



S.A.Nos.859 & 860 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 18.11.2025

Judgement Pronounced on : **27.11.2025**

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

S.A.Nos.859 & 860 of 2015

and

M.P.Nos.1 & 1 of 2015

1. S. Ganesan
2. Lavanya
3. Suriyaprakash

... Appellants

Versus

1. S. Krishnan
- 2.The Junior Engineer,
O & M / Rural, TNEB,
Papparapatti – 636 809.
Pennagaram Taluk, Dharmapuri District.
- 3.The Executive Engineer,
O & M, TNEB,
Palacode Town and Taluk – 636 808
Dharmapuri District.



S.A.Nos.859 & 860 of 2015

4.The Superintending Engineer,
TNEB, Collectorate,
Dharmaputi Town and Taluk – 636 705
Dharmapuri District.

... Respondents

Common Prayer : Second Appeals filed under Section 100 of Code of Civil Procedure, 1908, against the common judgement and decree dated 27.02.2015 made in A.S.No.37 of 2013 and A.S.No.41 of 2012, respectively, on the file of the Sub-Court, Dharmapuri, confirming the judgement and decree made in O.S.No.72 of 2006 on the file of the District Munsif Court, Palacode.

Appearance in both appeals:

For Appellants : Mr. T. Murugamanickam, Senior Counsel,
for M/s. Zennath Begum

For R1 in S.A.No.859/2015
and Sole Respondent in
S.A.No.860/2015 : Mr. N. Palani Kumar, (for R1)
for Mr. M. Selvam

For R2 to R4 in
S.A.No.859/2015 : M/s. J. Hemalatha Gajapathy,



WEB COPY



S.A.Nos.859 & 860 of 2015

Standing Counsel

COMMON JUDGEMENT

These Second Appeals have been preferred against the common judgement and decree passed by the First Appellate Court in A.S.No.41 of 2012 and A.S.No.37 of 2013 on the file of the Sub-Judge, Dharmapuri, dated 27.02.2015.

2. For the sake of convenience and brevity, the parties are referred to as “*plaintiffs*” and “*defendants*” as per their rank before the Trial Court.

3. Before the Trial Court, the appellants in both second appeals, had filed the suit in O.S.No.72 of 2006 on the file of the District Munsif Court, Palacode, seeking the relief of declaration, declaring that the plaintiffs are entitled to ½ share in the Well, electric motor and Electricity



S.A.Nos.859 & 860 of 2015

Service Connection No.29, and for a permanent injunction restraining the

WEB COPY

first defendant from interfering with or disturbing the rights of the plaintiffs to draw water from the suit Well, during their turn, and also prayed for a permanent injunction restraining the defendants 2 to 4 from transferring Electricity Service Connection No.29 in favour of the first defendant, without consent of the plaintiffs, and also prayed for costs.

3.1 The Trial Court, decreed the suit in part, declaring that the plaintiffs are entitled to $\frac{1}{2}$ share in the suit properties and granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' turn in drawing water, and declined to grant the relief sought against defendants 2 to 4 regarding the transfer of Electricity Service Connection No.29 without consent of the plaintiffs.

3.2 Aggrieved by the said judgement and decree, the plaintiffs in the suit preferred an appeal in A.S.No.37 of 2013, and the first defendant



S.A.Nos.859 & 860 of 2015

preferred an appeal in A.S.No.41 of 2012 before the Sub-Court,

WEB COPY

Dharmapuri. The First Appellate Court, after hearing both sides, dismissed

the appeal in A.S.No.37 of 2013, and allowed the appeal in A.S.No.41 of

2012, by setting aside the judgement and decree passed by the Trial Court

in O.S.No.72 of 2006, and dismissed the suit in O.S.No.72 of 2006.

Aggrieved by the said common judgement and decree, the plaintiffs/

appellants have filed these two Second Appeals before this Court.

4. The brief averments of the plaint are as follows:-

(i) The first plaintiff and the first defendant are brothers, and are sons of one Somu Gounder. The suit properties are common properties of the first plaintiff and the first defendant. Originally, the Electricity Service Connection No.29 stood in the name of father of the first plaintiff and the first defendant. The first plaintiff, the first defendant, and their father entered into a registered partition deed dated 14.12.2001, under which the suit Well and Electricity Service Connection No.29 with a 10 H.P., motor



S.A.Nos.859 & 860 of 2015

(Horse Power), were jointly allotted to the first plaintiff and the first defendant.

