessarily see the all revenue records namely patta, chitta, Adungal and topo sketch including the mark of well etc. In this regard, DW3 has stated that only after verifying the certificate issued by the Village Administrative Officer, the service connection was effected. In the said position, it is the duty of the defendants to produce all the relevant records pertaining to the disputed service connection which had been submitted by the plaintiff before effecting service connection. But unfortunately, in this case, the defendants, being the Government Authorities withholding the said records and submitted only the application submitted by the plaintiff.

12. Now, by applying Section 114(G) of the Indian Evidence Act to the case on hand, this Court has absorbed that where a party in possession of best evidence for example a material document which would throw light on the issue in controversy withholds it, the Court may draw the adverse inference against him on the fact that onus of proof does not lie on him.

13. The learned Subordinate Judge entirely agreed with the evidence given by DW1 and on considering the electrical poll was installed in the Government poramboke land came to the conclusion that the plaintiff by submitting the false document, before the officers of the Tamilnadu Electricity Board concerned obtained the service connection. So also the decision rendered by the first Appellate Court does not have any merit.

14. The learned counsel appearing for the defendants would contend that the notice issued to the plaintiff i.e., Ex.A4 was only for collecting the particulars pertaining to the service connection stands in his name, so also sending the above notice alone was not a sufficient ground to hold that the defendants are attempted to disconnect the service connection. Accordingly, the suit has been filed without any cause of action. In this regard, during the course of trial, the plaintiff has categorically deposed that as when the plaintiff asked about the notice sent by the fourth defendant, he says that his service connection was going to be disconnected, and if an illiterate person threatened by the Government authority as above, the only option for him is to approach the Court. So also we cannot throw away the case for the reason now stated by the counsel appearing for the defendants. In other wise, before parting with this case,

this Court has born-in -mind in respect to the circumstances in and around the agricultural service connection. As of now, all the agricultural service connections are given to the agriculturists with free of cost. However, all are aware the conditions of the agriculturists. In the present case, only on an application filed by the plaintiff and based on the certificate issued by the Village Administrative Officer, the service connection was effected. If really a man have not any well, it is not necessary for him to submit an application for providing electricity connection, after de-frauding the Government.

15. DW.3 in his evidence had categorically admitted that a person having electricity connection, have the right to shift the said service connection within a field subject to the terms and conditions of Tamil Nadu Electricity Board. In the said circumstances, even assuming that the plaintiff was violated the terms and conditions, for the said reason alone, the service connection cannot be disconnected. In view of the above said reasons, the substantial question of law is answered in favour of the appellants/plaintiffs.

16. Since the plaintiff filed a suit for the relief of injunction simplicitor, the same is granted in its entirety which prohibits the Tamilnadu Electricity Board Officers to inspect the service connection. So also this Court is of the view that subject to certain conditions, the injunction now prayed for by the plaintiff is granted. The defendants are entitled to inspect the suit service connection at any time, except for disconnecting the service connection pertaining to the reason stated by the plaintiff in the suit. Further, as per the particulars available in the Advocate Commissioner's report, the change over is effected by the plaintiff without getting any permission from Tamil Nadu Electricity Board. Hence, the plaintiffs are directed to submit an application for changing over the service connection to the borewell, within one month from the date of receipt of a copy of this Judgment. Further, a direction is issued to respondents 2 to 4 to dispose the said application submitted by the plaintiffs, within one month from the date of receiving the application from the plaintiffs.

17. In the result, the Second Appeal is allowed and the Judgment and decree, dated 28.06.1999, passed in O.S.No.325 of 1996, on the file of the learned District Munsif, Rasipuram, reversing the judgment and decree dated 13.11.2006 passed in A.S.No.19 of 2000 on the file of the learned Subordinate Judge, Namakkal, is hereby set aside. Consequently, the entire suit in O.S.No. 325 of 1996 stands confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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To

- 1.The Judge, Sub-Court, Namakkal
- 2.The District Munsiff Court, Rasipuram

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.P.Jagadeesan , Advocate SR.No. 12748

+1cc to Mr.V.Viswanathan , Advocate SR.No. 13314

S.A.No.1237 of 2007

A.SK(27/07/2020)