



SA.No.1061 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2024

PRONOUNCED ON : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

SA.No.1061 of 2011
and MP.No.1 of 2011

1. Vanammal
2. Ramesh
3. Ramu
4. Rajkumar
5. Lakshmi (minor)
represented by her mother Vanammal

... Appellants / defendants 4 to 8

V.

1. Shankar

2. Tamil Nadu Electricity Board
Reptd by its Executive Engineer CEDC (North)
Venbakkam, Ponneri.

3. The Assistant Engineer CEDC (North)
GNT Road, Elvaor Bazaar, Elvaor Village,
Gummudipoondi Taluk.

4. The Assistant Accounts Officer CEDC (North)
O/o.EE Complex,
Venbakkam, Ponneri.

... 1st Respondent/plaintiff
respondents 2 to 4 / defendants 1 to 3



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Prayer : This Second Appeal is filed under Section 100 of the Code of Civil Procedure 1908 to set aside the judgment and decree dated 11.02.2008 passed in AS.No.37 of 2006 on the file of Subordinate Court, Ponneri reversing the judgment and decree dated 29.12.2005 passed in OS.No.11 of 2004 on the file of the District Munsif, Ponneri.

For appellants : Mr.R.Munuswamy

For Respondents : Mr.T.P.Sekar for R1.
M/s.Hemalatha Gajapathy
Standing Counsel for R2 to R4.

J U D G M E N T

The instant second appeal has been filed at the instance of the defendants 4 to 8. The first respondent herein is the plaintiff before the trial Court. The respondents 2 to 4 are the defendants No.1 to 3 before the trial court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.



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The case of the plaintiff in brief :

3. The suit has been filed for the relief of declaration that transfer of suit service connection in favour of deceased Radha Reddy is null and void and for declaration that plaintiff is absolute and exclusive owner of the same and for mandatory injunction directing the defendants to shift the service connection to property of the plaintiff and to transfer the same from the name of deceased Radha Reddy to that of plaintiff and to give additional load of 7.5HP.

3.1. The plaintiff has sought the reliefs on the basis of sale deed dated 06.01.2003 regarding agricultural land to an extent of 0.75cents in S.No.1276/1 with the service connection No.26:157:02 from one Sundrammal wife of late Angu Reddy vide sale deed Doc.No.13 of 2003 on the file of the Sub Registrar Office, Gummudipoondi.

3.2. According to the plaintiff, the said Sundarammal already sold 20 cents of land to one Thangavel Reddy along with well but without service connection vide Doc.No.351 of 1978. The said Thangavel Reddy sold the said 0.20cents of land to Radha Reddy with well as well as



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Service Connection No.26:157:02 vide Doc.No.699 of 2002 on the file of the Sub Registrar, Gummudipoondi. The said Thangavel reddy having not purchased the disputed service connection, but illegally sold out the service connection to Radha Reddy and inturn the Radha Reddy illegally transferred the service connection in his favour. The said Radha Reddy died in the year 2003 leaving behind the defendants 4 to 8 are his legal heirs. Thereafter, the plaintiff approached the defendants 1 to 3 for name transfer of service connection, the defendants 1 to 3 orally refused to receive his application on the ground that the service connection stands in the name of Radha Reddy.

The case of the defendants 1 to 3 in brief :

4. According to their written statement, the service connection was originally stands in the name of Angu Reddy, after the demise of Angu Reddy, his legal heirs viz., Sundarammal and others sold the portion of the property in S.No.1276/1 to Thangavel Reddy vide Doc.No.351/1978 without the service connection and subsequently, he sold the same with service connection to Radha Reddy and on the basis of the sale deed, the said Radha Reddy effected name transfer in his favour.



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The case of the defendants 4 to 8 in brief :

5. According to their written statement, the said Radha Reddy is the husband of 4th defendant and father of defendants 5 to 8 purchased the land with service connection from Thangavel Reddy vide Doc.No.699 of 2002 and the said service connection had been enjoyed by his vendor Thangavel Reddy and after purchase he was in enjoyment and usage of service connection. Further, in the year 2002, the name transfer of service connection was effected in favour of the Radha Reddy and therefore, the plaintiff cannot sought for the relief through his sale deed, which is subsequent to the name transfer.

