



S.A.No.294 of 2004

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

S.A.No.294 of 2004 &

C.M.P. No.1814 of 2004

1. K.Ramaswami Gounder (Died)
2. Kamalam
3. Rathinaswami
4. Thirugnanam
5. Kaliyammal

...Appellants

(Appellants 2 to 5 brought on record as LR's of the deceased sole appellant vide order of this Court dated 05.01.2015 made in C.M.P.No.871 of 2008)

Vs.

1. The Superintending Engineer
T.N.E.B., Tatabad, Coimbatore-12.
2. The Divisional Engineer
T.N.E.B., Vadavalli, Coimbatore.
3. The Junior Engineer,
T.N.E.B., Devarayapuram, Coimbatore Taluk.



S.A.No.294 of 2004

WEB COPY

4. P.Muthuvelswamy
5. Subbathal
6. Sivagami
7. Rajammal
8. Dhanalakshmi
9. Mokaanambigai
10. Kannammal

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgement dated 25.04.2001 passed in A.S. No.220 of 1999, on the file of the Second Additional District Judge, Coimbatore, upholding the decree and judgement dated 12.04.1999 passed in O.S. No.2366 of 1993, on the file of the District Munsif, Coimbatore.

For Appellants	: Mr.S.Bala Ganesh For Mr.T.M.Hariharan
For R1 to R3	: Mrs.Hemalatha Gajapathy
For R4	: Ms.S.Janani, for Sai Associates.

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.



S.A.No.294 of 2004

WEB COPY

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. During the pendency of the present Second Appeal, the first appellant/plaintiff died and therefore his legal heirs were impleaded as appellants 2 to 4.

4. The brief facts of the case of the plaintiff is are follows:

The plaintiff is the owner of S.No.410 of Thennamannallur Village, Coimbatore Taluk and was in possession of the Electricity Service Connection S.C.No.275 of Devarayapuram under Boluvampatty distribution for the purpose of irrigating his lands. The plaintiff has been in possession and enjoyment of the same for several years and while so the defendants 1 to 3 disputing the title of the plaintiff (since deceased) over the suit property attempted to interfere with his peaceful possession over the same. They also attempted to disconnect the service connection without any valid reason. The plaintiff had raised sugarcane, turmeric

Page 3 of 14



S.A.No.294 of 2004

WEB COPY

and coconut trees in his land and if the Electricity Service connection is disconnected, he would be put to great loss. Therefore, he filed the suit for a mandatory injunction directing the official respondents namely the Superintendent Engineer, TNEB, Tatabad, Coimbatore Taluk and the Deputy Engineer TNEB, Vadavalli, Coimbatore to restore the service connection to the suit land in the name of the plaintiff.

5. The suit was resisted by the defendants on the following grounds:-

- i. The plaintiff has no locus standi to file the suit.
- ii. The plaintiff is not the owner of the suit property and he has filed the present suit with false and trivial allegations.
- iii. On the basis of the decision of this Court and as per the convenience the service connection had already been transferred in the name of one P.C.Pongiyappa Gounder on 06.07.1991.
- iv. The third respondent inspected the service connection on 30.11.1993 and found theft of energy by the said Pongia gounder. The electricity service connection was immediately disconnected.



S.A.No.294 of 2004

WEB COPY

v. With a view to escape from the clutches of law and their liability to pay compensation to the Electricity Board, Pongia gounder and the plaintiff had colluded together and filed a suit with false allegations.

vi. In fact the plaintiff had filed several suits in respect of the estate of one Rakia Gounder, who is the original owner of the suit property and all the suits were dismissed. The plaintiff having failed in his attempts had come out with the present set of false allegations.

vii. Therefore, they prayed for dismissal of the suit.

6. The trial Court on the basis of the above pleadings framed the following issues :-

"(i) Whether the plaintiff is entitled for a mandatory injunction?

(ii) To what other relief he is entitled ?"

7. Before the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to A11. The fourth defendant examined himself and one another witness and marked Ex.B1 to Ex.B77.



S.A.No.294 of 2004

WEB COPY

8. After analyzing the oral/documentary evidence adduced on both sides, the trial court dismissed the suit, aggrieved over which, the plaintiff filed an appeal in A.S.No.220 of 1999 before the Second Additional District Judge, Coimbatore. The learned Second Additional District Judge, Coimbatore dismissed the appeal vide his decree and judgment dated 25.04.2001 on the following grounds:-

- i. There is a dispute between the plaintiff and the defendants 4 to 10 in respect of the title over the suit property and it is an admitted fact that the suit property was originally owned by Rakia Gounder.
- ii. Rakia Gounder had three wives and he had no issues. The contention of the plaintiff is that he is the adopted son of Rakia Gounder and has right to inherit his entire estate.
- iii. During life time of Rakia Gounder one of his wives Pachaiammal filed a suit claiming maintenance from her husband. Out of the three wives one wife died and after the death of Rakia Gounder his two wives namely, Kuppathal and Pachaiammal partitioned the entire properties belonging to Rakia Gounder. Pachaiammal settled her share in favour of her brother Pongia Gounder who is



S.A.No.294 of 2004

WEB COPY

the father of the defendants 4 to 10. Though the plaintiff filed several suits against the defendants, he failed in all his suits.

iv. The evidence on record shows that the service connection was already transferred on 06.09.2011 in the name of Pongia gounder.

v. On 30.11.1993, the Anti-Power Theft Squad detected theft of power and the service connection in respect of the house of Pongia Gounder was disconnected by the officials.

vi. The plaintiff, except the stay order passed in the second appeal (marked as Ex.A12) had not adduced any documentary evidence to show that he has title over the suit property.

