



S.A.No.573 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.573 of 2011
and M.P.No.1 of 2011

1.T.R.Loganathan
2.T.R.Muthusamy (Died)
3.Rasayammal
4.Janaki
5.Santhosh
(A2 died, A3 to A5 are brought on
record as LRs of the deceased
2nd appellant vide Court Order
dated 18.10.2024 made in
C.M.P.Nos.23054, 23057 & 23059 of 2024
in S.A.No.573 of 2011)

... Appellants / Defendants

vs.

1.C.Ramalingam
2.R.Kuppuraj

... Respondents / Plaintiffs

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 16.11.2010 passed in A.S.No.55 of 2010 on the file of Principal Sub-Court, Erode, reversing the Judgment and Decree passed in O.S.No.66 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Kodumudi dated 14.12.2009.

For Appellants : Mr.V.Regunathan
for M/s.S.Dhanasekaran

For Respondents : Mr.D.Jagajothi
for M/s.Muthukumarasamy



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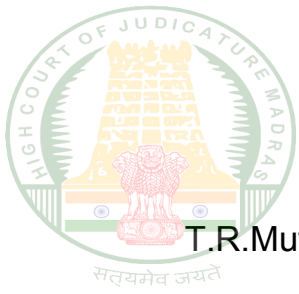
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JUDGMENT

This second appeal has been preferred by the defendants against the judgment and decree dated 16.11.2010 passed by the Principal Sub-Court, Erode in A.S.No.55 of 2010.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiffs, the suit properties are situated at Punjaikolanalli Village, Erode Taluk. 1st plaintiffs' father, Chinnappa Gounder and defendants' father, Ramasamy Gounder are brothers. The plaintiffs and the defendants are the co-sharers of the suit well as well as the suit electricity service connection No.S.C.429 / Pudur S.S.III. The suit properties are Undivided Hindu Joint Family properties of plaintiffs and the defendants. The plaintiffs got the properties in Punjaikolanalli Village in R.S.No.584/3 to an extent of half share in Hectare 0.89.5. After the death of the said Chinnappa Gounder and Ramasamy Gounder, the plaintiffs and the defendants are in joint possession and enjoyment of the suit properties. The plaintiffs and the defendants had applied for electricity service connection to the suit well in the name of 2nd defendant



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T.R.Muthusamy, S/o.Ramasamy Gounder for 5 HP electricity service connection by contributing equal shares of expenditure to the Tamil Nadu Electricity Board.

4. It is the further case of the plaintiffs that the Tamil Nadu Electricity Board sanctioned 5HP agricultural service connection to the suit well. They installed 5HP electric motor pump set in the suit well and the service connection is S.C.No.429, Pudur SS-III in the year 1993; since then, the plaintiffs and the defendants have been using the electric motor and pump-set commonly by way of turn system. The plaintiffs are jointly entitled to 2 days out of 4 days and the defendants are jointly entitled to 2 days out of 4 days. Enmity arose between the plaintiffs and the defendants in a temple festival and due to the same, the defendants on 27.05.2008 attempted to prevent the plaintiffs from taking water from the suit well through suit electric motor. Hence, the suit for declaration that the plaintiffs are entitled to half share in the suit well as well as electric motor pump-set in the service connection No.429, Pudur SS-III and for consequential permanent injunction.

5. The land in R.S.No.584/3 of Punjaikolanalli Village and other properties were orally divided between the father of the 1st plaintiff and the



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defendants, in the first week of June, 1980. Under the said partition, eastern portion of R.S.No.584/3 was allotted to the father of the 1st plaintiff and the western portion of R.S.No.584/3 was allotted for the defendants herein. It was reduced to a partition deed dated 05.04.2005. The defendants made several improvements in the property allotted to them, they planted coconut samplings in their lands. The defendants mortgaged the portions allotted to them with Bank and obtained loan. Therefore, the allocation of the land to the plaintiff in R.S.No.584/3 is in joint possession and enjoyment of the plaintiffs and the defendants' statements are utter false.

6. The defendants rather would contend that after the partition took place in the year 1980, the father of the 1st plaintiff and the defendants installed two separate oil engines for pumping out water from the suit well. In the year 1984, 1st defendant applied for a separate 5HP electricity service connection in respect of the suit well to the Tamil Nadu Electricity Board. For which, the father of the 1st plaintiff gave no objection. The 5HP electric service connection to the suit well was sanctioned in the name of the 1st defendant and a separate electric motor was installed by him in the year 1993. The plaintiffs did not contribute any amount either to the Tamil Nadu Electricity Board or for the cost of electric motor. Therefore, the



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plaintiffs have no manner of right, title or entitlement over the suit service connection. The plaintiffs removed their oil engine at the time of filing the suit and took the Advocate Commissioner to the suit well showing that there is no other mode of irrigation available to them.

7. Based on the rival pleadings, following issues are framed by the trial Court:

- (i) Whether the suit electricity service connection exclusively belongs to the defendants?
- (ii) Whether the plaintiffs are entitled for the declaration relief?
- (iii) Whether the plaintiffs are entitled for the relief of permanent injunction?
- (iv) To what other reliefs, the plaintiffs are entitled to?

8. At trial, to substantiate the plaint details, on the side of the plaintiffs, three witnesses were examined and fifteen documents were marked. Ex.A15 is the certified copy of the registered partition deed dated 05.04.2005 executed between the defendants No.1 and 2. On the defendants' side, three witnesses were examined and eight documents were marked. Three documents were marked in X-series. Exs.C1 and C2 are the report of the Advocate Commissioner and the rough plan.