(ii) After the partition, both parties were taking water from the said Well through the said service connection on a turn-system basis. Subsequently, due to some misunderstandings, both the first plaintiff and the first defendant claimed exclusive rights over the Electricity Service Connection No.29. The first defendant attempted to take possession of the said service connection with the help of defendants 2 to 4, and the same was objected to by the plaintiffs, and thereby misunderstandings arose between the plaintiffs and the first defendant. Though the defendants 2 to 4 have no right over the property, they have also included as parties to the suit. The first defendant attempted to prevent the plaintiffs from taking water from the Well through the Service Connection No.29 and also made efforts to transfer the said service connection and motor to another place. Hence, the plaintiffs filed the present suit.



S.A.Nos.859 & 860 of 2015

5. The brief averments in the written statement filed by the first

defendant are as follows:-

i) The suit is not maintainable and the plaintiffs are put to strict proof of the allegations levelled against the first defendant. The description of the properties as stated in the plaint are not correct. The Court fee paid in the suit is also not correct. The Court fee paid is also insufficient, and the suit has not been properly valued. The plaintiffs have suppressed the material facts.

ii) In the suit Well, two electricity service connections exist as S.C.No.29 and S.C.No.784. After the registered partition deed dated 14.12.2001 between the first plaintiff and the first defendant, due to inconvenience in taking water, both parties mutually decided to get another service connection in S.A.No.784, for which both incurred expenses.

iii) Thereafter, on 10.04.2004, by a Consent Deed, it was agreed between the parties that Service Connection No.29 would be allotted exclusively to the first defendant and Service Connection No.784 would be



S.A.Nos.859 & 860 of 2015

allotted to the first plaintiff. Pursuant to the said Consent Deed, from the

WEB COPY

year 2004 onwards, both the parties have been enjoying their respective service connections accordingly. Therefore, the first plaintiff has no right whatsoever over Service Connection No.29. The plaintiffs suppressed the above material facts and have filed the present suit, which is liable to be dismissed.

6. The brief averments in the written statement filed by the defendants 2 to 4 are as follows:-

i) The suit is not maintainable and liable to be dismissed. As per the records of the Electricity Board, the father of the first defendant, Somu Gounder, executed Settlement Deed in favour of the first defendant on 17.05.2001. The service connection No.29 originally stood in the name of the said Somu Gounder. Pursuant to the said Settlement Deed, the first defendant made a request to transfer the service connection in his name.



S.A.Nos.859 & 860 of 2015

Based on the Settlement Deed, the defendants 2 to 4 have already transferred the service connection No.29 in favour of the first defendant.

ii) Therefore, the first defendant is the exclusive owner of the Service Connection No.29. Service Connection No.784 is being used by the plaintiffs. The defendants 2 to 4 have been unnecessarily impleaded as parties to the suit, Hence, the suit is liable to be dismissed.

7. Based on the above said pleadings and hearing both sides, and upon perusal of the records, the Trial Court framed the following issues for trial:-

“i) Whether the plaintiffs have any right in half of the share in the suit property's Electricity Service Connection No.29?

ii) Whether as per the consent agreement between the plaintiffs and the first defendant, Electricity Service Connection No.784 was obtained in the name of the plaintiff for the suit Well?

iii) Whether the plaintiff is entitled to the relief of



S.A.Nos.859 & 860 of 2015

permanent injunction as prayed for?

iv) To what other reliefs, if any, is the plaintiff entitled to?"

8. In order to prove the case of the plaintiffs, on their side, the first plaintiff was examined as P.W.1 and one Mr. Ramasamy was examined as P.W.2 besides the documents were marked Exs.A1 and A5. On the side of the defendants, the first defendant was examined as D.W.1 and one Mr. Periyasamy was examined as D.W.2 and Ex.B1 document alone was marked.

9. After considering the above oral and documentary evidence, the Trial Court partly decreed the suit by declaring that the plaintiffs are entitled to $\frac{1}{2}$ share in the property, and granted a permanent injunction restraining the first defendant from disturbing the plaintiffs in drawing water from the suit Well. However, the Trial Court declined the relief of permanent injunction sought against the defendants 2 to 4 in respect of

10/24



S.A.Nos.859 & 860 of 2015

transferring the service connection No.29 without the consent of the first defendant.

WEB COPY

10. Aggrieved by the decree and judgement of the Trial Court, the plaintiffs preferred an appeal in A.S.No.37 of 2013 and the first defendant preferred an appeal in A.S.No.41 of 2012 before the First Appellate Court. The First Appellate Court dismissed the appeal filed by the plaintiffs and allowed the appeal filed by the first defendant. Consequently, A.S.No.41 of 2012 was decreed and the judgement and decree passed by the Trial Court were set aside. Aggrieved by the said common judgement and decree, the plaintiffs have preferred these Second Appeals.

11. At the time of admitting these Second Appeals on 23.07.2020, this Court formulated the following substantial questions of law:-

“ Whether the judgement of the Lower Appellate Court is vitiated in, that, it has believed the oral testimony



S.A.Nos.859 & 860 of 2015

WEB COPY

of D.W.1 of an alleged written Memorandum of Understanding arrived at between the parties, particularly, when this alleged Memorandum of Understanding is not before the Court?”

