



S.A Nos.193, 836 and 837 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02 .2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A Nos.193, 836 and 837 of 2013
&M.P 1 of 2013

- 1.Kanniah Naidu
2. Logaiyan
- 3.Murali

... Appellants in S.A No. 193, 836 and 837 of 2013.

Vs.

- 1.Anadan
- 2.Shanthi
- 3.Junior Engineer,
Operation and Maintainence,
Tamil Nadu Electricitiy Board,
Minnal Village & Post,
Arakkonam Taluk, Vellore District.
- 4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Gandhi Nagar, Vellore,
Vellore District.

... Respondents in S.A No.193 of 2013.

- 1.Anandan

...Respondent in S.A No. 836 of 2013.



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1.Shanthi

... Respondent in S.A No. 837 of 2013.

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PRAYER in S.A No. 193 of 2013: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 25.11.2008 passed in A.S No.74 of 2007 on the file of the Subordinate Judge Arakkonam, Vellore District confirming the judgment and decree dated 29.05.2007 passed in O.S No. 153 of 2003 on the file of the District Munsif, Sholingar.

PRAYER in S.A No. 836 of 2013: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 25.11.2008 passed in A.S No.75 of 2007 on the file of the Subordinate Judge Arakkonam, Vellore District confirming the judgment and decree dated 29.05.2007 passed in O.S No. 89 of 2004 on the file of the District Munsif, Sholingar.

PRAYER in S.A No. 837 of 2013: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 25.11.2008 passed in A.S No.76 of 2007 on the file of the Subordinate Judge Arakkonam, Vellore District confirming the judgment and decree dated 29.05.2007 passed in O.S No. 174 of 2004 on the file of the District Munsif, Sholingar.

For Appellants: Mr.R.Bharathkumar
For Respondents:A.Gowthaman



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COMMON JUDGMENT

Challenging the concurrent findings of Courts below defendants preferred this second appeal.

2. Originally three suits were filed by the first and second respondent herein on the file of the District Munsif, Sholingar, against the appellants in O.S No. 153 of 2003, in which seeking for the relief of declaration to declare that they are entitled to 63/192 share in the A schedule property, and seeking for mandatory injunction direct the defendants 1 to 3 to restore the plaint B schedule property in the plaint C schedule Well and and another relief seeking for permanent injunction against the fourth and defendant not to shift the electricity connection in A schedule property to any other Well or bore Well. In O.S No. 174 of 2004, the plaintiff seeks relief for damages directing the defendants to pay Rs. 6240/- to the plaintiff. In O.S No.89 of 2004 the plaintiff seeking relief for damages directing the defendants to pay Rs.7200/- to the plaintiff.

3. Before the Trial Court both the parties adduced their evidence as well as documents, on considering submissions on either side, it



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held that the the plaintiffs and the defendants are common owners of the C schedule property and as per the rotation they are entitled to irrigate through Well and as per the rotation period as mentioned detailed in the evidence. Accordingly right of declaration was granted in favour of the plaintiffs. Further the evidence reveals that electric equipments were unlawfully removed by the defendants hence plaintiffs' are entitled for the mandatory injunction as they prayed in the suit and also restore the channel course by way of mandatory injunction and also granted relief of permanent injunction not to shift the electricity service connection No. 108 by the Electricity board to newly drilled Well by the defendants and also the first plaintiff entitled to damages as they claimed in the suits. Accordingly, the suits were decreed in favour of the plaintiffs.

4. Aggrieved over the same the defendants preferred an appeal before the Subordinate Court, Arakkonam, which independently analysed the facts and evidence concluded that the defendants are not absolute owner of the suit service connection No.108 as well as they have no right to deny the enjoyment of the C schedule property for the plaintiffs' and also concluded that plaintiffs having common share in the C schedule irrigation Well thereby dismissed the appeal by confirming the findings of the Trial



Court.

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5. Challenging the said findings the defendants preferred this second appeals this Court admitted the second appeals with the following substantial questions of law:

- i. Whether the Court below are right in decreeing the suit taking into consideration of oral evidences of plaintiffs in the absence of pleadings?
- ii. Whether the Courts below have committed an error of law in granting declaratory relief in respect of A shcedule property in the absence of proof of co-ownership of thereon?
- iii. Whether judgment and decree of the Courts below are vitiated on the ground of perverse?