Trial Court and First appellate Court

6. Based on these pleadings, the trial Court framed the following issues :-

(i) Whether plaintiff is entitled to declaration that transfer of suit service connection in favour of Radha Reddy (deceased) is null and void?

(ii) Whether plaintiff is entitled to declaration that he is absolute owner of suit service connection?



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(iii) Whether plaintiff is entitled to mandatory injunction against the defendants 1 to 3 to shift the suit service connection?

(iv) Whether the plaintiff is entitled to mandatory injunction against the defendants 1 to 3 for name transfer of suit service connection?

(v) Whether the plaintiff is entitled to relief of mandatory injunction against defendants 1 to 3 for sanctioning additional load to suit service connection?

(vi) To what reliefs is the plaintiff entitled to?"

7. Before the trial Court on the side of the plaintiff two witnesses were examined. The plaintiff himself was examined as PW1 and one Sundarammal was examined as PW2 and Exs.A1 to A6 were marked. On the side of the defendants, 7th defendant was examined as DW1 and Exs.B1 to B4 were marked. On the side of the defendants 1 to 3, there was no oral and documentary evidence.



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8. The trial Court after having considered the oral and documentary evidences and the submissions made on either side has found that the plaintiff was a purchaser who has to make careful enquires before entering into a sale contract and the plaintiff has produced one current consumption bill stands in the name of the Angu Reddy for the year 1976, no bills or receipts have been produced upto date of his purchase by the plaintiff. The white meter card relating to suit service connection has been marked by the defendants 4 to 8 as Ex.B4. The plaintiff is guilty of gross negligence in not verifying the possession of the suit service connection with his vendors. Accordingly, the suit was dismissed.

8.1. Being not satisfied with the judgment and decree of the trial court, the plaintiff has preferred an appeal, the first appellate Court on reappreciation of evidence had reversed the findings and arrived at a conclusion that in Ex.A5 only 20cents of land with well have been sold and the electricity service connection have not been sold. It was also the findings of the first appellate Court that under Ex.A5 the service connection had not been transferred and only through Ex.A6, the service connection have been transferred to one Radha Reddy. It was also findings that no documents have been filed by the defendants to prove



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that Thangavel Reddy had been using the service connection. Further, the first appellate court finding that the trial Court without considering the Ex.A2, Ex.A5 and Ex.A6 on proper perspective concluded the rights over the service connection only on the basis of its usage and wrongly arrived at a conclusion that the plaintiff ought to have verified as who had been in usage of service connection. Aggrieved over the findings of the first appellate Court, the defendants 4 to 8 are before this Court by way of this second appeal.

Substantial Questions of Law :

9. At the time of admission, this Court has formulated the following substantial questions of law :-

"(1) Has not the lower appellate Court committed grave miscarriage of justice by shifting the burden of proving the negative on the defendants/appellant herein, which is against the settled law?"

(2) Has not the lower appellate Court erred in reversing the judgment and decree of the trial Court without setting aside the findings of the trial Court and without discussing as to how the findings of the trial Court are wrong in the back drop of oral and



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documentary evidence? Therefore the first appellate Court had improperly exercised its jurisdiction, which is not so vested with it?

(3) Has not the first appellate Court erred in misreading the evidence of PW1 and PW2 with total non-application of mind and allowed the first appeal over looking the documentary evidences and also by giving a go by to the admissions made by PW2 in her cross examination?

(4) Has not the first appellate Court committed grave irregularity in not exercising its jurisdiction in accordance with Order 43 of C.P.C.?

(5) Has not the first appellate Court committed grave injustice in allowing the appeal and decreeing the suit reversing the judgment and decree of the trial Court, placing reliance on the loopholes and weakness in the case of defense raised by the defendants without appreciating the fact that the plaintiff has failed to prove his case with legal evidence as was found by the trial court?

(6) Has not the first appellate Court erred in allowing the first appeal and decreeing the suit, when



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the suit reliefs as claimed by the plaintiff is not sustainable in the eye of law, particularly the first appellate Court failed to give any findings much less favour of the plaintiff to decree the suit?