12. The learned Senior Counsel appearing for the appellants in both appeals would submit that the suit properties consist of a common Well and Electricity Service Connection No.29, and that both the plaintiffs and the first defendant are jointly entitled to the said Well and Electricity Service Connection No.29. In fact, the suit properties originally belonged to the father of the first plaintiff and the first defendant, one Mr. Somu Gounder. On 14.12.2001, the first plaintiff and first defendant, along with the said Somu Gounder have entered into a Partition Deed and as per the Partition, the suit Well and the Service Connection No.29 with a 10 H.P. motor were commonly allotted to the first plaintiff and the first defendant. In such circumstances, the first defendant cannot claim exclusive right over the suit properties by denying the rights of the first plaintiff to draw water



S.A.Nos.859 & 860 of 2015

from the common Well using Service Connection No.29. Since the first

WEB COPY

defendant attempted to restrain the first plaintiff from exercising such

rights, the suit came to be filed. Before the Trial Court, on the side of the

plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A5 were marked.

On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1

was marked. The evidence also shows that the first defendant attempted to

shift the service connection with the assistance of defendants 2 to 4. The

plaintiffs have clearly proved their case and the partition deed. There is no

dispute regarding the common allotment of the suit properties.

Accordingly, the Trial Court declared that the plaintiffs are entitled to $\frac{1}{2}$

share in the suit properties and granted a permanent injunction restraining

the first defendant from interfering with the plaintiffs' rights to take water

from the Well in turn. However, the Trial Court failed to consider the other

relief and dismissed the suit insofar as the prayer of permanent injunction

restraining defendants 2 to 4 from shifting the service connection without

the consent of the plaintiffs. Therefore, aggrieved by denial of the relief



S.A.Nos.859 & 860 of 2015

relating to the injunction restraining defendants 2 to 4 shifting the service

WEB COPY

connection with the consent of the plaintiffs, the plaintiffs filed an appeal.

Similarly, the first defendant also filed an appeal challenging the judgement and decree in respect of the declaration by declaring that the plaintiffs are owner of the $\frac{1}{2}$ share in the suit properties, and granted the permanent injunction in respect of the relief of restraining him, not to disturb the plaintiffs for taking water in the said suit Well through the said service connection.

13. Further, the learned counsel for the appellants in both Second Appeal would submit that the First Appellate Court, without properly appreciating the evidence on record in a proper prospective, erroneously allowed the appeal filed by the first defendant and dismissed the appeal filed by the plaintiffs. The First Appellate Court placed reliance on the evidence of D.W.2, who is stated to be an attesting witness to the Consent Deed. However, the said Consent Deed was not marked before the Trial



S.A.Nos.859 & 860 of 2015

Court, and in the absence of marking the consent deed, the First Appellate

WEB COPY

Court ought not to have relied the evidence of D.W.2. Therefore, the findings of the First Appellate Court are erroneous, and both the Second Appeals are liable to be allowed by setting aside the judgement and decree passed by the First Appellate Court.

14. On the other hand, the learned counsel appearing for the first respondent would submit that the properties had already been partitioned between the first defendant and the first plaintiff under the Partition Deed dated 14.12.2001, and as per the partition deed, the Well and the Service Connection No.29 were allotted as common to both parties. Due to the common use of service connection caused inconvenience, another service connection was obtained in the name of the first plaintiff in Service Connection No.784, and the Service Connection No.29 was thereafter allotted to the first defendant. To that effect, the first defendant and the first plaintiff had also entered into a Consent Deed dated 10.01.2004. The said



S.A.Nos.859 & 860 of 2015

Consent Deed was with the plaintiffs, which prevented the first defendant

WEB COPY

unable to produce it before the Trial Court. However, during the examination of D.W.2, the said witness proved the existence of the consent deed and categorically deposed that, as per the consent deed, the property has two service connections and the Service Connection No.29 was exclusively allotted to the first defendant.

15. The first appellant/first plaintiff contends, by referring to the materials on record, that the Service Connection No.29 is common to the first defendant and the first plaintiff. However, the Trial Court, without considering the evidence adduced by the first respondent herein/the first defendant, erroneously decreed the suit by declaring that the plaintiffs are entitled to $\frac{1}{2}$ share in the Well as well as in Service Connection No.29. Since the service connection was exclusively allotted to the first defendant, no question arises to grant a permanent injunction restraining him from taking water using the Service Connection No.29. Therefore, the first



S.A.Nos.859 & 860 of 2015

defendant/first respondent herein preferred an appeal. Likewise, the

WEB COPY

appellants/plaintiffs preferred an appeal as against the dismissal of permanent injunction restraining defendants 2 to 4 from shifting the service connection. The First Appellate Court, after considering all the evidence and witnesses, correctly dismissed the appeal filed by the plaintiffs and allowed the appeal filed by the first defendant, setting aside the judgement and decree passed by the Trial Court. There is no illegality or irregularity in the findings of the First Appellate Court. Hence, the Second Appeals are liable to be dismissed. Since no substantial questions of law arise for consideration, the appeals are deserve to be dismissed.

