

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.06.2019

Judgment Pronounced on : 14.08.2019

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1252 of 2004

- 1.Kandasamy Gounder (Died) 1st Appellant / 1st respondent / Plaintiff
- 2.Chinnammal
- 3.K.Palanimuthu
- 4.K.Duraisamy
- 5.K.Mani alias Solai Muthu ... Appellants 2 to 5

(Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide order dated 03.6.2019 made in CMP.No.525/2013 in S.A.No.1252/2004)

Vs

- 1.Chinnasamy
- 2.The Junior Engineer (O &M)
Tamil Nadu Electricity Board
Sathapadi, Attur Taluk
Salem District.
- 3.The Assistant Executive Engineer (O & M)
Tamil Nadu Electricity Board
Attur, Salem District.
- 4.The Executive Engineer (O & M)
Tamil Nadu Electricity Board
Attur, Salem District.
- 5.The Superintending Engineer (O & M)
Tamil Nadu Electricity Board
Salem, Salem District.

.... Respondents

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree passed in A.S.No.22 of 1999 on the file of Subordinate Judge, Attur, dated 27.02.2004, reversing the judgment and decree dated 28.7.1999 in O.S.No.129/1995 on the file of the District Munsif, Attur.

For Appellants : Mr.V.Sivalingam
for Mr.S.Mani

For Respondents : Ms.Zeenath Begum [R1]
R2 to R5 – No Appearance

JUDGMENT

The plaintiff in a suit for bare injunction which he has laid against the then Tamil Nadu Electricity Board (henceforth TNEB), challenging the show cause notice issued by the Tamil Nadu Electricity Board as to why the electricity connection provided to the plaintiff for agricultural purposes should not be disconnected. Parties would be referred to by their rank before the trial Court.

2. The case of the plaintiff may be summarised :

- A certain Karuppa Muthu owned a block of agricultural property comprised in Survey Nos.23/11 and 23/12. On his demise, it devolved on his three sons viz., the plaintiff and his brothers Marutha Muthu and one Muthu. Subsequently, the plaintiff and his brothers divided the property and accordingly the plaintiff obtained 1/3 share in Survey No.23/11 and 23/12. Sometime in 1968, the plaintiff had purchased 1/3 share from his brother

Marutha Muthu and from then onwards the plaintiff began to have 2/3 share in this properties. There is a well common to both the survey fields, in which the plaintiff has acquired 2/3 share. Later, he obtained the service connection from the TNEB.

- Be that as it may, the fifth defendant had purchased Muthu's share in these properties and he proceeded to file two suits *inter alia* against the present plaintiff. His first suit is O.S.No.96/1985, in which he claims absolute right over the well to the exclusion of the plaintiff, but the suit came to be dismissed with the trial Court entering a finding that the plaintiff indeed has 2/3 share in the suit property, and that the balance share alone belonged to the fifth defendant. Subsequently, he filed another suit in O.S.No.208/ 1983, challenging transfer of patta, but later he did not press this suit. It is in this setting, the TNEB had issued notice dated 04.5.1995 on the plaintiff and required him to show cause why the electricity connection provided to him should not be disconnected.

- The ground on which the plaintiff was required to show cause was that the plaintiff had fabricated his application form for obtaining electricity service connection by providing two false information. They are:

(a) While the plaintiff has only 1/3 share in the property in Survey No.23/11 and 23/12, he had stated that he had 2/3 share in the

same; and

(b) While the well is situated in Survey No.23/11, the Tamil Nadu Electricity Board officials have said it is in Survey No.23/12.

The plaintiff therefore, laid the suit for bare injunction that his electricity service connection should not be disconnected.

3.1 In its written statement the Tamil Nadu Electricity Board officials have pleaded that they were not aware about the earlier litigations between the plaintiff and the fifth-defendant Chinnasami, and that they have merely issued a show-cause notice, and it only required a response.

3.2 The fifth-defendant would plead that the plaintiff did not have any right to the well in S.F.No:23/11, that this property originally belonged to this defendant's grandmother Deivanai, that she had settled 2/3 share in the same on 22-01-1990 (Ext.B-10) and as to the remaining 1/3, he had purchased the same earlier, on 21-03-1979 under Ext.B-9 sale deed. The dispute is over the title obtained by the defendant under Ext.B-9 sale deed. And, this was the subject matter of O.S.96/1985. The plaintiff had corrected the sale deed in his favour when he participated in O.S.96/1985. Hence, this defendant preferred A.S.77/1979, and in that appeal, the plaintiff had conceded that he did not have title to the property in S.F.No:23/11. It is how, the appeal came to be decided

when the court confirmed that this defendant had 1/3 share. The present suit is therefore, barred by *res judicata*. So far as O.S.203/1993 is concerned, the revenue officials undertook not to change the patta, and hence it was not pressed.

