



IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 05.03.2021]

[JUDGMENT PRONOUNCED ON : 25.06.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1285 of 2007

and

M.P.No.1 of 2007

1. K.Palanisamy @ Palaniyappan (Died)

2. P.Kowsalya

3. P.Prabakaran

4. P.Gnanaselvi

[Appellants 2 to 4 brought on record as L.Rs. of the deceased first appellant viz., K.Palanisamy vide order of Court dated 27.01.2021 made in C.M.P.Nos.14847 & 14846 of 2019 in S.A.No.1285 of 2007]

... Appellants/Plaintiffs

.. Vs ..

1. Tamilnadu Electricity Board,
Represented by its

Superintending Engineer,

Periyar Electricity Distribution Circle, Erode - 9.

2. The Junior Engineer,
Tamilnadu Electricity Board,
Operation and Maintenance,
Mullamparappu, Erode Taluk.

3. Karuppanagounder

... Respondents/Defendants

Prayer:- Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.02.2007, passed by the learned I Additional Sub Judge, Erode, in A.S.No.70 of 2006, confirming the judgment and decree dated 14.12.2005 passed by the learned Principal District Munsif, Erode, in O.S.No.1351 of 2004.

For Appellants : Mr.V.S.Kesavan

For RR-1 & 2 : No Appearance

For R-3 : Died

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The legal representatives of the original plaintiff are the appellants herein.

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

3. The original plaintiff namely, K.Palanisamy @ Palaniyappan, has filed a suit in O.S.No.1351 of 2004 before the Principal District Munsif Court, Erode, for the relief of permanent injunction against the defendants 1 and 2 and their men and officials from disconnecting or shifting the suit service connection and permanent injunction restraining the third defendant from dismantling the suit electric motor pump set, electric service connection and other things in the schedule of the property.

4. After trial, the said suit in O.S.No.1351 of 2004 was dismissed by the learned Principal District Munsif, Erode, on 14.12.2005. As against the order of dismissal, the plaintiff has preferred an appeal in A.S.No.70 of 2006 before the learned I Additional Sub Judge, Erode. The learned I Additional Sub Judge, Erode, by judgment dated 12.02.2007, dismissed the said appeal in A.S.No.70 of 2006 by confirming the judgment and decree passed by the trial Court. As against which, the plaintiff has preferred the above second appeal before this Court. Pending the second appeal, the original plaintiff namely, K.Palanisamy @ Palaniyappan died and his legal heirs were brought on record as appellants 2 to 4 in this second appeal.

5. The third defendant is the father of the original plaintiff. The defendants 1 and 2 are the officials of the Tamil Nadu Electricity Board.

6. The sum and substance of the plaint averments are as follows:-

[i] The plaintiff, third defendant, the plaintiff's younger brother Paramasivam and one Thangamuthu gounder partitioned their family properties under a registered Partition Deed dated 15.07.1977, where under the plaintiff was allotted schedule 'B' in the said Partition Deed. The registration copy of the said Partition Deed was marked as Ex.A.1. An extent of 1.50 acres in old S.F.No.277/1 [R.S.No.24/2] was allotted to the plaintiff with a well therein, along with other properties. The said land originally an Inam land in the name of Lord Varadharaja Perumal. But the land was in possession and enjoyment of the plaintiff and his predecessor's in title time immemorial. Except the plaintiff, no one has got any right, title or possession over the said property. The RSR extract for the suit property is produced herewith. The plaintiff has produced the kist receipt for the suit land in Patta No.1020.



[ii] Prior to the aforesaid partition, the third defendant had applied with defendants 1 and 2 for agricultural electric service connection for the well in S.F.No.277/1. On the priority basis, for the service connection in 71/2, H.P., electric motor was sanctioned and the service connection was effected in S.C.No.237 after the said partition on 26.10.1977. Though the service connection was sanctioned in the name of the father of the third defendant (The application was made by the father before partition), the plaintiff only met out all the expenses for obtaining it and for installation of motor etc., Hence, for the aforesaid reasons, the third defendant has no right in the said service connection, since he has not contributed any amount either for obtaining the service connection or for installation of 71/2 H.P., electric motor. The service connection No.237 of Mullamparappu distribution is the subject matter of the suit and it is hereinafter referred to as the suit service connection.

[iii] The plaintiff averred in the plaint that ever since then, he was using the suit service connection and electricity motor pump set for irrigating his land in R.S.No.24/2. The suit service connection is for agricultural purpose exempted from payment of consumption charges.

7. The contesting defendant viz., third respondent herein, father of the plaintiff has disputed that the subject matter of the well was allotted to the plaintiff in the alleged Partition Deed dated 15.07.1977. However, the existence of the well prior to the Partition Deed is an admitted fact and the third defendant had applied for service connection much prior to the Partition Deed is also admitted by the plaintiff and it was disputed by the third defendant that the suit well was not allotted to the plaintiff and since the plaintiff doing foul play and doing criminal activity committing theft of electricity energy, the third defendant being a registered consumer had issued a legal notice to the first and second defendants to disconnect the free electricity supply given in the suit well service connection.