6. The brief facts of the case are as follows:

The Plaint 'C' Schedule property is an old well in which 1st defendant is having 96/192th share. The first Plaintiff's father Changalvaraya Naidu purchased 1/12th share in the Plaint C-Schedule property, among landed properties from Chinnammal and others for valuable consideration under a registered sale deed dated 27.01.1968, i.e. 16/192th share. The first Plaintiff's father also purchased 13/192th share in the plaint C-Schedule property among landed properties from M.C. Munirathinam and others for valuable consideration under a registered sale



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deed dated 07.05.1982. The first Plaintiff is entitled to 11/192th share in the Plaintiff C-Schedule property ancestrally. Thus the 1st Plaintiff is entitled to 40/192th share in the same. The 2nd plaintiff is entitled to 40/192th share in the same. The 2nd Plaintiff had purchased 23/192th share, in the Plaintiff C-Schedule property from her mother Kannammal among landed properties, for valuable consideration under a registered sale deed dated 25.08.2003, and the 1st Plaintiff herein. Except 7 ½ cents of land in Dry [S.F.No. 343/10B](#) all the other lands to an extent of 40 cents referred in the above said sale deed is the Ayacut lands of the Plaintiff C-Schedule well. The 2nd Plaintiff and her brother K. C. Ganesan are together entitled to 40/192th share in the Plaintiff C-Schedule property. The 2nd Plaintiff is entitled to 23/192th share as stated above and her brother K. C. Ganesan is entitled to 17/192th share in the same. An extent of 30 cents of K. C. Ganesan is the Ayacut land of the Plaintiff C-Schedule well. In the sale deed dated 25.08.2003, the well share is mentioned as 1/24th share by mistake, and the 2nd plaintiff is going to take steps to correct it as 23/192th share by way of rectification deed. The First defendant's brother by name Anandan is entitled to 16/192 share in the Plaintiff C-Schedule property and he sold the same to the first defendant. The Plaintiffs, first defendant, K.C. Ganesan and



Anandan have also drilled a bore well and put electric motor in that bore well. While so, the first defendant applied to the 4 defendant's Office to obtain Electric Service connection for the Electric Motor and pumpset to be installed in his well situated at the Eastern side of the lake which also sanctioned by the electricity board and service connection No.108 was assigned and it was put in the plaint C Schedule well. For which, the First defendant, his brother Anandan and the 2 Plaintiff's brother K C. Ganesan have contributed their share of Money towards the expenses incurred for the for putting a Plaint A Schedule Property, in proportionate to the well shares belonging to them in the Plaint C-Schedule well. Thus the Plaintiffs, the First Defendant, his brother Anandan and the 2nd Plaintiff's brother K C. Ganesan are Co-owners of the plaint A and C-Schedule properties and they are in common enjoyment of the same. In fact, a Scheme was framed with regard to irrigation of the Plaint C-Schedule well among the aforesaid shares, in which the First Defendant has to take water for 24 hours ie., a fully the First Plaintiff for 10 hours, the 2 plaintiff and her brother K. C. Ganesan together for 10 hours and the First Defendant's brother Anandan for 4 hours. The said Scheme of irrigation of the plaint C-Schedule well is adopted ever since the date of obtaining Electric Service Connection, Viz..



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for about past 15 years. In the meanwhile, the defendants 1 to 3 all at a sudden had illegally and high-handedly taken away the plaint B-Schedule property from the plaint C- Schedule well on 30.10.2003. Further they are making speedy arrangement with the 4th defendant to shift the plaint A-Schedule property to his bore well. As a matter of fact they had chosen a place to dig the bore well in their land. They are not entitled to do so. The 4th defendant is also not entitled to order for shifting of the Suit Electric Service Connection from the suit well. The first defendant is doing so, to defraud the plaintiff's legitimate share in the suit properties. In spite of oral representation to the 4 defendant not to order for shifting of Electric Service Connection to some other place form the suit well, the 4th defendant is arranging to order for the same, and therefore the plaintiffs have issued a registered legal notice dated 03.11.2003 to the defendants 3 and 4 in that aspect. They have not chosen to send reply so far. But the 4th defendant still continues his attempt to order for shifting the Electric Service Connection. Further, the First Plaintiff raised Gundu Paddy in his land in an extent of 45 cents shown as E-Schedule and the 2nd Plaintiff raised Gundu Paddy in an extent of 40 cents shown as F-Schedule in the plaint. The lands immediately mentioned supra are the Ayacut lands of the Plaint C Schedule well. Since



the 1 Defendant had taken away the Plaintiff No. 36, and Chilles, and Gundu Paddy, Ragi seedlings in his lands, which are also Ayacut lands of the suit well. The aforesaid Crops of the parties are withering for want of water since 30.10.2003. Further the defendants 1 to 3 have obliterated the Plaintiff D-Schedule mentioned Channels about three months ago. The First Plaintiff is entitled to take water through the Plaintiff D-Schedule Channels. The First Plaintiff, his father and their pre-decessor in interest have been taking water through the said channel right from time immemorial. The defendants 1 to 3 are bound to restore the obliterated channels to its original position, and also to restore the plaintiff B-Schedule property in the suit well. Hence the suit.

