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S.A. Nos. 1197 and 1198 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. Nos. 1197 and 1198 of 2013
and M.P. Nos. 1 & 1 of 2013

S.A. No. 1197 of 2013:-

- 1.R.Nataraj Gounder(died)
- 2.N.Anandhan
- 3.N.Rukmani
- 4.N.Mahalingam
- 5.B.Rajeswari
- 6.D.Rajakumari

all are residing at No.4
Alagappa Layout
Venkatesa Colony, Pollachi
(appellants 3 to 6 brought on record as LRs
of the deceased 1st appellant viz., R.Nataraj
Gounder vide Court Order dated 30.11.2021
made in M.P. No.1 of 2014 in S.A. No.
1197/2013)

...Appellants

Vs.

- 1.A.Gowher John
- 2.The Tamil Nadu Electricity Board
Udumalpet Electricity System
Rep. By its Superintending Engineer
Udumalpet.

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 31.10.2008 made



S.A. Nos. 1197 and 1198 of 2013

in A.S. No. 35 of 2008 on the file of the Sub-Court, Pollachi partly modifying the judgment and decree dated 18.01.2007 made in O.S. No. 119 of 2000 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.Anwarsadar
For Mr.Haja Mohideen Gisthi (R1)

Ms.J.Hemalatha Gajapathy (R2)

S.A.No.1198 of 2013:-

- 1.R.Nataraj Gounder(died)
- 2.N.Anandhan
- 3.N.Rukmani
- 4.N.Mahalingam
- 5.B.Rajeswari
- 6.D.Rajakumari

all are residing at No.4
Alagappa Layout
Venkatesa Colony, Pollachi

(appellants 3 to 6 brought on record as LRs of the deceased 1st appellant viz., R.Nataraj Gounder vide Court Order dated 30.11.2021 made in M.P. No.1 of 2014 in S.A. No. 1197/2013)

...Appellants

Vs.

- 1.A.Gowher John
- 2.The Tamil Nadu Electricity Board
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Rep. By its Superintending Engineer
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... Respondents



PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 31.10.2008 made in A.S. No. 35 of 2008 on the file of the Sub-Court, Pollachi partly modifying the judgment and decree dated 18.01.2007 made in O.S. No. 119 of 2000 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.Anwar sadar
For Mr.Haja Mohideen Gisthi (R1)

Ms.J.Hemalatha Gajapathy (R2)

COMMON JUDGMENT

The defendants 1 and 2 are the appellants. The second appeal has been filed originally by the deceased first defendant along with the second defendant. During the pendency of the appeal, the first defendant died and their legal representatives have been impleaded as the appellants 3 to 6.

2. The suit has been filed by the first respondent /plaintiff for seeking various kinds of permanent injunction, mandatory injunction, declaration and damages. The trial Court has decreed the suit as prayed and fixed the damages



at the rate of Rs.3,000/- per annum. On the first appeal preferred by the defendants 1 and 2 and the cross appeal filed by the plaintiff, the first appellate Court had partially allowed the appeal filed by the defendants 1 and 2 and the cross appeal filed by the first respondent and modified the decree to the extent of setting aside the relief granted with regard to the mandatory injunction and by enhancing the damages from Rs.3,000/- per annum to Rs.6,000/- per annum.

3. In the suit filed by the first respondent/plaintiff for various reliefs it appears that she had also sought the relief to declare that the plaintiff has the right to use the water in the suit 'A' and 'B' schedule properties during his turn for non-agricultural purposes also, suiting to his convenience and consequential permanent injunction to restrain the defendants 1 and 2 from preventing the same. The above relief has been granted to the first respondent by the trial Court and that is confirmed by the first appellate Court also.

4. Now the appellants had filed the second appeal in S.A. No. 1197 of 2013 challenging the judgment of the first appellate Court and have raised a concern stating that the plaintiff should not take advantage of the above relief



and use the well water for commercial purposes also during his turn and that would result in disconnection at the hands of the second respondent /third defendant-electricity board. The appellants do not have any grievance in respect of the other relief granted in favour of the respondent /plaintiff.

5. The learned counsel for the appellants submitted that if an undertaking is given by the respondent/ plaintiff stating that she would not use the well water during his turn for commercial purposes that itself is sufficient for the purpose of this second appeal.

6. The learned counsel for the first respondent also submitted that the plaintiff cannot take advantage of using the well water for commercial purposes and she is aware that he has to abide by the terms and conditions imposed by the second respondent electricity board and the consequences of its violation.