8. The official defendant No.2 has filed written statement wherein he has stated that based upon the V.A.O. certificate, temporary change of name was effected from the third defendant's father to the plaintiff's son and thereafter, the third defendant/father of the plaintiff has given a letter dated 15.05.2004 to disconnect the suit service connection alleging that his son, the plaintiff is misusing the free electricity suit service connection. Pending trial, an Advocate Commissioner was appointed.

9. Before the trial Court, on behalf of the plaintiff, the plaintiff examined himself as P.W.1 and two witnesses were examined as P.Ws.2 and 3 and documents Exs.A.1 to A.8 were marked. On behalf of the defendants, the second defendant



examined himself as D.W.1 and third defendant examined himself as D.W.2 and documents Exs.B.1 to B.9 were marked. Advocate Commissioner's report was marked as Ex.C.1 and Advocate Commissioner's sketch was marked as Ex.C.2.

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10. After trial, the suit was dismissed and as the appeal was also dismissed, the plaintiff has filed the above second appeal before this Court. In this second appeal, notice was ordered on 04.12.2007. After hearing the parties, the following substantial questions of law are framed:

(1). Whether the courts below were correct in discussing the title of the service connection possessed by the plaintiff when it is not the subject matter of the suit?

(2). Whether the plaintiff proved the possession of service connection and entitled for permanent injunction?

11. After hearing both the parties and on perusal of the oral and documentary evidence produced on either side, it is clear that the suit well was situated in Survey No.277/1. It is the specific case of the third defendant that under the Partition Deed-Ex.A.1, dated 15.07.1977, 1 acre 50 cent was given to the plaintiff. However, neither the well nor the pump set was allotted to him and it is the admitted case of both the parties that the suit service connection was effected on 26.10.1977. Admittedly, after the Partition, it was given in the name of the third defendant. An admission has been elucidated in the cross-examination of P.W.1 [plaintiff] that the service connection was given only in the name of his father viz., the third defendant and based upon the service connection, the plaintiff has unauthorizedly put two bore wells and also using the water by committing theft of energy and also stated that without obtaining prior permission from the Electricity Board, he was using the electricity for non agricultural purpose. Though the plaintiff claims that he was in possession for more than 30 years, the service connection is admittedly stands in the name of the third defendant and it has been shifted to the plaintiff's name on a temporary basis for 90 days only assumes significance. Despite notice given by the third defendant on 15.05.2004, the defendants 1 and 2 official defendants have not taken any steps to disconnect the service connection as could be seen from the cross-examination of P.W.1.

12. Furthermore, without obtaining change over switch and permission therefor, the plaintiff is misusing the service connection given in the name of the third defendant. As per the report of the Advocate Commissioner, who was examined as P.W.3, mutation of name change is only temporary for 180 days. Even after expiry of the said date, the plaintiff neither obtained necessary permission nor obtained permanent service connection assumes significance. From the cross-examination of



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the third defendant (D.W.2), it is seen that based upon the Advocate Commissioner's report, without obtaining necessary change over switch permission from TNEB, the plaintiff was using it for deep bore well which is not intention of the electricity board, since it is an agricultural service connection and hence, the Lower Appellate Court, taking note of the evidence of D.W.1, has categorically given a finding that the defendants 1 and 2 though having the knowledge of violation of Rules, other than the assigned purpose, the plaintiff, without getting the permission for change over switch, he was misusing the service connection for deep bore well and such a finding is well merited and well considered.

13. From Ex.B.4, this Court finds that the name transfer was effected from the name of the third defendant to the plaintiff's name on temporary basis only for 180 days only. When such being so, the plaintiff cannot seek permanent injunction against the original consumer in whose favour the service connection was given effect to and hence, I find that seeking injunction restraining the electricity board from disconnecting the service connection which is admittedly given in the name of the third defendant and the plaintiff was using it only for 180 days, on a temporary arrangement and after expiry of the said period, he cannot seek the indulgence of this Court for permanent injunction against the original consumer in whose favour the service connection was effected. An apprehension of the third defendant that the plaintiff is using the service connection for illegal purposes, the third defendant, being the original consumer, he has to face legal consequences thereto meted by the plaintiff also assumes significance. No doubt, in Ex.A.1-Partition Deed, the suit well was not allotted to the plaintiff and the service connection being standing in the name of the third defendant, the plaintiff is not entitled for any injunction as sought for. Both the Courts below have concurrently and rightly held that the plaintiff is not entitled for relief of permanent injunction. Both substantial questions of law do not arise for consideration. The judgment and decree passed by both the Courts below do not suffer from any irregularity or illegality warranting interference at this appellate stage. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

14. In the result,

[i] The Second Appeal is dismissed and the judgment and decree dated 12.02.2007, passed by the learned I Additional Sub Judge, Erode, in A.S.No.70 of 2006, confirming the judgment and decree dated 14.12.2005 passed by the learned Principal District Munsif, Erode, in O.S.No.1351 of 2004, is confirmed.

[ii] However, there shall be no order as to

costs



[iii] The connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Jr1
To

1. The I Additional Sub Judge,
Erode.
2. The Principal District Munsif,
Erode.

S.A.No.1285 of 2007

GPL (CO)
A.SK(29.10.2021)