4. The matter went to trial, and the trial Court relied on the judgment in O.S.No.96/1985 and indicated that both the grounds on which the show cause notice was issued as bad, and decreed the suit. While the relief was sought only against the Tamil Nadu Electricity Board, and the issue pertained to the show cause notice issued by the Tamil Nadu Electricity Board, it opted not to challenge the decree. Instead, the fifth defendant, against whom no decree was passed, has chosen to appeal against the said decree in A.S.No.22/99 on the file of Sub Court, Athur. The appellate Court allowed the appeal in the sense that it had only indicated that the plaintiff ought to respond to the show cause notice instead of rushing to the Court. In other words, the first Appellate Court dismissed the suit more on the ground of either non-maintainability, or that it was premature, neither of which finds an explicit statement in the judgment. Challenging this decree, the plaintiff is before this Court.

5. The appeal was admitted on the following substantial questions of law :

Whether the judgment of the Lower Appellate Court is sustainable on the face of non-consideration of the judgment and decree in O.S.No.96 of 1985 as confirmed in A.S.No.77 of

1989 wherein it has been declared that the appellant herein is entitled for the service connection No.368, particularly when the judgment has become final?

6. As indicated in the earlier paragraph, it is amusing as to how the first appeal itself came to be maintained by the first appellate Court. When the first appeal is not maintainable, anything that was passed by the first appellate Court too cannot have the effect of upsetting the decree passed by the trial Court. If at all the fifth defendant is aggrieved as to the title of the property, then it has to be decided only by the civil Court, and not by the Tamil Nadu Electricity Board.

7. The learned counsel for the first respondent argued that earlier O.S.No.96/1985 was laid for declaration of his title to three Survey Numbers, which includes property in S.No.23/10 and S.No.23/12 and also a share in the well in S.No.23/11. The present appellants 1 to 4 were arrayed as defendants in O.S.No.96/1985 and he had relied on a sale deed, dated 11.09.1968, under which he claims to have purchased 1/3rd share of his brother Marutha Muthu in the property in S.No.23/11 and S.No.23/12. This document, he had produced as Ex.B1 in the earlier suit (O.S.No.96/1985). Later, after the disposal of the appeal (A.S.No.77/1989) preferred against the decree in O.S.No.96/1985, this respondent became aware of certain interlineation or correction in the plaintiff's sale deed, which according to him rendered the sale deed fraudulent. And, it constituted a fraud on court as well. Reliance was placed on **A. John Vs**

Vasanthi and Others [(2018 (6) CTC 365)]. It is on this footing, he had alerted the officials of the TNEB, based on which, a show cause notice was issued.

8.1 Replying the same, the learned counsel for the appellants would argue that the sale deed is of the year 1968, which the first respondent now impugns as having some interlineation etc., cannot be considered at this point of time, since it has already been produced before the Court in O.S.No.96/1985. Secondly, he has no *locus standi* to challenge the said document as it was executed not by his vendor, but by first appellant's brother. Thirdly, in the worst case scenario, the said sale deed constituted only a fraud on the party, and not any fraud on court. When the first respondent herein had all the opportunity to attack the same in the earlier suit, he had conveniently chosen to remain silent. What he has lost cannot be revived now as he is barred from raising it by virtue of doctrine of constructive *res judicata*.

8.2 The learned counsel for the appellants further submitted that pursuant to the judgment of the first appellate Court, the first appellant herein did in fact offered his explanations, but the same is yet to be disposed of by the authorities, due to the pendency of the present appeal.

9. Though much arguments were advanced on title and *res judicata* and constructive *res judicata*, it has to be underscored that to consider them would

be beyond the scope of this case. The present suit is all about a challenge to a show-cause notice, which pose no threat of invasion or injury to plaintiff's right. All that the show cause notice seeks is an answer to clarify certain facts. What may perhaps affect the right of the plaintiff is an adverse decision of the officials, but that eventuality has not happened yet. This perhaps is the underlying reason of the first appellate court.

10. For the present, this Court dismisses this appeal, and the judgment and decree in A.S.No.22 of 1999 on the file of Subordinate Judge, Attur, dated 27.02.2004, is confirmed. It is made clear that TANGEDCO, the successor of TNEB, shall not decide any disputed question of title to any immovable property.

No costs.