7. It is clarified that the right declared in favour of the plaintiff to use the suit 'A' and 'B' Schedule well water during his turn for non-agricultural operation would simply mean other usages than the agricultural purpose. This



cannot in any way presume that the Court has granted the liberty to the plaintiff to use the well water for commercial purposes by violating the terms and conditions imposed by the electricity Board; using the well water for commercial purpose will invite only penal action from the second respondent /electricity board.

8. As of now, the second respondent electricity board did not make any complaint stating that the first respondent /plaintiff had taken advantage of the relief granted in his favour and has used the well water at any point of time for commercial purposes.

9. In such circumstances, there need not be any apprehension in the minds of the appellants that the first respondent might use the water for commercial purposes. However, for the sake of clarity and dispel any doubts, it is made clear that the relief granted in favour of the first respondent/ plaintiff as regards the declaration of his right to use the well water during his turn for non-agricultural purposes would not mean to use the water for any commercial purposes.



10. In view of the above observation, this second appeal does not require to deal with any other grounds raised in the grounds of second appeal.

11. The other second appeal in S.A. No. 1198 of 2013 that has been filed by the plaintiff challenging the judgment and decree passed by the first appellate Court on the cross appeal filed by the first respondent /plaintiff before the first appellate Court to enhance the damages.

12. Originally, the trial Court had awarded a sum of Rs.3,000/- per annum as damages, and that worked to Rs.250/- per month. The first appellate Court enhanced it from Rs.250/- per month to Rs.500/- per month and thus, arrived a yearly damages at Rs.6,000/- per annum. In fact, the plaintiff has sought Rs.10,000/- per year as damages and that has been considered and fixed at Rs.6,000/- per year by the first appellate Court.

13. The learned counsel for the appellants submitted that the first respondent did not establish through evidence that she has suffered any damages and the first appellate court has also observed the said facts in its judgment and hence, awarding of damages will not arise.



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14. But on a thorough reading of the judgment of the first appellate Court and the trial Court, it is seen that the first respondent has not produced any evidence to show that he has spent a sum of Rs.1,000/- per month. That does not mean that the first respondent has not proved before the Court that he had suffered damages. The Court has clarified only on the quantum claimed by the plaintiff and not the fact that he has not suffered damages.

15. In fact, the first appellate Court has made clear observation as to the difficulties suffered to the first respondent /plaintiff in securing water from alternate sources in view of the obstruction caused by the first and second defendants. The Court had also made an observation that on this account, the first respondent /plaintiff was compelled to spend money. Apart from that, there are observations to that effect that it caused mental agony to the first respondent /plaintiff. No doubt, the obstruction caused by the first and second defendants would have put the first respondent /plaintiff in dilemma and stress and no doubt he would have compelled to spend money from his pocket to secure water in order to irrigate his land and for other purposes. Even though the amount spent on this aspects cannot be quantified before the Court



with proof, the fact remains that the damages caused is very much true.

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16. In all fairness the Courts below had rightly dealt the issue of claim for damages and awarded damages.

17. Taking into consideration of the length of the time for which these litigations are pending and also to ensure a better relationship between the appellants and the first respondent/plaintiff atleast hereafter, I feel a little indulgence can be shown in awarding damages by reducing it from Rs.6,000/- per annum to Rs.4,500/- per annum. Even though there is no substantial question of law has arisen in these appeals, the above limited relief is granted taking into consideration of the interest of justice.

18. Thus, the second appeal in S.A. No. 1197 of 2013 is disposed by setting aside the judgment and decree dated 31.10.2008 made in A.S. No. 35 of 2008 on the file of the Sub-Court, Pollachi partly modifying the judgment dated 18.01.2007 made in O.S. No. 119 of 2000 on the file of the District Munsif Court, Pollachi and the second appeal in S.A. No. 1198 of 2013 is partly allowed by setting aside the judgment dated 31.10.2008 made in A.S. No. 35



S.A. Nos. 1197 and 1198 of 2019

of 2008 made in the judgment and decree dated 18.01.2007 made in O.S. No.

119 of 2000 on the file of the District Munsif Court, Pollachi. No costs.

Consequently, connected Miscellaneous Petitions are closed.

03.01.2025

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

Maya

To

1. The Sub Court, Pollachi.
2. The District Munsif Court, Pollachi.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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