

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.638 of 2014
and MP No.1 of 2014

Chinnasamy

... Appellant/Appellant/Plaintiff

Vs.

1. The Junior Engineer,
(Operation and Maintenance),
Tamilnadu Electricity Board,
Sithar, Bhavani Taluk,
Erode District.
2. The Executive Engineer,
(Operation and Maintenance)
Tamilnadu Electricity Board,
Bhavani, Erode District.
3. The Superintending Engineer,
(Operation and Maintenance)
Tamilnadu Electricity Board,
Gobichettipalayam, Erode District.

K.P.Chinnasamy gounder (died)

4. K.C.Ponnusamy ... Respondents/Respondents 1 to 3
& 5/Defendants 1 to 3 & 5

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 07.03.2014 made in A.S.No.52 of 2011 on the file of the learned Sub Court, Bhavani confirming the judgment and decree dated 31.10.2011 made in O.S.No.116 of 2009 on the file of the learned First Additional District Munsif Court, Bhavani.

For Appellant : Mr. N.Manokaran

For Respondents: Mr. V.Viswanathan, for RR 1 to 3

Mr. S.Kaithamalai Kumaran, for R4

J U D G M E N T

This matter is taken up for final hearing through Video-Conferencing with the consent of all the counsel appearing.

2. The plaintiff in O.S.No.116 of 2009 having filed in his attempt to obtain a decree for permanent injunction restraining the defendants from disconnecting the suit service connection before both the Courts below, has come up with this Second Appeal.

3. According to the plaintiff, he purchased the suit property from one P.Kumaresan son of Perumalgounder on 05.06.2008. After his purchase he had applied for Electricity Service Connection and the same has been granted to him in December 2008. He would also submit that he came to know that the defendants 4 and 5 have obtained a permanent injunction decree against the defendants 1 to 3 and the vendor of the plaintiff, viz., Kumaresan restraining them from effecting service connection to the suit property in OS No.116 of 1999 on 05.07.2001. Claiming that he was ignorant of the said decree when he had purchased the property and had obtained the service connection subsequently. He would also claim that the defendants 4 and 5 have only 1/3rd share in the suit properties and they have obtained a preliminary decree for partition in OS No.127 of 1984. They have not even applied for a final decree. Therefore, according to the plaintiff, he being a bona fide purchaser, he is entitled to have the service connection uninterruptedly.

4. The suit was resisted by the fifth defendant contending that the defendants 1 to 3 were not justified in granting a service connection to the plaintiff in the teeth of the decree in OS No.116 of 1999 granted against the plaintiff's vendor Kumeresan as well as the other defendants in the present suit. He has also taken steps to have the said decree for permanent injunction executed. It is at this juncture the plaintiff has come forward with the above suit.

5. At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A15 were marked. One Amuthavalli, an officer of the first defendant was examined as D.W.1 and the fifth defendant was examined as D.W.2. Exhibits B1 and B2 were marked.

6. The Courts below upon a consideration of evidence on record concluded that once there is a decree for permanent injunction against the plaintiff's vendor and the other defendants in OS No.116 of 1999, the plaintiff cannot seek a

counter injunction restraining the respondents from disconnecting the electricity supply that was admittedly granted in violation of the decree for injunction. It is also seen that the plaintiff had purchased the property after the decree in O.S, No:116 of 1999 and therefore, the judgment and decree in OS No.116 of 1999 would be binding on him. The Courts below also pointed out that there will be two conflicting decrees, one against the defendants 1 to 3 and the vendor of the plaintiff restraining them from granting service connection for the suit property and another restraining the defendants 1 to 3 from disconnecting the service connection that was granted in violation of the decree for injunction. On the said findings, the Courts below dismissed the suit. Aggrieved, the plaintiff has come up with this Second Appeal.

7. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant, Mr. V.Viswanathan, learned counsel appearing for the respondents 1 to 3 and Mr. S.Kaithamalai Kumaran, learned counsel appearing for the fourth respondents.

8. Mr.N.Manokaran, learned counsel appearing for the appellant would vehemently contend that he being a pendente lite purchaser has got some right in enjoyment of the property and therefore, the Courts below were not right in dismissing the suit. Of course a pendente lite purchaser has got some right. The suit in OS No.116 of 1999 was decreed on 05.07.2001, therefore it is after the said decree, the plaintiff's vendor had sold the property to the plaintiff and the plaintiff had obtained an Electricity connection in the year 2008 under the teeth of the decree for permanent injunction. The decree in OS No.116 of 1999 is very much binding on the plaintiff, who is a purchaser from a defendant in the said suit, who had suffered a decree for injunction.

9. As rightly pointed out by the Courts below, I find that there would be conflicting decrees for permanent injunction if the present suit is also decreed. I therefore do not find any question of law much less substantial question of law in order to enable me to entertain the appeal. The Second Appeal fails and therefore it is dismissed without being admitted. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv

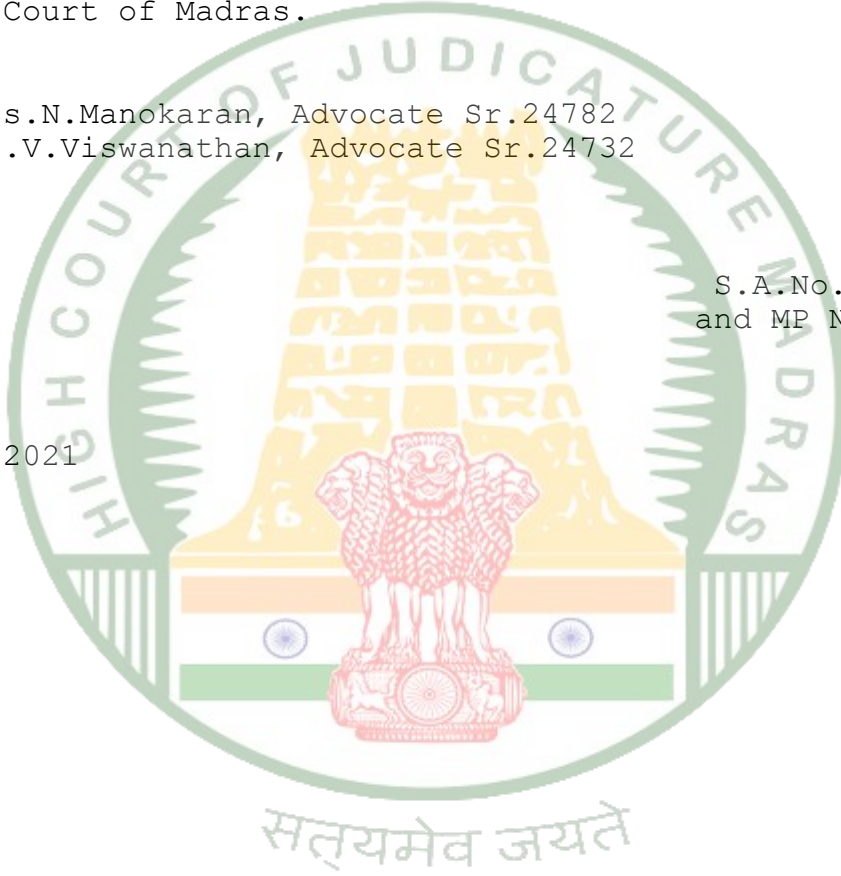
To

1. The Subordinate Judge,
Bhavani.
2. The First Additional District Munsif,
Bhavani.
3. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to M/s.N.Manokaran, Advocate Sr.24782
1cc to M/s.V.Viswanathan, Advocate Sr.24732

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