



S.A.No.931 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 24.09.2024

CORAM

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

S.A.No.931 of 2009

Ganesan

... Appellant

Vs.

Perumal Gounder (died)

- 1.Sundaam
- 2.Chinnakkal
- 3.Chandra
- 4.Khandha

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.7 of 2007 dated 21.09.2007 passed by the Subordinate Judge, Mettur, reversing the Judgment and Decree passed in O.S.No.274 of 1997 dated 31.01.2005 passed by the District Munsif cum Judicial Magistrate, Omalur.

For Appellant	: Mr.M.Elango
For R1	: Died
For R1	: Mr.P.Jagadeesan
For R3 & R4	: No appearance



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JUDGMENT

WEB COPY The appellant herein is the defendant and the respondents are the plaintiffs.

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

3.A suit in O.S.No.274 of 1997 was filed by the plaintiffs, seeking for permanent injunction. The case of the plaintiffs is that 1st plaintiff is the father and the 2nd plaintiff is the son. The suit schedule mentioned property situated in S.No.79/7 was purchased by the 1st plaintiff under a registered sale deed, dated 11.7.1984 from one Abbai Chettiar. On the said day, the defendant also purchased the property in same survey number, i.e. S.No.79/7 from the same vendor. There was a common well in the property and as per the sale deed in favour of the 1st plaintiff, the 1st plaintiff and the defendant have common right over the said well. Since, it was not in good condition, in 1984, both the plaintiffs and the defendant jointly spent money and repaired the well and used the water from the well for their respective fields on alternate days. In



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the year 1988, with the consent of the 1st plaintiff, the defendant obtained an electric service connection in his name for the common well. As per Muchalika dated 26.02.1988 both the plaintiffs and the defendant have to use the electric service equally for the purpose of irrigating their respective lands by drawing water from the common well. The patta for the lands belonging to the 1st plaintiff and the defendant is given in their name as common and likewise, the electric service connection is also common to be used by them equally. While so, due to misunderstanding arose between the 1st plaintiff and the defendant in respect of repair charges of the common motor, the defendant was restraining the plaintiffs from using the electricity service connection to irrigate their lands, which prompted the plaintiffs to file the suit.

4. On the other hand, the defendant though admitted as regards purchase of property by both parties in same survey number and from same vendor, however, denied that after purchase of the property, the parties jointly spent money and repaired the well and used the water for their fields on alternative days. The case of the defendant is that both the 1st plaintiff and



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the defendant are having rights over the common well but the motor was fixed and electric service connection was obtained by the defendant by spending his own money and the plaintiffs are not entitled to get water by using the pump set fixed by the defendant. The plaintiffs having Ac.4.43 in S.No.79/7 and also having separate well and another well adjoining land purchased by Arunachalam Chettiar. The plaintiffs are using both the said well to irrigate their lands since they are having separate electric service connection and bore well. There is no cause of action for the suit and the suit is liable to be dismissed.

5. Based on the above pleadings, the trial Court has framed the following issues, viz.,

i) Whether the suit electric service connection and the electric motor pump set are common for both the plaintiffs and the defendant?

ii) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

iii) To what relief?

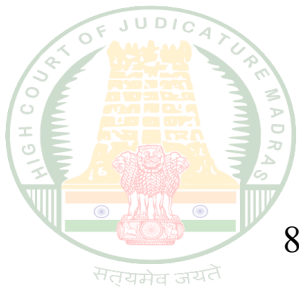
6. In order to prove their case, on behalf of the plaintiffs, the 2nd



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WEB COPY plaintiff was examined as PW.1 and one Ponnusamy was examined as PW.2 and Exs.A1 to A8 were marked; while on behalf of the defendant, the defendant was examined as DW.1 and one Appusamy was examined as DE.2 and Exs.B1 to B3 were marked.