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9. Upon consideration of oral and documentary evidence and after hearing the arguments advanced on either side, the trial Court concluded that no document is filed to prove the fact that since 1993, plaintiffs have been using electric motor and dismissed the suit in entirety.

10. Aggrieved, the plaintiffs preferred appeal before the Principal Sub-Court, Erode in A.S.No.55 of 2010. Upon perusal of entire case records and after hearing the arguments advanced on both sides, the First Appellate Court concluded that based on the joint adangal Exs.A1 to A8, the contention of the defendants that the total extent of land was partitioned between the 1st plaintiff's father and defendants' father are incorrect and by relying upon the evidence of PW2 and the Advocate Commissioner's report and other evidences, came to the conclusion that the plaintiffs have got half share in the electric motor and allowed the appeal by decreeing the suit in entirety. Aggrieved, the defendants have preferred this Second Appeal before this Court.

11. Heard both sides. The following substantial questions of law arises for consideration :

Has not the First Appellate Court below



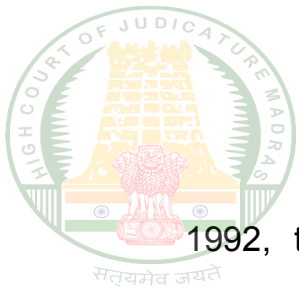
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committed an error of law in not holding that in the absence of any document in favour of plaintiffs claiming declaration and permanent injunction regarding electric service connection and pump set?

12. The fact that first plaintiff's father Chinnappa Gounder and defendants' father Ramasamy Gounder are brothers, they jointly owned dry lands at Kolanalli Village in R.S.No.584/3 to an extent of Hectare 0.89.5 with a well and so also both had half share are not in dispute. In order to obtain electricity service connection, an application - Ex.X1 dated 12.10.1984 was given by the 1st defendant to the Tamil Nadu Electricity Board office and the service connection in the name of 1st defendant has been given in the year 1993 in S.C.No.429. DW2 is the Assistant Engineer of Tamil Nadu Electricity Board. From his evidence, it is deducible that in the year 1984, application was given by the 1st respondent and the 1st plaintiff's father has given no objection for grant of electricity connection. It is his candid evidence that the electricity service connection was applied for the entire 0.89.5 Hectare land. As pleaded by the defendants had it been true which means, had the partition taken place in the year 1980 itself, the 1st defendant should have mentioned half share of 0.89.5 Hectares. Even in the copy of re-settlement register extract in the year



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1992, the name of 1st plaintiff's father Chinnappa Gounder and the defendants father Ramasamy Gounder's name have been mentioned, coupled with Ex.A8 patta, names of both brothers Chinnappa Gounder and Ramasamy Gounder are found.

13. Plaintiffs' candid case is that 1st plaintiff's father Chinnappa Gounder and defendants' father Ramasamy Gounder have equal share in the well as well as in the service connection with 5 HP electric motor. Whereas, DW1 would state that both brothers have orally partitioned the lands equally in the year 1980 itself. As per Sections 101 and 102 of Indian Evidence Act, 1872 one who pleads to prove. But, the above said documents invariably strongly indicate the fact that the properties are not partitioned and stand in the name of both brothers, thereby, the defendants plea as mentioned supra was not substantiated at all. Advocate Commissioner's report with rough plan indicates the fact that there is only one water channel is available from the well which means a common water channel has been in use by both the plaintiffs and the defendants. A careful perusal of Ex.A15 which is a registered partition deed executed between the defendants No.1 and 2 on 05.04.2005 also reads that the defendants 1 and 2 have 1/4 share each in the well. There is no whisper about the electricity service connection and 5HP motor. Had



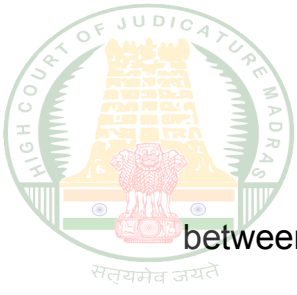
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it been true as per the defendants case, they have half share in the electricity service connection and 5 HP motor, it would have been mentioned. Absence of the said details in Ex.A14 clearly explicates that the property was not partitioned between the plaintiffs and the defendants do have half share each in the well as well as in the electricity service connection and 5HP motor by turn system.

14. Based on both sides oral evidence and the Exhibits as mentioned supra along with Advocate Commissioner's report and plan, the learned First Appellate Court has rightly concluded that the plaintiffs have half share in the well and the electricity service connection and the 5 HP motor pumpset by way of turn system. This Court does not find any good reason to upset the findings of the learned First Appellate Court.

15. For the above said reasons, the substantial question of law is answered in favour of the plaintiffs.

16. Based on the aforesaid observations and discussions, this second appeal stands dismissed. Sequel to this, the Judgment and decree dated 16.11.2010 passed by the Principal Subordinate Court, Erode in A.S.No.55 of 2010 stands confirmed. Considering the relationship



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between the parties to the suit, no cost is ordered throughout.

Consequently, connected miscellaneous petition is closed.

04.06.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Principal Sub-Court, Erode.
2. The District Munsif-cum-Judicial Magistrate Court, Kodumudi.
3. The Section Officer,
V.R.Section,
High Court, Madras.

R.KALAIMATHI, J.,

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