14.08.2019

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Index : Yes / No

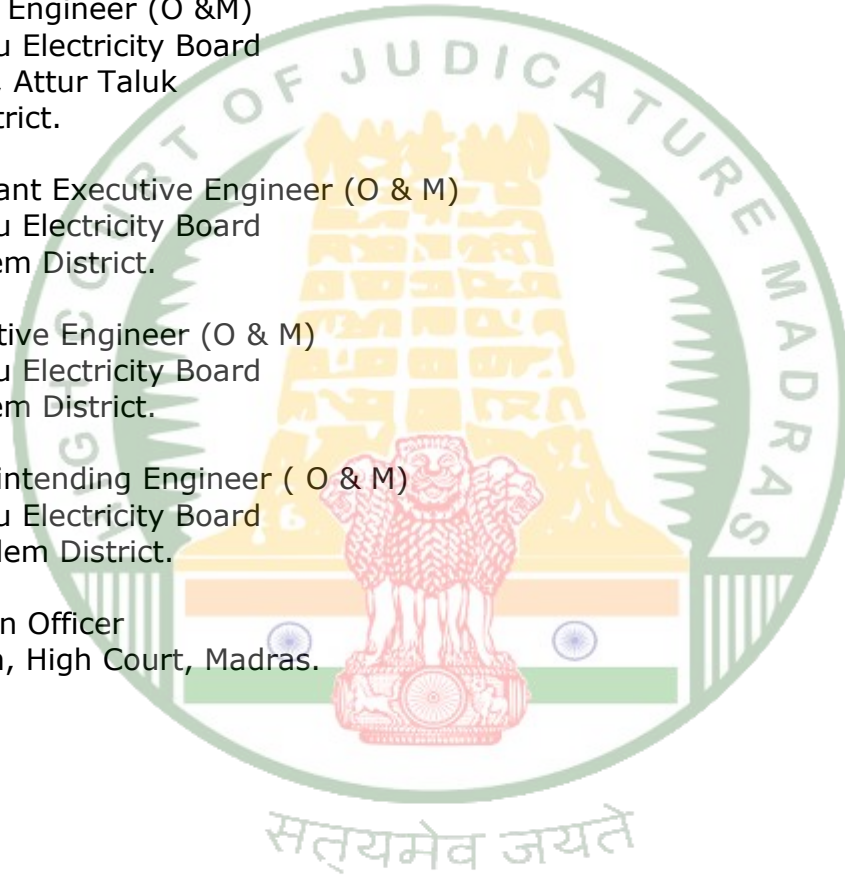
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Speaking Order / Non-speaking Order

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To:

- 1.The Subordinate Judge
Attur.
- 2.The District Munsif
Attur.
- 3.The Junior Engineer (O &M)
Tamil Nadu Electricity Board
Sathapadi, Attur Taluk
Salem District.
- 4.The Assistant Executive Engineer (O & M)
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- 5.The Executive Engineer (O & M)
Tamil Nadu Electricity Board
Attur, Salem District.
- 6.The Superintending Engineer (O & M)
Tamil Nadu Electricity Board
Salem, Salem District.
- 7.The Section Officer
VR Section, High Court, Madras.

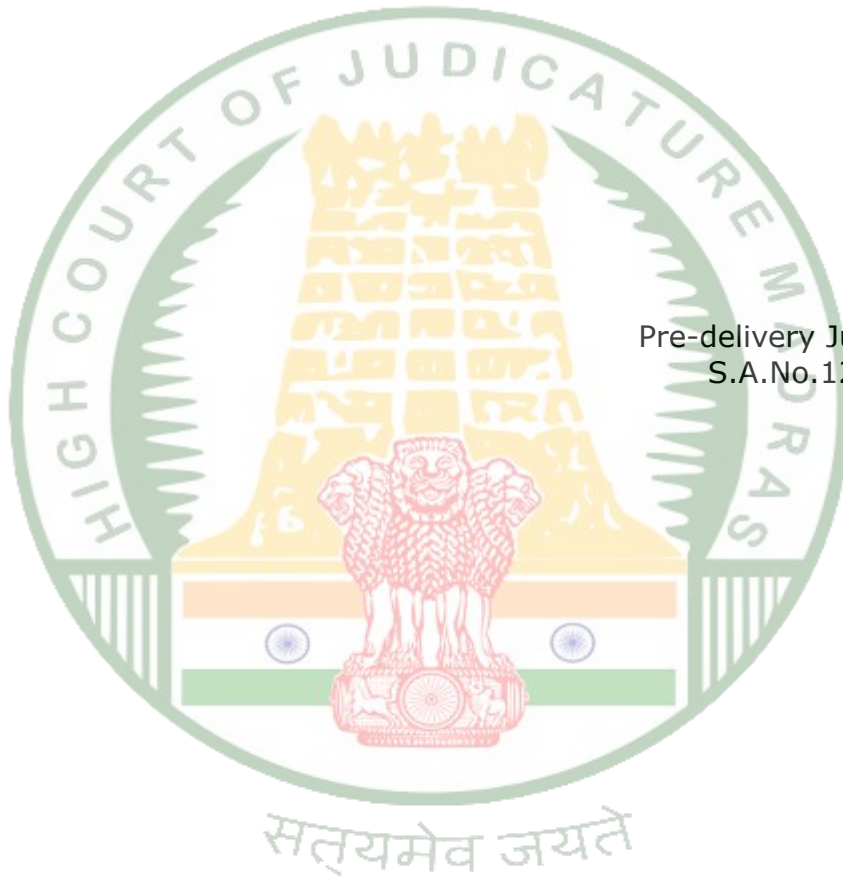


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N.SESHASAYEE,J.,

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Pre-delivery Judgment in
S.A.No.1252 of 2004

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