7.On consideration of both oral and documentary evidence, the trial Court has categorically held that the plaintiffs have not made out a case for grant of the relief sought for by them in the suit. The trial Court has discussed in details as regards the usage of water pump set and electricity service connection stood in the name of the defendant and found that the plaintiffs have not proved by letting in evidence that they spent money towards installation of water pump set and also to get the electricity service connection in the name of the defendant for which, the 1st plaintiff gave consent letter to get loan from Mohanur Co-op.Sugar Mill and that the plaintiffs are having common right over the said usage of water pump set, etc. and came to a conclusion that the plaintiffs are not entitled to the relief and accordingly, dismissed the suit with costs.



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8. Aggrieved by the findings of the trial Court, the plaintiffs have preferred an appeal in A.S.No.7 of 2007 before the learned Subordinate Judge, Mettur. The first appellate Court, on consideration of the evidence on record and the findings of the trial Court, vide judgment dated 21.09.2007, reversed the findings of the trial Court and allowed the appeal. Challenging the same, the defendant has come forward with the present Second Appeal.

9. Having heard the learned counsel for the parties and on consideration of the entire materials and the findings of the Courts below, the following substantial questions of law would arise for consideration, viz.,

i) Whether the plaintiffs are entitled to the right of common usage of the water pump set connected with the common well and the equal right over the electricity service connection bearing S.C.No.191, which stood in the name of the defendant?

ii) Whether the first appellate Court is right in reversing the findings of the trial Court?

iii) To what relief?

10. It is not in dispute that both the 1st plaintiff and the defendant



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purchased the lands situated in same Survey No.79/7 from one Abbai Chettiar

and that there is a common well and both parties have equal right to use the same for the purpose of irrigation of their lands. The dispute is only pertaining to the usage of water pump set and to the electric service connection which stood in the name of the defendant. According to the learned counsel for the appellant/defendant, even in the absence of evidence let in by the plaintiffs, the first appellate Court has erred in holding that the plaintiffs are having equal right in usage of water pump set connected to the common well and also over the electricity service connection though admittedly stood in the name of the defendant. He would also submit that during pendency of the suit proceedings in the year 2000, the plaintiffs have also obtained independent electricity service connection bearing No.450. He would also submit that the first appellate Court has relied upon the Exs.A7 and A8, viz., unregistered deed of agreement of common right and Muchalika, said to have been executed between the defendant and the 1st plaintiff, but the contents of the said documents would not establish that the plaintiffs are having equal right over the water pump set as well as in the electricity service connection, but they would establish only as regards the

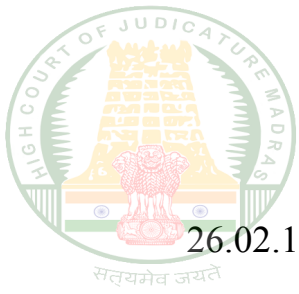


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common right over the common well. On the other hand, the learned counsel for the respondents/plaintiffs would submit that the lower appellate Court has dealt with the issues involved in the suit in a proper perspective and the plaintiffs have proved their case by adducing documentary evidence by way of Ex.A7 and A8 which were admitted by the defendant to the extent that he signed the said documents in blank papers, but the lower appellate Court has rightly held that once the defendant admitted his signature, he cannot take U turn and deny the same. He would also submit that since the electricity service connection could not be obtained in the name of two persons, the 1st plaintiff have no objection in favour of the defendant in getting the service connection and after getting the same, due to misunderstanding, the defendant prevented the plaintiffs to use the water pump set and the lower appellate Court has rightly reversed the findings of the trial Court, which requires no interference by this Court and hence, he would urge this Court to dismiss the appeal.