(7) Has not the first appellate Court committed grave illegality in not adverting to the findings of the trial Court on merits as well as on laches and acquiescence before reversing the judgment and decree of the trial Court with a preposterous, perfunctory and abrupt conclusion while setting aside the dismissal of the suit?

(8) The judgment and decree of the lower appellate Court is based on no material besides the result of misreading the evidence available on record. Further the appellate Court ought to appreciated the evidences and set-aside the findings of the trial Court before reversing the judgment and decree of the trial Court?”

Submissions on either side :

10. The learned counsel appearing for the appellants/defendants 4 to 8 submits that the first appellate Court ought to have seen the evidence of PW2, she categorically admitted in her cross examination that Radha



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Reddy and his vendor Thangavel Reddy have been in continuous possession and enjoyment of the electricity service connection, since 1978, the date on which the sale in favour of the Thangavel Reddy was effected. It was also contended that the electricity service connection effected for the bore-well was transferred under Ex.A5-sale deed, though transfer of service connection was not subsequently mentioned by inadvertence, as per Ex.A6-sale deed, the service connection has been transferred in the year 2002 itself. It was also contended that the plaintiff who have claimed to have purchased it in the year 2003 vide Ex.A2-sale deed ought to have made an enquiry about the same before execution of sale deed as per proviso under section 3 of the Transfer of Property Act.

11. Further, it was contended by the learned counsel for the defendants 4 to 8 that the first appellate Court has wrongly placed the burden of proof on the defendants 4 to 8 who are the appellants herein, when the plaintiff has miserably failed to prove his case. It was also contended that the first appellate Court had wrongly reversed the judgment and decree of the trial Court by improperly exercising its jurisdiction without independently reappreciating the pleading and evidence on record within the ambit of Order 43 r/w. Section 96 of CPC.



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12. Per contra, the learned counsel appearing for the first respondent/plaintiff would contend that the trial Court misconceived the evidence and documents and dismissed the suit. Further, the trial Court failed to observe that Ex.A5 sale deed stands in favour of Thangavel Reddy, the rights of service connection is neither conveyed nor transferred. On contrary, Ex.A6 sale deed executed by Thangavel Reddy in favour of Radha Reddy, the rights of service connection have been conveyed and effected name transfer.

13. The learned counsel would further contend that the first appellate Court allowed the appeal on the ground that in Ex.A5 only 20 cents of land with well have been sold and electricity service connection have not been sold. It is also contended that after considering the evidences and exhibits on proper perspective, the first appellate Court correctly reversed the dismissal decree of the trial Court and decreed the suit in favour of the plaintiff/first respondent and there is no interference is warranted by this Court.



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14. The learned counsel appearing for the respondents 2 to 4 / defendants 1 to 3 would submit that the suit service connection originally stands in the name of Angu Reddy, the legal heirs of Angu Reddy viz Sundarambal and others sold the said property including “Thirukkal” well in SF.No.1276/1 to one Thangavel Reddy vide registered sale deed No.351/1978. The said Thangavel Reddy sold out the property to Radha Reddy vide registered sale deed No.699 of 2002, the sale deed included well with service connection. Based on the aforesaid sale deed, Radha Reddy approached the respondents 2 to 4/defendants 1 to 3 and thereby the name transfer was effected in his favour as per terms and conditions of Electricity supply vide Clause II and sub Clause IV and V and also based on execution of indemnity bond and undertaking given by Radha Reddy.

15. Heard the learned counsel for the appellants/defendants 4 to 8 and the learned counsel for the first respondent/plaintiff and the learned standing counsel for the respondents 2 to 4/defendants 1 to 3. This Court has considered the submissions made on either side and perused the materials available on record.



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16. The main submission of the learned counsel appearing for the appellants is on two folds :- (i)By virtue of Ex.B1 = Ex.A5 sale deed stands in the name of the Thangavel Reddy and by virtue of Ex.A6/sale deed, the said Thangavel Reddy sold out the property, well along with electricity service connection No.26:157:02 in SF.No.1276/1 in favour of Radha Reddy. (ii)The second fold of his argument is that during the cross examination of PW2/Sundrambal by the defendants 4 to 8 side, PW2 categorically admitted that in the year 1978, they sold out the land with well to Thangavel Reddy, since 1978 he used to irrigate his lands from the “Thirukkal” Well and the said Thangavel Reddy has paid the electricity charges. PW2 also admitted that from the date of sale, the said Thangavel Reddy and thereafter Radha Reddy were in possession and enjoyment of the electricity service connection.

