



S.A.No.504 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.504 of 2023
and C.M.P.No.15458 of 2023

K.Muthusamy

... Appellant

Vs.

1. Palanisamy Gounder
2. Ponnusamy
3. Muthusamy
4. Chinnasamy gounder (died)
Gurusamy (died)
5. Thulasimani
6. Palanisamy
7. The Tamil Nadu Electricity Board,
Rep. by the Superintending Engineer,
Erode Distribution Circle,
EVN Road, Erode.
8. The Assistant Executive Engineer,
O& M, Tamil Nadu Electricity Board,
Arachalur Road, Chennimalai,
Perundurai Taluk.



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9. The Assistant Engineer,
O& M, Tamil Nadu Electricity Board,
Pudupalayam, Chennimalai,
Perundurai Taluk.

10. Boobathi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleased to set aside the Judgement and Decree made in A.S.No.12 of 2020 dated 09.12.2022 passed by the learned Subordinate Judge, Perundurai, Erode District, confirming the Judgment and Decree in O.S.No.135 of 2012 dated 28.02.2020 on the file of the learned District Munsif, Perundurai, Erode District.

For Appellant : C.Venkatesan

JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the learned Subordinate Judge, Perundurai, Erode District, in A.S.No.12 of 2020 dated 09.12.2022, confirming the Judgment and Decree passed by the learned District Munsif, Perundurai, Erode District, in O.S.No.135 of 2012 dated 28.02.2020.



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2. The appellant is the 4th defendant before the trial Court and respondents 1 to 6 are the plaintiffs, who had filed the original Suit seeking for relief of declaration, mandatory injunction and permanent injunction. The suit was decreed in favour of the respondents 1 to 6/plaintiffs and it was confirmed by the first appellate Court. Aggrieved against the same, the appellant/4th defendant has filed this present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the Original Suit.

4. The crux of the plaint averments is as follows:

(a) The plaintiffs 1 to 3 are brothers. By virtue of a registered partition deed dated 19.08.1986, they are entitled to a specific extent in old S.F.No.297 of Ekkatampalayam Village, Perundurai Taluk and 5/9 share in the plaint 'A' schedule well situated in old S.F.No.297 and the resurvey number for the said well is R.S.No.135/3.

(b) The 4th plaintiff and one Kaliyappa gounder are entitled to 1/9 shares each by virtue of a registered partition deed dated 10.09.1987 in the said well. The 5th plaintiff's father Pongiannagounder is entitled to 2/9



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shares in the said well by a virtue of the registered partition deed dated 12.5.1955 and the 5th plaintiff is the sole heir to succeed the said property. The 6th plaintiff is the only daughter of the 5th plaintiff, who got the property under family arrangement from the 5th plaintiff. Hence, the 6th plaintiff is entitled to 2/9 shares in the said well. The above said Kaliappagounder died leaving behind the 4th defendant to succeed his estate. Hence, the 4th defendant is entitled to 1/9 share in the said well. The 5th defendant is the son of the 4th defendant. Thus, the plaintiffs and the 4th defendant are entitled to the said well in R.S.No.135/3 in common.

(c) Plaintiffs 1 to 4, the father of the 5th plaintiff namely Ponginanna Gounder and the 4th defendant have applied for 5 Hp electric Motor service connection for the suit 'A' schedule well with the 3rd defendant, in the name of the 4th defendant as prime person, since the plaintiffs are ignorant and illiterate and they have no worldly knowledge, they were not aware of it. There was an oral agreement between the co sharers of the 'A' schedule well that they will get the proportionate share in the electric service connection in accordance with their shares.



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(d) In the year 1999, an Application was made for getting electricity service connection under self finance scheme. Meanwhile, there was a misunderstanding between the 4th defendant and the plaintiffs and they were not in talking terms. Taking advantage of the fact that the application for electric service connection stands in his name, the 4th defendant was trying to shift the said new connection to his separate well under the self finance scheme itself. Therefore, the 4th plaintiff, on 13.11.2000 sent a petition to the 3rd defendant raising objections for issuing and shifting the said new Electric service connection to some other well. Thereupon the said proposal was dropped.

(e) The plaintiffs submit that the application for service connection was matured on its regular priority recently and defendants 1 to 3 seemed to have invited the 4th defendant his readiness for the service connection. Defendants 4 and 5 with the connivance of defendants 1 to 3 have made secret arrangements to get that electric service connection for the plaint 'B' schedule bore-well situated in R.S.No.135/7 in the land of defendants 4 and 5. The 4th defendant went to the extent of forging the signatures of the plaintiffs and the thumb impressions of the 4th plaintiff and



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the said Pongianna Gounder/father of the 5th plaintiff and fabricated an affidavit and got it notarized in support of shifting the service connection from the well in R.S.No.135/3 to the bore-well in R.S.No.135/7. The recitals found in the said Notary affidavit would prove that the suit service connection was applied in common by them.