11.On going through the findings of the first appellate Court, this Court finds that the first appellate Court has mainly relied upon Ex.A7 dated

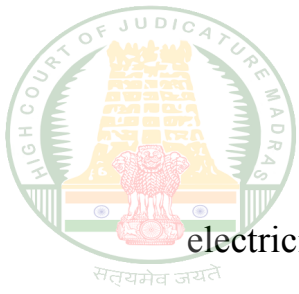


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26.02.1988, which is an agreement said to have been entered between the 1st

plaintiff and the defendant regarding enjoyment of E.B.connection and the motor pump set for the purpose of irrigation of their lands and also Ex.A8 Muchalika, dated 24.3.1989 executed by the defendant in favour of the 1st plaintiff as regards deepening the well, to get loan from Mohanur Co-op Sugar Mill, the 1st plaintiff had given consent letter. However, these Ex.A7 and A8 were denied by the defendant, stating that for the purpose of getting separate E.B.connection in the name of the 1st plaintiff, the defendant put some signature in blank papers, which were forged and created Exs.A7 and A8. It is pertinent to note that once the defendant denied the Exs.A7 and A8, it is for the plaintiffs to prove the same. Admittedly, the 1st plaintiff who is the party to Exs.A7 and A8, was not examined any witness to prove the contents of the said documents and no steps were taken by the 2nd plaintiff to get 1st plaintiff examined through Advocate Commissioner. In fact, no receipts as regards purchase of water pump set in joint name or electricity consumption receipts that were paid by the 1st plaintiff or his contribution thereof, were produced by the 1st plaintiff. It is not in dispute that the electricity service connection stands in the name of the defendant and no



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electricity service connection can be obtained in the name of two persons.

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No reasons were assigned in the plaint or in his deposition by the 2nd plaintiff that as to why the electricity service connection could not be taken in the name of either 1st plaintiff or 2nd plaintiff. Further, since the defendant denied Exs.A7, though the plaintiff examined one of the attestors, namely, Ponnusamy as PW.2 to prove Ex.A7, however, he admitted in his evidence that he is a close relative of the plaintiffs and the trial Court has rightly observed that there is possibility to depose in favour of the plaintiffs being their close relative. The plaintiffs have not proved other attesting witness to Ex.A7 as there were 3 attesting witnesses to it. Therefore, Ex.A7 cannot be relied upon. When the plaintiffs to prove Ex.A7, they cannot take a stand that the defendant admitted his signatures contained in it. Ex.A8 pertains to common rights over the usage of common well. There is no dispute over this aspect. The defendant fairly agrees that both the plaintiffs and himself have common rights over the usage of common well to irrigate their lands, but denied the right over the common usage of water pump set and electricity service connection since according to him, he purchased the same and he got the electricity service connection in his name and he is paying the electricity



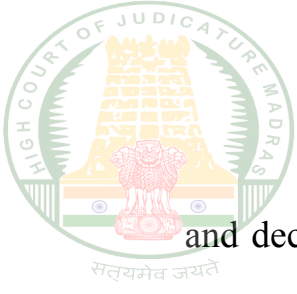
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consumption charges. Therefore, when there is no dispute over the common enjoyment in respect of common well, instead of raising the dispute as regards the electricity service connection, the plaintiff could very well approach the E.B.authorities and obtain separate service connection in their name by proving their ownership over the common well. In fact, the learned counsel for the appellant brought to the notice of this Court that during pendency of the suit proceedings, the plaintiffs have obtained separate electricity service connection bearing S.C.No.150.

12.In the light of the above discussion, this Court is of the view that the the plaintiffs are not entitled to the right of common usage of the water pump set connected with the common well and the equal right over the electricity service connection bearing S.C.No.191, which stood in the name of the defendant and accordingly, the substantial questions of law are answered in favour of the appellant. Consequently, the findings of the first appellate Court are liable to set aside.

13.In the result, the Second Appeal stands allowed and the judgement



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and decree dated 21.09.2007 passed by the first appellate Court in A.S.No.7

of 2007 are set aside and the judgment and decree dated 31.01.2005 passed

by the trial Court in O.S.No.274 of 1997 stand confirmed. There shall be no

order as to costs.

jai

24.09.2024



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To

- 1.The Subordinate Judge,
Mettur.
- 2.The District Munsif cum Judicial Magistrate,
Omalur.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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T.V.THAMILSELVI,J.

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