

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1017 of 2019

and

CMP.No.21923 of 2019

- 1.Naveena
- 2.Samuktha

..Appellants/Appellants/Plaintiffs

Vs.

- 1.The Executive Officer,
Arachalur Town Panchayat,
Arachalur Post, Arachalur,
Erode District - 638 101.
- 2.The Assistant Executive Engineer (Operations & Maintenance),
Tamil Nadu Electricity Generation and Distribution Corporation,
Kasthuriba Giramam,
Kasthuriba Giramam Post, Erode Taluk,
Erode District.
- 3.The Assistant Engineer (Operations & Maintenance),
Tamil Nadu Electricity Generation and Distribution Corporation,
Arachalur Village and Post,
Arachalur,
Erode District.
- 4.K.Prakash
- 5.P.Hemalathan

..Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned I Additional Subordinate Judge, Erode in A.S.No.48 of 2016 dated 10.07.2019 confirming the judgment and decree of the learned Principal District Munsif, Erode in O.S.No.329 of 2012 dated 28.07.2016.

For Appellants : Mr.C.E.Pratap

J U D G M E N T

The plaintiffs in O.S.No.329 of 2012 on their suit being dismissed and the said dismissal being confirmed in appeal in A.S.No.48 of 2016 have come up with this Second Appeal.

2. The suit was laid by the plaintiffs seeking a declaration that the act of the defendants 2 and 3 in granting electricity supply to the defendants 4 and 5 to suit property is ultra vires and against law, for mandatory injunction directing the defendants 2 and 3 to disconnect the service connection and for permanent injunction restraining the 1st respondent from changing the assessment order or entering the names of the defendants 4 and 5 as owners of the property.

3. According to the plaintiffs, the suit property originally belonged to one Sellappa Gounder, who died leaving behind two sons Chinnaasamy and Viswanathan and a daughter Lakshmi. The plaintiffs are the daughters of Viswanathan, one of the sons of Sellappa Gounder. Sellappa Gounder died in the year 2003. According to the plaintiffs, the suit property was purchased out of the joint family funds by Sellappa Gounder in the name of Chinnaasamy.

4. A suit for partition was filed by the minor plaintiffs in O.S.No.375 of 2004, in which an ex parte preliminary decree came to be passed on 13.12.2004 and an application in I.A.No.258 of 2006 was filed for passing of final decree and the same is said to be pending. Therefore, according to the plaintiffs, in view of the pendency of the final decree proceedings, the defendants who are the purchasers from Chinnaasamy would not be entitled to any right by virtue of the sale deed dated 08.09.2004 executed by the court in their favour.

5. The suit was resisted by the defendants contending that the suit property belonged to Chinnaasamy absolutely and the said Chinnaasamy entered into an agreement of sale agreeing to sell the property to one Meenakshi on 27.03.1998. Pursuant to the said agreement, the said Meenakshi filed a suit in O.S.No.628 of 1999. The said suit, after contest, came to be decreed on 16.07.2003, since the vendor viz., Chinnaasamy failed to execute the sale deed as per decree, the purchaser filed an Execution Petition in E.P.No.22 of 2004 for execution of the sale deed and in the said execution proceeding, the sale deed came to be executed on 08.09.2004. Thereafter, the purchaser viz., Meenakshi filed execution Petition in E.P.No.10 of 2005 seeking delivery of possession. When delivery was ordered and the purchaser attempted to take possession, the plaintiffs herein filed an application in I.A.No.326 of 2005 under Order XXI Rule 97 to 100 of the Code of Civil Procedure obstructing execution. The said application came to be dismissed on 09.01.2006 after contest and possession was taken by Meenakshi on 06.02.2006. The said Meenakshi executed a gift settlement deed in favour of her daughter Rajathi on 30.11.2006. The said Rajathi executed a registered sale deed in favour of the 5th defendant on

08.02.2011. Therefore, according to the defendants 4 and 5 the 5th defendant was in possession of the property.

6. The defendants 1 to 3 being official defendants submitted that the electricity connection was given on the basis of valid property documents and the mutation of revenue records was also effected based on the sale deed executed by the court in favour of Meenakshi.

7. The courts below upon consideration of the evidence on record found that the decree obtained in the partition suit viz., O.S.No.375 of 2004 is a collusive decree. It was also found that the suit in O.S.No.375 of 2004 was itself filed on 11.10.2004 i.e., after the execution of the sale deed by the court in favour of Meenakshi.

8. The courts below also faulted the plaintiffs for not impleading the purchaser viz., Meenakshi in the suit for partition. The courts below concluded that the order of dismissal of the application in I.A.No.326 of 2005 would bar the plaintiffs from re-agitating the question regarding their right, title and interest in the present suit. It is the settled law that the proceedings under Order XXI Rule 97 is treated as a suit and all questions relating to right, title and interest of the parties to the said proceedings can be decided by the court executing the decree under the said provisions.

9. The said order is also made appealable as if it is a decree of the civil court. This would only mean that the findings rendered under Order XXI Rule 97 to 100 would be akin to that suit and the finding would operate as res judicata in these proceedings. Order XXI Rule 101 of the Code of Civil Procedure reads as follows:-

101. Question to be determined
All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

10. A reading of the above provision would show that once the execution of the decree is obstructed, the executing court has jurisdiction to decide all the questions relating to right, title and interest of the parties to the proceeding and separate suit for that purpose is barred. Therefore, I do not find any error or illegality or perversity in the findings of the courts below in dismissing the suit.

11. I do not find any question of law much less a substantial question of law in order to enable me to entertain this Second Appeal. Hence, the Second Appeal is dismissed without being admitted. No cost. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

dsa
To

1. The I Additional Subordinate Judge, Erode.

2. The Principal District Munsif, Erode.

+1 CC to Mr.C.E.Pratap, Advocate sr 86253.

S.A.No.1017 of 2019

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RSI (CO)
SP(03/03/2020)

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