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Marakkal Vs. the Superintending Engineer

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Court : Chennai

Decided On : Feb-10-2012

Judge : M.Venugopal, J.

Acts : Indian Electricity Act - Section 24; Code of Civil Procedure,(CPC) 1908 - Section 100

Appeal No. : SECOND APPEAL No.1609 of 1999

Appellant : Marakkal

Respondent : The Superintending Engineer

Advocate for Def. : Mr.V.Viswanathan, Adv.

Advocate for Pet/Ap. : Mr.A.R.Nixon, Adv.

Judgement :

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 03.03.1999 made in A.S.No.109 of 1998 on the file of Sub-Court, Bhavani, Erode District, confirming the Judgment and Decree in O.S.No.370 of 1990 on the file of the Additional District Munsif Court, Bhavani, dated 05.08.1998.

JUDGMENT

1. The Appellant/Plaintiff has projected this Second Appeal as against the Judgment and Decree dated 03.03.1999 in A.S.No.109 of 1998 on the file of the Sub-Court, Bhavani, Erode District in confirming the Judgment and Decree dated 05.08.1998 in O.S.No.370 of 1990 on the file of the Additional District Munsif Court, Bhavani.

2. The First Appellate Court, while passing the Judgment in A.S.No.109 of 1998 (filed by the Appellant/Plaintiff) on 03.03.1999 has opined that 'without prejudice to the right of the Appellant/Plaintiff in any manner', the electricity connection from Service Connection No.60 has been given to the 3rd Respondent/3rd Defendant's another Well and for giving such electricity service connection, no hardship or loss is caused to the Appellant/Plaintiff and also by giving such electricity connection, the said act cannot be considered to be against law and if the relief of mandatory injunction is granted in favour of the Appellant/Plaintiff, then it will cause hardship and loss to the 3rd Respondent/3rd Defendant and viewed in that perspective, dismissed the Appeal with costs, thereby confirming the Judgment and Decree passed by the trial Court in the main Suit.

3. Earlier, in the main Suit (filed by the Appellant/Plaintiff), one to two issues have been framed for consideration. On behalf of the Appellant/Plaintiff, witness P.W.1 has been examined and Exs.A1 to A10 have been marked. On the side of the Respondents/Defendants, the 3rd Respondent/3rd Defendant has been examined as D.W.1 and Exs.B1 to B3 have been marked.

4. The trial court, on a scrutiny of the entire oral and documentary evidence available on record, has come to a clear conclusion that for two Survey Numbers, the Well is common and also the service connection is common and since there is no water in the Well, by putting a bore and to draw water, to fix an Air Compressor and to use the same, this service connection is utilised and that there is no possibility for the Appellant/Plaintiff to get affected and consequently, dismissed the Suit with costs.

5. At the time of admission of the Second Appeal, this Court has formulated the following Substantial Questions of Law for rumination :

(i) Whether both the Courts below erred in holding that the Appellant was not put to any difficulty or hardship because of change over switch given in Service Connection No.60 to enable the 3rd respondent to take water from the borewell situated in another land? (ii) Whether both the Courts below failed to note that the Appellant being a co-owner is entitled to prevent the other co-owner from utilising the electric connection for some other purpose?

The Contentions, Discussions and Findings on Substantial Questions of Law Nos. 1 and 2:

6. According to the Learned Counsel for the Appellant/Plaintiff, the trial Court as well as the Appellate Court have committed an error in dismissing the Suit as well as the Appeal and in fact, the Appellant/Plaintiff is a co-sharer of the motor pumpset connected in the Suit Land and that the Appellant/Plaintiff has got equal share in the motor pumpset and both the Courts have failed to appreciate that the Appellant/Plaintiff is entitled to equal half right in respect of the electricity connection, even though Service Connection No.60 stands in the name of the 3rd Respondent/3rd Defendant.

7. It is the submission of the Learned Counsel for the Appellant/Plaintiff that Respondents 2 and 3/Defendants 2 and 3 should have given a notice to the Appellant/Plaintiff before giving such change over. The plea of the Appellant/Plaintiff is that if the 3rd Respondent/3rd Defendant uses Air Compressor change over switch, then the Appellant/Plaintiff will not be in a position to operate the motor and therefore, she cannot draw water through motor pumpset, in which she is entitled to half share.

8. Lastly, it is the contention of the Learned Counsel for the Appellant/Plaintiff that granting the relief of mandatory injunction is purely within the discretion of the Courts below and when civil right of the Appellant/Plaintiff is being affected, she is entitled to get the relief of mandatory injunction.