7. The written statement of the defendants are as follows:

The defendants admitted the relationship with the plaintiffs. Further, the Plaintiffs, the 1st defendant, his brother Anandan, 2nd Plaintiff and the defendants 1 to 3 are Co-owners of the plaintiff 'C' schedule well. But the plaintiffs, and the said K. C. Ganesan and Anandan, have no share and no right in the plaintiff A Schedule property. The defendants 1 to 3 are the absolute owners of the plaintiff A Schedule property and denied that the Plaintiffs said Anandan and K. C. Ganesan are in common enjoyment of the



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'A' Schedule property. Further they denied the alleged scheme which was framed with regard to irrigation of the Plaintiff C Schedule well among the aforesaid shares in which the first defendant has no right to take water for 24 hours (i.e) a full day, the first plaintiff for 10 hours, the Plaintiff and her brother K. C. Ganesan, together for 10 hours and the First defendants brother Anandan for 4 hours and its adoption. Further they stated that Electric service connection S.C No.108 was installed in the Plaintiff C Schedule well out of his own fund and denied the right claimed by the plaintiff and he has perfected his right and title over the same by way of adverse possession. Further they stated that the Electric Motor and Pumpshed bearing S.C. 187, absolutely belonged to one Chinnappa Naidu, Son of Munusamy Naidu, residing in Gudallore Village. While so, the said Chinnappa Naidu sold out the said Electric Motor and Pumpshed bearing S.C. 187, to the 1 defendant for full and valid considerations under the Registered sale deed dated 13.04.1987 and delivered possession of the same to the First defendant on the same day. Thereafter defendant has transferred the said service connection No. 187 in his name also and it has been installed only in the well situated in [S.F.No.](#) 388/2. in which the Plaintiffs Anandan and the said K. C. Ganesan have no share and right. Thus, the 1st



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defendant has perfected his right and title over the [S.C.No.](#) 187 and the well in [S.F.No.](#) 388/2 in pursuance of the said sale deed dated 13.04.1987 and also by way of adverse possession also. Thus, the 1st defendant has been in possession and enjoyment of the said Motor and Pumpshed bearing [S.C.No.](#) 187, continuously from 13.04.1987 to till today without any objection. The defendant 2 and 3 being sons of the 1 defendant are enjoying the same along with first defendant. The defendants 1 to 3 are legally entitled to dug up a bore well in their lands. The plaintiffs, Anandan and K. C. Ganesan have no share in the plaint 'A' and 'B' Schedule properties and hence, they have no right to make any objection to the 4th defendant with regard to [S.C.No.](#) 187 and SC.No 108. The Plaintiffs have no right over the plaint 'B' Schedule property. It is true the first defendant has raised paddy crops in his lands. But he is taking water from third party's well. The water in C Schedule well dried up way long ago. Hence it is false to state that the Plaintiffs crops are withering for want of water since 30.10.2008. Further they denied the allegations that they have obliterated the plaint 'D' Schedule mentioned channels. The channel describe in 'D' Schedule is in existence. Therefore there is no necessity for defendants 1 to 3 to restore the said channel. The plaintiffs have no right in the 'A' and 'B' Schedule properties. Hence there is



no necessity for the defendants 1 to 3 to restore the plaint B Schedule properties. The plaintiffs have no right and title over the plaint 'A' and 'B' schedule properties. The 1st defendant above has got absolute right and title over the plaint 'A' and 'B' Schedule properties. The defendants 2 &3, being sons of the first defendant enjoying the same the Plaintiffs have no share and right over the plaint 'A' and 'B' schedule properties, they are not entitled to ask for restoration of the 'B' Schedule properties and also asking the 4th defendant not to shift the service connection to the bore well of the defendants. They pray to dismiss the suit.