9. Now, the present second appeal is filed on the following substantial question of law:-

"(i) Whether the dismissal of the suit filed by defendants 4 to 10 against the plaintiff herein stated to have been withdrawn at the second appellate stage before this court will give a legal right to the plaintiff to have the service connection Nos.193 and 275 re-transferred to his name, which was earlier transferred from his name solely based on



S.A.No.294 of 2004

WEB COPY *the pendency of the suit?"*

10. Heard Mr. S. Bala Ganesh, learned counsel for the appellants, Mrs. Hemalatha Gajapathy, learned counsel for the respondents 1 to 3 and Ms. S. Jajani, learned counsel for the 4th respondent.

11. Mr. Bala Ganesh, learned counsel appearing for the appellant contended that the plaintiff has been in possession of the suit property and that till date, civil suits are pending between him and the defendants 4 to 10. However, he admitted that the service connection was transferred in the name of Pongia Gounder in the year 1991 itself. According to him, the transfer made in the name of Pongia Gounder was totally erroneous and therefore, the plaintiff is entitled for a mandatory injunction as prayed for in the suit.

12. The learned counsel appearing for the respondents would contend that the plaintiff was only appointed as a receiver in the suit in



S.A.No.294 of 2004

WEB COPY

O.S.No.402/1950 on the file of District Munsif, Coimbatore, to administer the estate of Rakia Gounder. However, he has gone to the extent of claiming himself to be the adopted son of Rakia Gounder. According to them, after the death of Rakia Gounder, the suit properties were partitioned between his two wives namely Kuppathal and Pachaiammal. Pachaiammal executed a registered settlement deed dated 23.03.1959 (Ex.B9) in favour of her brother Pongia gounder and ever since the date of settlement deed, Pongia Gounder has been in possession and enjoyment of the suit property. It is further contended that the Electricity Service Connection was transferred in the name of Pongia Gounder as per the deed of settlement in the year 1991 and therefore, the plaintiff cannot claim transfer of electricity service connection in his name, especially, when he has not adduced any documentary evidence to show that he has title over the suit property.

13. I have carefully analyzed the oral and documentary evidence adduced on both sides, from which, it is clear that the plaintiff has not adduced any acceptable evidence to show that he has title over the suit property. He has not also filed any documentary evidence to



S.A.No.294 of 2004

WEB COPY

show that he is the adopted son of late Rakia Gounder. The plaintiff admits that he was originally appointed as receiver in O.S.No.402 of 1950 on the file of the District Munsif, Coimbatore. The said suit was filed by Kuppathal and Ayyammal, the wives of Rakia Gounder. In the meanwhile, Pachaiammal, another wife of Rakia Gounder, filed a suit in O.S.No.364 of 1948 (Ex.B5) against her husband Rakia Gounder, Kuppathal and Ayyammal and the present plaintiff. The suit for maintenance in O.S.No.364 of 1948 was taken up along with O.S.No.402 of 1950 and by a common judgment, it was held that the wives of Rakia Gounder are entitled for maintenance. In view of the same, the properties of Rakia Gounder were divided in two equal shares and Kupathal and Pachaimmal were allotted one such share since Ayyammal in the meanwhile died. In the final decree, the receiver/plaintiff was directed to hand over possession of the suit property to the wives of Rakia Gounder and accordingly, the receiver had handed over possession as per the judgment passed by the learned District Munsif in E.P.No.484 of 1963 (Ex.B8) in O.S. No.402/50. Thus, the suit property was allotted to the share of Pachaimmal who executed a settlement deed in favour of



S.A.No.294 of 2004

WEB COPY

her brother Pongia Gounder. It is further seen that Pongia Gounder had also dealt with the property by mortgaging the same as is seen from the certified copies of the mortgage deed Exs.B20 & Ex.B22. Thereafter, he had also discharged the loan as evidenced from the discharge receipts Exs.B23 and Ex.B24 receipts. A perusal of Ex.B25 to Ex.B51 shows that Pongia Gounder has been in possession of the suit property for the past 40 years. Ex.B61, which is a certified copy of the judgment passed in S.C.No.81 of 1984 shows that the present plaintiff was convicted and sentenced to undergo imprisonment for life. After serving the sentence, he attempted to trespass into the suit property and a complaint in this regard was lodged. Thus, the various records adduced by the defendants clearly shows that Pongia Gounder has been in possession of the suit property and service connection was transferred in his name as per the decree and judgment passed in O.S.No.402 of 1950 & O.S.No.364 of 1948 and as per the settlement deed executed by Pachaimmal. As already observed, the plaintiff has not placed any documentary evidence to show his possession over the suit property and in the circumstances, both the Courts were right in dismissing the suit filed by the plaintiff.



S.A.No.294 of 2004

WEB COPY

14. In view of the same, the substantial question of law is answered against the appellant and the appeal is dismissed.

15. In the result,

i. the second appeal is dismissed. No costs.

Consequently connected Civil Miscellaneous Petition is dismissed.

ii. the decree and judgment dated 25.04.2001 passed in A.S.No.220 of 1999, on the file of the Second Additional District Judge, Coimbatore and the decree and judgment dated 12.04.1999 passed in O.S.No.2366 of 1993, on the file of the District Munsif, Coimbatore, are upheld.

02.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
kmm/bga



S.A.No.294 of 2004

WEB COPY

- To
1. The District Munsif, Coimbatore.
 2. The Second Additional District Judge, Coimbatore.
 3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.294 of 2004

R. HEMALATHA, J.

kmm/bga

S.A.No.294 of 2004

02.03.2023