9. The Appellant/Plaintiff in the plaint has averred that she got the property measuring an extent of 3 acres and 21 cents in S.F.No.590 of Vannangadu Odathurai Village, Bhavani Taluk through a Settlement Deed, dated 20.06.1981

under Document No.840/81 along with right of suit property. From the date of 20.06.1981, she is in possession and enjoyment of the lands. The 3rd Respondent/3rd Defendant applied before the 2nd Respondent/2nd Defendant for getting service connection from the suit property to his exclusive bore well through an Air Compressor during March 1990. The Appellant/Plaintiff has given her objection before the 2nd Respondent/2nd Defendant on 17.04.1990. The 2nd Respondent/2nd Defendant has issued a letter dated 25.04.1990 to the Appellant/Plaintiff, wherein, it is mentioned that necessary action will be taken against the Objection Petition of the Appellant/Plaintiff in due course. Subsequently, the Appellant/Plaintiff offered the signature of the 3rd Respondent/3rd Defendant in a prescribed form for transfer. But, the 3rd Respondent/ 3rd Defendant refused the same. Hence, she has filed a Suit seeking the relief of mandatory injunction against the Respondents/Defendants by directing the Respondents 1 and 2/Defendants 1 and 2 to disconnect the service connection from Service Connection No.60 to the 3rd Respondent/3rd Defendant Air Compressor and to restore the same to its original condition and to pay the costs.

10. In the Written Statement filed by the 3rd Respondent/3rd Defendant, it is averred that the Appellant/Plaintiff is not entitled to get the relief of mandatory injunction. Further, she is not entitled to Service Connection No.60 and she is not in possession of the same and there is no approval of service connection in the name of the Appellant/Plaintiff and the service connection stands in the name of the 3rd Respondent/3rd Defendant as a rightful owner.

11. Moreover, the relationship between the Appellant/Plaintiff and the 3rd Respondent/3rd Defendant has become strained due to the pendency of a Suit in Sub Court, Erode and the Settlement Deed dated 20.06.1981 is a sham and nominal document and also that the Appellant/Plaintiff has not been put into possession of the property in question either in terms of the Settlement Deed or any time thereafter.

12. P.W.1 (Appellant/Plaintiff), in her evidence has deposed that the 3rd Respondent/ 3rd Defendant is her husband and he has settled the Suit property in her favour and during her lifetime, her husband viz., the 3rd Respondent/3rd

Defendant has married one Rajammal for the second time and that her husband has not divorced her and nearly 17 years have lapsed after execution of the Settlement Deed and that the suit property has been given on lease to one Bhavanan and for the suit land, Service Connection No.60 has been given.

13. It is the evidence of P.W.1 (in her cross-examination) that she does not remember that her tenant has filed a case against her and it is not correct to state that she has no right in the service connection and only has got the right of enjoyment. Moreover, the said tenant has filed a case against her and her husband in O.S.No.987 of 1993 praying for the relief of injunction.

14. Ex.A10 is the certified copy of the Judgment in O.S.No.987 of 1993 passed by the Learned Additional District Munsif, Bhavani dated 15.10.1997, in and by which the tenant has been granted the relief of permanent injunction. As a matter of fact, the present Appellant/Plaintiff in Second Appeal and her husband, viz. the 3rd Respondent/3rd Defendant having restraint by means of permanent injunction not to disturb the peaceful possession and enjoyment of the tenant/Plaintiff in that Suit.

15. D.W.1 (3rd Respondent/ 3rd Defendant), in his evidence, has deposed that in the Suit Well, there is no proper water and in his land, he has dug a borewell and there is a pumpset in the Well and he asked for permission from the Electricity Board for a change over switch and the Electricity Board have laid change over switch and he has kept the Compressor for drawing water from the Well through the bore.

16. It is the further evidence of D.W.1 that he has cancelled the Settlement Deed executed by the Appellant/Plaintiff (Wife) because of the reason that she has given trouble in filing the case and from the year 1988, the Suit electricity connection is a free electricity service and he does not remember his wife has raised an objection that he should not be given electricity connection.

17. This Court pertinently recalls the following decisions to prevent aberration of justice and to promote substantial cause of justice.

(a) As per the decision reported in AIR 1996 Bombay 36 (Prakash S.Akotkar and others vs. Mansoorkha Gulabkha and others), a co-owner/co-sharer when he is found in possession for and on behalf of other co-owners, the other co-owner cannot claim injunction so as to exclude the other co-owners from exercising their rights as co-owners.

(b) In Watson and Company vs. Ram Chand Dutt (1891) 18 ILR Cal. 10, the Privy Council has laid down the following rules :

(i) that the Court should be cautious of interference with the rights of co-shares;

(ii) that the circumstances of this country and its law were to be considered;

(iii) that where a co-sharer is in actual occupation of land not actually used by another cultivating in a proper course of cultivation, and that sharer resists a co-sharer, not in denial of title, but with a view to self-protection there should be no decree for joint possession or injunction, but damages only should be given.