(f) The fraud committed by the defendants have come to the knowledge of the plaintiffs in the first week of February 2010 and they made representation to defendants 1 to 3 and on 11.02.2010, they sent a legal notice to them for calling upon them not to energize the 'B' schedule bore-well. The 3rd defendant purposely delayed in receiving the said legal notice and he received the same on 19.2.2010 after giving the service connection to the 4th defendant for the 'B' schedule bore-well and he issued a reply letter dated 25.2.2010 stating that the service connection was already effected in the name of the 4th defendant.

(g) The plaintiffs, under the Right to Information Act, had come to know that the service connection was effected on 15.2.2020 itself. Thereby, they had lodged a complaint before the Chennimalai Police Station against defendants 3 to 5 and two others and based on which, a case in crime



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No.13/11 has been registered under Sections 120A, 198, 416, 463, 464 & 468 of IPC and the same is under investigation.

(h) The 'B' schedule bore-well is drilled for the purpose of getting the electric service connection and defendants 4 and 5 have planned to get additional load and shift the suit service connection to their separate well and the 3rd defendant, on 23.05.2012, inspected the suit 'B' schedule properties for the aforesaid purpose. Defendants 1 to 3 may shift the service connection at any moment to other separate open well of defendants 4 and 5 and they are not entitled to do so. In that event, plaintiffs would be put to great hardship.

(i) In view of the original application made by the plaintiffs and the 4th defendant, they have entered into an oral agreement that they receive the electric service connection for the 'A' schedule well in common and agreed to divide the expenditures in accordance with their share in the well. The 4th defendant fraudulently obtained the new electric service connection for his separate bore-well in R.S.No.135/7 and the same is liable to be transferred to the suit 'A' schedule well. The plaintiffs own 8/9 shares in the suit A schedule well and defendants 4 and 5 have only 1/9 share.



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(j) Inspite of the protest made by the plaintiffs, defendants 1

to 3 gave electric service connection, thereby, they have to be directed to shift the suit service connection from the well in R.S.No.135/7 to the well in R.S.No.135/3, as per the application given by them. Hence, the plaintiffs have filed the present suit for declaration, mandatory injunction and permanent injunction.

(k) During the pendency of the suit, the 4th plaintiff namely

Chinnasamy Gounder died on 26.09.2012 leaving behind his son as legal heir namely 7th plaintiff.

5. The 3rd defendant has filed the written statement and it was adopted by defendants 1 and 2. The crux of the averments in the written statement is as under :-

No application for additional load was received for the service connection mentioned in the suit and the 3rd defendant has not inspected the suit 'B' schedule property for additional load purpose on 23.05.2012. The 3rd defendant has not received any application to shift the service connection for the said bore-well to other open well belonging to 4th and 5th defendants.



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The application was in the name of the 4th defendant alone and there is no necessity for getting "no objection" from anybody in the event of getting service connection belonging to the 4th defendant. Since the service connection was exclusively in the name of the 4th defendant, he alone is entitled for shifting for other purpose and other than that nobody can claim right or anything. Except the 4th defendant neither the plaintiffs nor the 5th defendant has any right or whatsoever regarding the service connection. There is no cause of action for the suit and thereby, the suit may be dismissed.

6. The 4th defendant has also filed the written statement and it was adopted by the 5th defendant. The crux of the averments in the written statement is as follows:

(a) The plaintiffs were not interested in getting the electricity service connection, since the said well was dried and it was only the 4th defendant, who took the initiative and made the plaintiffs to apply for a service and the said application was made in the name of the 4th defendant. There was no oral agreement between the co sharers of the 'A' schedule well



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as alleged in the plaint. Moreover, since the plaintiffs had already obtained separate service connection to their separate wells, they were not particular about this service connection and promised that they would not claim any right over the same.

(b) The plaintiffs were not inclined to spend for a service connection which could not be used on account of dryness of the common well and they themselves expressed the same to defendants 2 and 3 and when the 4th defendant expressed his readiness to have the service connection, it was given to the bore well situated in R.S.No.135/7. Initially the service connection was applied in common and later, only with the consent of the plaintiffs the service connection was shifted to the bore well in R.S.No.135/7, in a routine manner on 15.02.2010.

(c) The 4th defendant further contended that once the plaintiffs did not want the service connection, they have no right to question him on opting the additional load or getting his own service connection shifted to his separate well and thereby, the plaintiffs cannot have any grievance, when the 3rd defendant inspected the suit 'B' schedule properties. Therefore, the said service connection is not liable to be transferred to the suit 'A' schedule well and also contended that the 4th defendant does not dispute the right of the



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plaintiffs to 8/9 shares in the well in 'A' schedule property. The plaintiffs have filed the suit belatedly and there is no cause of action and thereby, they are not entitled to any declaration sought for and they are not entitled for any injunction either mandatory or prohibitory. The suit is, therefore, liable to be dismissed.

7. The trial Court has framed the following issues.

1. Whether the plaintiffs are entitled to the relief of mandatory injunction against defendants 1 to 3 as prayed for or not ?
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for or not ?
3. To what other relief?

