

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.10.2020
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
SA. No.527 of 2020

Balakrishnan

.. Appellant/Appellant/Plaintiff

Vs.

1. Poongavanam

2. Kannaiyan

3. The Junior Engineer
O & M,
Tamil Nadu Electricity Board,
Pudupet, Panruti Taluk,

4. The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
L.N. Puram, Panruti.

5. The Superintending Engineer,
Tamil Nadu Electricity Board,
Cuddalore.

.. Respondents /Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.12/2017 on the file of the Subordinate Judge, Panruti, dated 29.06.2020 confirming the decree and judgment passed in O.S.No.335 of 2005 on the file of the District Munsif, Panruti dated 10.02.2017.

For Appellant : Mr.V.K.Vijayaraghavan

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No.335 of 2005 has come up with this Second Appeal, aggrieved by the dismissal of the suit for mandatory injunction for transfer of the Electricity Service connection in his name.

2. The plaintiff claims title to the suit property under a Sale Deed dated 21.09.1988 executed by the first defendant, who happens to be his brother's wife. According to the plaintiff, since the Electricity Service Connection was sought for in the name of the first defendant, it was allowed to be granted in her name as any name change will delay the grant of service connection. Therefore, after his purchase he wanted the Authorities to transfer the service connection in his name.

3. This suit was resisted by the defendants 1 and 2 contending that the Sale Deed dated 21.09.1988 is vitiated by fraud. According to the second defendant who filed a written statement, which was adopted by the first defendant, the suit property originally belonged to the family and at a partition in the year 1987, it was allotted to the second defendant. Therefore, the first defendant had no right to convey the property to the plaintiff. The Sale Deed executed by the plaintiff in favour of the first defendant in the year 1983 was also characterised as a document incapable of conveying any title.

4. The Courts below have accepted the defence and dismissed the suit. Hence the Second Appeal by the plaintiff. I have heard Mr.V.K.Vijayaraghavan, learned counsel appearing for the appellant.

5. Mr.V.K.Vijayaraghavan, learned counsel appearing for the appellant would vehemently contend that in a suit for a mandatory injunction simplicitor the Courts ought not to have gone into the question of title and pronounced upon title. They should have left the question of title open allowing the parties to agitate the title in appropriate proceedings.

6. Though I do not find any infirmity in the ultimate decision of the Courts below, I do not think they were right in going into the question of title and pronouncing upon title in a suit for mandatory injunction simplicitor. Therefore while confirming the judgment and decree of the Appellate Court, I leave the question of title open to be decided in appropriate proceedings.

7. The Second Appeal is dismissed with the above observation without being admitted.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

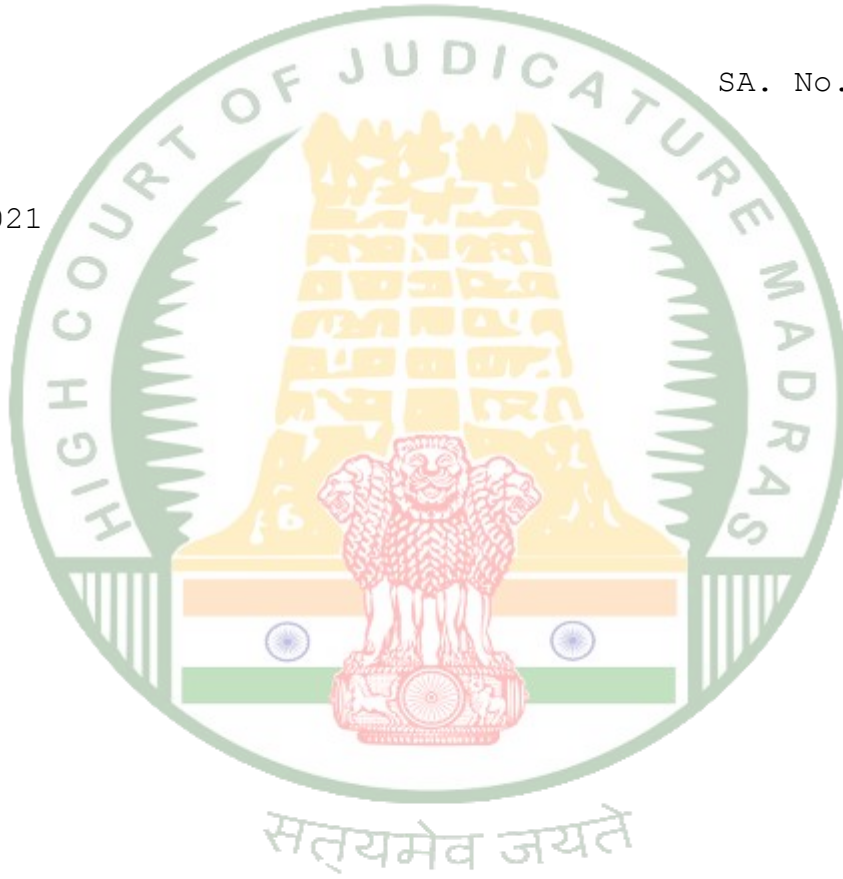
1. The Subordinate Judge,
Panruti

2. The District Munsif,
Panruti

+1 cc to Mr.V.K.Vijayaraghavan Advocate sr33605

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