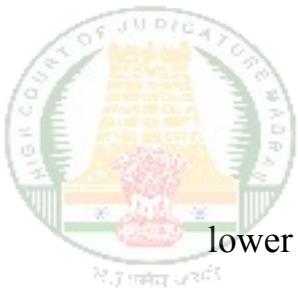
8. The learned counsel for the appellant submitted that the Court below failed to taken note of the fact that through Ex.A1/sale deed plaintiffs purchased only 13/192 share in the land as well as irrigating Well and not that service connection. Further Ex.A8 sale deed not referred suit service connection it referred only another service connection which is common connection, in absence of the above the Trial Court granted declaration and injunction as well as survey connection as such is unfair and liable to be set aside. Furthermore, the documents Ex.A9, A21 to A25 photos and the communications and not referred the plaintiff's right in the



disputed suit electricity service connection and also the Trial Court erroneously appreciated Ex.A20 which is inadmissible in evidence as it is unregistered document. Apart from that, the evidence of the officer of electricity board not been Properly appreciated by the Court below. Hence he prayed to allow the appeal by set aside the findings of the Court below.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents.

10. The plaintiffs are claiming right in the irrigating Well in C scheduled property and also in electricity service connection No. 108 along other sharers. But the first defendant claiming absolute right over the electricity service connection No. 108 and the bore well dug up in the irrigation Well/C schedule property. To prove their right over the Well the plaintiffs relied the sale deed marked as Ex.A1, A2, A3 through which plaintiffs father purchased land along with share in the Well. On the other hand, the First defendant totally denied the plaintiff's share over the Well but the documents relied by the plaintiff's clearly reveals that they purchased the land along with the Well. Furthermore, during the evidence the witness on the side of the defendants also admits that plaintiffs are having share in the suit Well and the same was rightly appreciated by the



lower Court which needs no interference. The defendant claimed absolute right over the C schedule Well is not maintainable one. Therefore the findings of the Trial Court needs no interference.

11. In respect of electricity service connection No. 108 the contention of the plaintiffs' is that that first defendant in order to irrigate lands from the Well he applied to the Electricity Board accordingly electricity service connection 108 was allotted but with regard to fixing the electric motor pumpsets and to fix the other equipments the plaintiff's and the defendants' equally shared the money and fixed it for which the first defendant also allowed the plaintiffs' to irrigate the Well through the said pumpset by using service connection 108. But the defendant denied the same. On seeing the Ex.A20/hand written letter of the third defendant, it is evident that the defendant dug up Well in the year 1988 for which the plaintiff shared their money hence the defendants allowed the plaintiffs to utilise the Well and irrigate the land equally. In spite of objection raised by the plaintiff while pending suit the defendants removed the electric pumpset from the C schedule property so the plaintiffs were unable to cultivate the land and the crops also damaged, for that the plaintiff's claiming damages by filing separate suit.



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12. To prove this fact plaintiffs also examined commissioner report who visited the property and note down the physical features submitted the report which marked as Ex.C1 and C2 as per the evidence commissioner and his report reveals that at the time of visiting the suit property the crops in the plaintiff field were damaged without any water but the land of the defendant were cultivated through pumpset fixed in the C schedule property(Well). Further other electric equipments also removed from the said irrigation Well but the age of the Well seems to be more than 70 years with the help of advocate commissioner the plaintiffs established that before filing of the suit electric pumpset were removed by the defendants due to that crops were damaged. But the objection of the defendant is that in the suit service connection 108 the plaintiffs have no right so also in the bore Well which was dug up by him on his own cost, to disprove the same plaintiff relied Ex.A20/hand written letter of the third defendant to the Electricity Board, which reveals that in the year 1988 Well was dried without water thereafter the bore Well was drilled, for which the plaintiff and other shares paid their share amount hence the defendant allowed the plaintiff to draw water from the said borewell to irrigate the suit



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properties. Though the defendant denied the signature of the letter but the plaintiffs proved the signature of the defendant. Therefore the Trial Court rightly appreciated Ex.A20 and declare the plaintiff's right over the Well as well as electricity connection No. 108 and also bore well, both the plaintiffs' and defendant irrigating the land through bore Well by electricity connection No. 108. At the time of filing of the suit service connection mentioned as 187 subsequently it is termed as 108 but the disputed number 108 admitted by both the parties so the Court below rightly appreciated the evidence and records and granted relief in favour of the plaintiffs which needs no interference. Accordingly questions of law are answered. The suits are decreed in favour of the plaintiffs. Therefore the findings of the Court below is confirmed.

13. In result, the second appeal is dismissed as no merits. There shall be no order as to costs. Consequentially connected miscellaneous petitions is closed.

03.02.2023

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1. The Subordinate Judge Arakkonam, Vellore District .
2. The District Munsif, Sholingar.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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