8. During the trial, on the side of the plaintiffs, PW1 & PW2 were examined and Ex.A1 to Ex.A20 were marked. On the side of the defendants, DW1 & DW2 were examined and Ex.B1 to Ex.B6 were marked.

9. After a full fledged trial, the trial Court decreed the suit as prayed for by the plaintiffs in O.S.No.135 of 2012 dated 28.02.2020, against



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which, the 4th defendant has filed the appeal in A.S.No.12 of 2020 before the Subordinate Court, Perundurai.

10. During the appeal, the appellant/4th defendant has filed an application in I.A.No.2 of 2022 to receive additional documentary evidence and it was heard along with appeal.

11. The first appellate Court, based on the grounds of appeal had framed the following points for consideration.

1. Whether the application for obtaining service connection in the 'A' schedule well was made in the name of the 4th defendant in the respective capacity?
2. Whether there was an oral agreement among the co-sharers that they would get the proportionate share in the service connection?
3. Whether the consent Affidavit Ex.A19 was a forged one?
4. Whether the additional documents mentioned in I.A.No.2/2022 are to be received as additional evidence on the side of the appellant?
5. Whether decree and judgment in O.S.No.135 of 2012 dated 28.02.2020 passed by the trial Court is liable to



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be set aside?

6. Whether the appeal is to be allowed or not ?

12. So far as the Application filed by the appellant is concerned, the first appellate Court, finding that the documents sought to be marked as additional documents are sale deeds executed by the plaintiffs in favour of the 3rd parties and the revenue records in respect of R.S.No.135/1, had dismissed the application contending that a person may retain certain rights while conveying some of the rights to the 3rd party and he can sell the retained rights later and also stated that merely because the plaintiffs have not conveyed the share in service connection though the sale deeds cannot be a ground to infer that, they have admitted that they did not have any right in the service connection.

13. Further, the first appellate Court, after considering the oral and documentary evidence, had dismissed the Appeal Suit by confirming the judgment and decree passed by the trial Court in O.S.No.135 of 2012 dated 28.02.2020. Aggrieved against the concurrent findings of the Courts below, the present second appeal has been filed.



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14. Heard, perused the judgments of the Courts below and also the grounds raised by the appellants.

15. The issue to be resolved in the present Second Appeal is whether the electricity service connection obtained in respect of 'A' schedule well entirely belongs to the appellant/fourth defendant in whose name it was availed or whether the co-sharers viz., the plaintiffs and defendants would get their respective shares in the well.

16. On analysis of the entire oral and documentary evidence and the judgment and decree of the courts below, this court is able to see that the electricity service connection for 'A' schedule well was obtained in the name of the fourth defendant only for the purpose of convenience, however, it was intended to be used by the co-sharers jointly. Such a factual aspect has been clearly admitted by the fifth defendant, who is the son of the fourth defendant, when he was cross-examined. The further admission of DW1 reveals that an objection was filed by the plaintiffs on 13.11.2000 contending that DW1 was trying to exclusively use the service connection taking advantage of the fact that the service connection is in the name of 4th defendant and thereupon, the service connection process was stalled.



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17. The feeble defence taken by the defendants that the plaintiffs had expressed 'no objection', Ex.A19 for provision of electricity service connection in the name of the fourth defendant and hence, they are not entitled to claim any exclusive right in the service connection was dealt with by the courts below in proper perspective. The Courts below, found that when one of the signatories to Ex.A19 viz., Pongianna Gounder, father of the fifth plaintiff had passed away on 19.8.1996 itself as evidenced by E.A16, the thumb impression found in Ex.A19 claimed to be that of Pongianna Gounder must be a forged one. The evidence of DW1 and especially, the admission made by him in this regard and simultaneous ignorance pleaded by him about the affixture of thumb impression of Pongianna Gounder has been taken into consideration by the courts below to arrive at a conclusion that the plaintiffs have established their case that though the service connection was applied in the name of the fourth defendant, it was intended by the parties to use the service connection by all the co-sharers who are having share in the 'A' schedule well and without the consent of the plaintiffs, the 4th defendant had fraudulently got it changed to 'B' schedule bore-well.



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18. Therefore, it is clear that on re-appreciating the entire oral and documentary evidence, the first appellate Court had concurred with the findings of the Trial Court both on facts and in law and rightly appreciated and confirmed the judgment and decree of the Trial Court .

19. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that no substantial question of law is involved to admit this second appeal.

20. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question



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of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

21. In view of the above, sans any substantial question of law, the Second Appeal fails and the same is dismissed confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petition is closed.

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Speaking / Non-speaking

Neutral Citation : Yes / No



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A.D.JAGADISH CHANDIRA.,J.

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To

1. The Subordinate Court, Perundurai, Erode.
2. The District Munsif Court, Perundurai, Erode.
3. The Section Officer, VR Section, High Court of Madras.

***S.A.No.504 of 2023
and C.M.P.No.15458 of 2023***

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