



*S.A.No.917 of 2013*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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**DATED : 29.02.2024**

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**S.A.No.917 of 2013**

**and**

**M.P.No.1 of 2013**

Krishnasamy

.. Appellant

Vs.

1.Joint Family Leader,  
Rangasamy

2.The Assistant Engineer,  
Public Works Department (WRO),  
Amaravathi River Basin,  
Chinna Dharapuram PO,  
Karur District

3.The Junior Engineer,  
TANGEDCO,  
Kannivadi Distribution Circle,  
Kannivadi, Kannivadi PO,  
Dharapuram Taluk,  
Tirupur District

.. Respondents

(RR2 and 3 impleaded  
vide Court order dated  
29.02.2020 made in  
CMP.No.1698/2020 in  
S.A.No.917/2013 by  
VPNJ)



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**Prayer** : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.35 of 2010, dated 28.03.2011 on the file of the Sub Court, Dharapuram reversing the judgment and decree passed in O.S.No.478 of 2005, dated 16.08.2010 on the file of the District Munsif Court, Dharapuram.

For Appellant : Mr.K.S.Jai Ganesh  
for Mr.K.Arangeswaran

For R1 : Mr.N.Manoharan

For R2 : Mr.B.Tamilnidhi  
Additional Government Pleader

For R3 : M/s.Hemalatha

### **JUDGMENT**

The present Second Appeal arises out of the judgment and decree of the Court of the learned Subordinate Judge at Dharapuram in A.S.No.35 of 2010, dated 28.03.2011 in allowing the appeal and setting aside the judgment and decree of the Court of the learned District Munsif at Dharapuram in O.S.No.478 of 2005, dated 16.08.2010.

2. O.S.No.478 of 2005 is a suit filed for declaration and prohibitory injunction with respect to common pipeline, service connection and electric



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motor pumpset. It also relates to the turn of drawing of water from the common well. The plaintiff averred that he is entitled to take water for three days out of six days and the defendant is entitled to the remaining three days.

3. According to the plaintiff, the 'A' schedule mentioned property belonged to the joint family, for which, he is the 'Karthā' and 'B' schedule mentioned property was purchased by him as 'Karthā' and one Periyasamy, son of Chenniappa Gounder on 15.12.1986. The declaratory relief relates to 'A' schedule mentioned property and the injunction relief relates to 'B' schedule mentioned property.

4. It is not in dispute that the plaintiff Rangasamy, on behalf of the family, and Periyasamy dug a well to be used in common, in the 'B' schedule mentioned property, in order to utilize the water generated from the well. Both of them had laid a cement pipeline 6 feet below the ground. When the water was pumped out from the well, the plaintiff had been using the water for three days and in order to pump out the water, he installed a 10 HP motor and applied for a service connection in S.C.No.244 with the



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Tamil Nadu Electricity Board. As the Well was one dug in common, the plaintiff had to obtain a 'No Objection Certificate' from his co-owner, Periyasamy. Periyasamy also granted 'No Objection Certificate', and on the strength of the said certificate, S.C.No.244, dated 24.02.1997 was granted to the plaintiff.

5. All was well with Periyasamy and the plaintiff. The problem arose when Periyasamy sold the property to one Krishnasamy, and Krishnasamy started staking a claim over the use of S.C.No.244.

6. The case of Krishnasamy/Appellant is that, he is not only entitled to three days of water supply from the well but he is also entitled to use the electricity motor and pump, which had been installed by Rangasamy, on behalf of his joint family, for irrigating his lands. This was resisted by Rangasamy, hence, the plaintiff came forward with the suit for the aforesaid reliefs.

7. It is the case of Krishnasamy that, in order to dig the “Well” as well as to lay the pipeline, his vendor Periyasamy had applied to the Bank and



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had secured loans to generate funds to lay the pipelines. On the aspect of the commonality in the Well, the irrigation lines, the right of Rangasamy over 'A' schedule mentioned property, there are not in disputes. The only dispute relates to whether the S.C.No.244 can be used by both and if the plaintiff can be prevented from usage of water for three days out of six days.

8. Before the Trial Court, the plaintiff examined five witnesses and marked Ex.A1 to Ex.A14. On the side of the defendants, three witnesses were examined and Ex.B1 to Ex.B3 were marked. Apart from that, an Advocate Commissioner had been appointed in order to inspect the suit schedule mentioned property and Ex.C1 to Ex.C4 were marked on their side.

9. On the basis of the evidence, answering these issues, the learned Trial Judge granted the relief of declaration but dismissed the suit insofar as the permanent injunction that was sought for with respect to 'B' schedule mentioned property. The defendants did not appeal against the grant of declaration.



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10. The plaintiff, feeling aggrieved over the rejection of permanent injunction with respect to 'B' schedule mentioned property preferred an appeal in A.S.No.35 of 2010. The said appeal was allowed granting a decree for permanent injunction, restraining the defendants from interfering with the right of the plaintiff to irrigate 'A' schedule mentioned property for which, he is the owner, by taking water through his pipeline for a period of three days out of six days in a week.