16. This Court has heard the submissions made by both sides and has perused the materials available on record.

17. In this case, the plaintiffs have filed the suit seeking a relief of declaration, by declaring that the suit properties, namely, Well and the



S.A.Nos.859 & 860 of 2015

Service Connection No.29, are common properties, and that the plaintiffs

WEB COPY

are entitled to $\frac{1}{2}$ share therein, and for a permanent injunction restraining the first defendant from interfering with their right to take water from the Well in turn, through the Service Connection No.29, and also prayed for a permanent injunction restraining defendants 2 to 4 from transferring Electricity Service Connection No.29 in favour of the first defendant, without consent of the plaintiffs, and also prayed for costs.

18. The first defendant denied the averments made in the suit and contended that the properties had already been partitioned on 14.12.2001. Thereafter, due to inconvenience in drawing water jointly, another service connection, namely, S.C.No.784, was obtained in favour of the first plaintiff, while Service Connection No.29, which was already in existence in the suit Well, was allotted to the first defendant. The first defendant relied upon a Consent Deed dated 10.01.2004, but the said document was not produced before the Trial Court. Therefore, the Trial Court decreed the



S.A.Nos.859 & 860 of 2015

suit.

WEB COPY

19. The First Appellate Court in the judgement, while discussing the facts of the case, reflects considerable confusion and lacks clarity regarding the status of the parties both in mentioning the suit as well as in the appeals. At several places, the reasoning is incomprehensible, and this Court unable to understand that what was trying to convey, and also the sentences do not properly convey the intended meaning. Moreover, the First Appellate Court failed to frame proper points for determination in each of the appeals and did not provide appropriate findings for the issues involved.

20. Therefore, without going into the merits of the case, it is appropriate to set aside the common judgement and decree passed by the First Appellate Court and the matter is liable to be remanded for fresh consideration, with a direction to frame proper points for determination in



S.A.Nos.859 & 860 of 2015

both appeals and to analyze the evidence adduced by both parties in accordance with law.

WEB COPY

21. Therefore, this Court is of the view that the judgement and decree of the First Appellate Court, rendered without proper appreciation of the evidence and without framing the necessary points for determination, is unsustainable.

22. As mandated under Order XLI Rule 31 of the Code of Civil Procedure, the judgement of the First Appellate Court shall be in writing and shall contain:-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced



S.A.Nos.859 & 860 of 2015

be signed and dated by the Judge or by Judges concurring therein.

WEB COPY

In the case on hand, no proper points for determination were framed in either of the appeals, and the reasons for the decisions rendered are also not even conveyed in a proper manner.

23. Though these Second Appeals were filed invoking Section 100 of Code of Civil Procedure (C.P.C.) 1908, and substantial questions of law were formulated, this Court, exercising the power under Section 103 of C.P.C., sets aside the common judgement and decree of the First Appellate Court and remands both Second Appeals for fresh disposal.

24. Accordingly, the Second Appeals are allowed. The judgement and decree passed by the First Appellate Court in A.S.No.37 of 2013 and A.S.No.41 of 2012 are set aside, and the matter is remanded to the First Appellate Court for fresh consideration by framing proper points for determination. Consequently, connected miscellaneous petitions are also



S.A.Nos.859 & 860 of 2015

closed.

WEB COPY

25. Considering the long pendency of the matter, the First Appellate Court is directed to dispose of both appeals without any delay as early as possible, preferably within a period of three months from the date of receipt of the case papers.

26. This Court further directs the Registry to send the entire case records to the First Appellate Court immediately, without any delay.

27.11.2025

Speaking/Non-Speaking Order : Yes/ No

Neutral Case Citation : Yes/ No

Index : Yes/ No

klt

22/24



S.A.Nos.859 & 860 of 2015

To

WEB COPY

- 1.The Sub-Court, Dharmapuri.
- 2.The District Munsif Court, Palacode.
- 3.The Section Officer, V.R. Section, High Court of Madras.

P. DHANABAL, J

klr



WEB COPY



S.A.Nos.859 & 860 of 2015

Pre-Delivery Judgement in

S.A.Nos.859 & 860 of 2015

and

M.P.Nos.1 & 1 of 2015

27.11.2025