17. Ex.A5 is the certified copy of the sale deed dated 10.04.1978 it shows that one Thangavel Reddy purchased the property in S.No.1276/1 to an extent of 0.20cents land with 22feet width x 21feet depth “Thirukkal” well from one Sundarambal w/o.Angu Reddy, Thangavel Reddy s/o.Govinda Reddy and Gopal Reddy s/o.Govinda Reddy. The



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said Sundrambal also executed the sale deed on behalf of her minor children Kalappan and Munusamy.

18. Ex.A6 is the sale deed dated 08.05.2002 Radha Reddy purchased the property from one Thangavel Reddy son of Raji Reddy, wherein the vendor the said Thangavel Reddy had executed the sale deed in S.No.1276/1 out of acre 6.81 to an extent of 20cents of land, well and 3 HP motor with electricity service connection.

19. A perusal of sale deed in Ex.A5, it reveals that only 20cents of land with well have been sold and electricity service connection have not been sold. It is also reveals that in Ex.A5 the service connection had not been transferred and only through Ex.A6 the service connection had been transferred to Radha Reddy.

20. Tmt.Sundarambal w/o.late Angu Reddy who is one of the vendor in Ex.A5-sale deed dated 10.04.1978 and Ex.A2-sale deed dated 06.01.2003 was examined as PW2 by the plaintiff side. PW2 in her chief examination by way of proof affidavit has stated that they have not sold the Electricity service connection to Thangavel Reddy and they have sold



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the same to the plaintiff. PW2 has deposed in her cross examination that in the year 1978, they sold the land with well to one Thangavel Reddy and he used to fetch water for his agricultural lands from the “Thirukkal” well and he used to pay for electricity consumed by him. PW2 also deposed that electricity service connection was in possession and enjoyment of Thangavel Reddy and thereafter to Radha Reddy.

21. Ex.A2 is the certified copy of sale deed dated 06.01.2003 stands in the name of the the plaintiff herein, it is seen that the sale deed was executed by (i)Sundrambal w/o.Angu Reddy (ii)Kalappan s/o.Angu Reddy (iii)Gopal Reddy s/o.Govinda Reddy in S.No.1276/1 to an extent of 0.75cents with electricity service connection No.26:157:02. The defendants 4 to 8 have not filed any documents to prove that Thangavel Reddy had used the service connection.

22. From the documents, it is seen that without acquiring any rights over the electricity service connection, Thangavel Reddy sold the same to Radha Reddy along with land under Ex.A6 which is not proper. The findings of the trial Court without considering the Ex.A2, Ex.A5 and Ex.A6 on proper perspective concluded the rights over the service



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connection only on the basis of its usage is not proper. The trial court has also wrongly shifted the burden of proof to the plaintiff, who ought to have verified, as to who is using the suit service connection. As per the evidence of PW2, even though, the suit service connection was used by Thangavel Reddy and subsequently, Radha Reddy, legally it cannot curtail the rights of Sundrambal and others to sell the suit service connection to the plaintiff, because the suit service connection has not been sold legally to either to Thangavel Reddy or Radha Reddy. Therefore, there is no force in the submissions made by the learned counsel for the appellants/defendants 4 to 8. As per Ex.A2-sale deed, the plaintiff is the purchaser of the suit electricity service connection and entitled for the relief sought for by him.

23. The first appellate Court after considering the evidences and exhibits on proper perspective reversed the decree and judgment passed by the trial Court and decreed the suit in favour of the plaintiff/first respondent by allowing the first appeal. There is no circumstances warranted to interfere with the findings rendered by the first appellate Court.



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24. In view of the above detailed discussions, all the substantial questions of law are answered in favour of the first respondent/plaintiff. The second appeal is dismissed by confirming the judgment and decree passed by the first appellate Court in AS.No.37 of 2006 dated 11.02.2008 on the file of Subordinate Court, Ponneri. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To
1. The Subordinate Court, Ponneri
2. The District Munsif, Ponneri



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M. JOTHIRAMAN, J.

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Pre Delivery Judgment in
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