11. Against the said judgment and decree, the present Second Appeal has come forth before this Court. The Second Appeal was not admitted by this Court but notice regarding admission had been ordered on 11.09.2013. Thereafter, when the matter was listed before my brother Hon'ble Mr.Justice V.Parthiban. He felt that the presence of the Assistant Engineer, Public Works Department (WRO), Amaravathi River Basin, Chinna Dharapuram PO, Karur District and the Junior Engineer, TANGEDCO, Kannivadi Distribution Circle, Kannivadi, Kannivadi PO, Dharapuram Taluk, Tirupur District were the proper and necessary parties to decide the appeal and they were impleaded as parties.



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12. Heard Mr.K.S.Jai Ganesh for Mr.K.Arangeswaran, learned counsel appearing for the appellant and Mr.N.Manoharan, learned counsel appearing for the 1<sup>st</sup> respondent, Mr.B.Tamilnidhi, learned Additional Government Pleader appearing for the 2<sup>nd</sup> respondent and M/s.Hemalatha, learned counsel appearing for the 3<sup>rd</sup> respondent.

13. The only issue that has to be considered by me is whether the electricity connection that has been granted to the plaintiff is capable of division. By the very nature of things under the Electricity Act and Electricity Supply Code, the electricity connection that is granted is individual in nature. It is a license that is granted to a party. The license which is granted to an individual is individualistic and is not capable of being partitioned. Infact, if an individual parts with his rights, which has been granted as a license, there is the possibility of the license itself being terminated. If the claim of the defendant/appellant is to be accepted for sharing of the electricity connection that has been granted in favour of the plaintiff, then it will lead to a situation, where an order of the Court is utilized for the purpose of violating the terms and conditions of the license.



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14. This issue has been considered by the judgment of this Court in ***Kanakaraj v. Lakshmanan*** case reported in (2012) 8 Mad LJ 88, the relevant portions are as follows :

*“17. In my considered opinion, electricity service connection is impartible and it cannot be a subject matter of partition. Neither in the Act nor in the Tamil Nadu Electricity Supply Code any right is given to the consumer, viz., the person who obtained electricity service connection to share his connection with others or partition the same.*

*18. I would like to refer to an illustration, which would highlight the point that an owner of a house or a motor pump set who is enjoying electricity service connection cannot allow a third party to take service connection from his electric supply. Even if he through any means or device supplies electricity to others that would be treated as one against law the Electricity Supply Act and the Electricity Supply Code.”*

15. This being the settled position of law, I cannot take any exception to the decree granted by the Lower Appellate Court. S.C.No.244 standing in the name of 'Karthi' of the joint family Rangasamy, then, he alone is



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entitled to utilize the connection for drawing the water from the well in the 'B' schedule mentioned property through the common pipeline laid by him and by Periyasamy for irrigation of the lands in 'A' schedule mentioned property.

16. I cannot be insensitive to the fact that the appellant/Krishnasamy is also an agriculturist, cannot survive in a location, without supply of water.

17. The arrangement, according to the plaintiff, which has been found correct by the Lower Appellate Court is that Krishnasamy is drawing water utilizing an oil pump for the purpose of irrigation of his lands. He is in need of electricity connection.

18. M/s.Hemalatha would submit that if an application is filed by the appellant/Krishnasamy for the supply of electricity, the same will be considered in accordance with law.

19. Mr.N.Manoharan states that his client will not object for the



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purpose of effecting such electricity connection from the common well and he would add, if necessary, he will tender no objection when the application is proffered to him.

20. Therefore, while dismissing the appeal, taking into consideration the purpose for which the respondents 2 and 3 were impleaded, the appellant is permitted to make an application for supply of electricity to the 3<sup>rd</sup> respondent, who shall consider the same on receipt of such an application in accordance with law, as expeditiously as possible, for which the 1<sup>st</sup> respondent has no objection.

21. With the above directions, the Second Appeal is not admitted. It is dismissed. The judgment and decree of the Court of the learned Subordinate Judge at Dharapuram in A.S.No.35 of 2010, dated 28.03.2011 in partly reversing the judgment and decree of the Court of the learned District Munsif at Dharapuram in O.S.No.478 of 2005, dated 16.08.2010 stands confirmed. Consequently, the connected Miscellaneous Petition is closed.



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**WEB COPY** 22. Considering the fact that the parties are agriculturists, I am not inclined to impose any costs.

**29.02.2024**

Index:Yes/No  
Speaking Order :Yes/No  
Neutral Citation:Yes/No  
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To

- 1.The Sub Court,  
Dharapuram
- 2.The District Munsif Court,  
Dharapuram



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**V. LAKSHMINARAYANAN, J.**

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