(c) In a decision reported in AIR 1999 SC 2272 (Kochkunju Nair vs. Koshy Alexander), the Apex Court has held as follows:

Ownership imports three essential rights namely, (i) right to possession; (ii) right to enjoy; and (iii) right to dispose. If an owner is wrongly deprived of possession of his property he has a right to be put in possession thereof. All the three essentials are satisfied in the case of co-owner of a land. All co-owners have equal rights and co-ordinate interest in the property though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owner or co-owners. Each co-owner has, in theory interest in every infinite small portion of the subject-matter and each has the right irrespective of the quantity of his interest, to be in possession of every part and parcel of the property jointly with others. (vide Mitra's Co-ownership and Partition, Seventh Edn.)

(d) In a Full Bench decision of the Punjab and Haryana Court reported in 1981 PLJ 204 (Bartu vs. Ram Sarup), it is held as follows:

(i) A co-owner has interest in the whole property and also in every parcel of it.

(ii) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(iii) A mere occupation of a larger portion or even of entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all. (iv) The above rule admits of no exception when there is ouster of a co-owner by another. But is order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other. (v) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(vi) Every co-owner has a right to use the joint property in a husband-like manner not inconsistent with similar rights of other co-owners.

(vii) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owner, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition. (e) In Jayaramachandran vs. Tamil Nadu Electricity Board (AIR 2002 Madras 230), it is held that

the suit filed without exhausting remedies under the Act is not maintainable.

(f) In M/s Swastic Industries vs. Maharashtra State Electricity Board reported in JT 1997 (2) SC 329, the Apex Court has held as follows:

It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same.

They have the power to discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges.

(g) In a decision reported in 1997 (III) CTC 527 (Asmath Begum vs. The Superintending Engineer, TNEB, Mattur and others), it is held that an injunction cannot be granted to supersede or to run against a specific mandate of statute.

(h) Also, in a decision reported in 1999 (1) CTC 289 (S.M.Amarchand Sowcar (died) and others vs. Tamil Nadu Electricity Board, Kancheepuram and others), this Court has held that the Courts cannot grant futile decree or order. Moreover, in paragraph 20 of the aforesaid judgment, it is observed that 'the Courts cannot grant a declaration when it is of no utility and can be ignored by the party against whom the declaration is issued. The principle of brutum fulmen is applicable to the present case, which is defined in Blacks Dictionary as follows : An empty noise; an empty threat, a Judgment void upon its face which is in legal effect no judgment at all, and by which no rights are divested, and very much more can be obtained, and neither binds nor bars any one.

18. Furthermore, a co-owner ought to utilise the joint property in a husband-like fashion and his/her use of the joint property is not in any manner inconsistent with the similar right of other co-owners. However, a co-owner can claim injunction against another co-sharer if he is in exclusive possession. The remedy of the other co-sharer not in possession is not ousting him forcibly, but his remedy is to file a Suit for partition and to claim mesne profits.

19. It is well settled principle in law that no injunction muchless a mandatory injunction can be granted by a Court of Law in favour of a co-owner against another co-owner, when there is a dispute between the parties. Moreover, both the trial Court as well as the first Appellate Court have come to a clear conclusion that by keeping the Air Compressor and drawing water from the Well through bore will not cause any hardship to the Appellant/Plaintiff when the service connection is a common one and also for the land in S.F.No.590-B and 590-A, the Well therein has a common Service Connection bearing No.60 and in S.No.550 Well, there is a service connection and the Well in 590-A is also concerned with S.No.590-B. Getting the electricity service connection by means of change over switch by the

3rd Respondent/3rd Defendant definitely will not cause any hardship or inconvenience or loss to the Appellant/Plaintiff and viewed in that perspective only, both the Courts have negatived the relief of mandatory injunction prayed for by the Appellant/Plaintiff.

20. At the risk of repetition, it is to be pertinently pointed out by this Court that as against the co-owner, no relief of injunction or mandatory injunction can be granted.

21. At this stage, the Learned Counsel for the Respondents 1 and 2/Defendants 1 and 2 (Electricity Board) submits that if the Appellant/Plaintiff has any grievance in regard to the permission accorded by the Electricity Board relating to the change over switch for making the Air Compressor to work, etc, the Appellant/Plaintiff, as against the permission being accorded by the Electricity Board, has to prefer an Appeal before the competent authority and the Appellant/Plaintiff as a Consumer is entitled to avail such remedy under the Indian Electricity Act, which the Appellant/Plaintiff in the present case has not availed of the same and therefore the Suit filed by the Appellant/Plaintiff prayed for the relief of mandatory injunction is not maintainable in law.

22. In the instant case on hand, the Appellant/Plaintiff has not availed the remedy of initiating further proceedings as against the order of permission being granted by the Electricity Board in favour of the 3rd Respondent/3rd Defendant relating to change over switch electricity connection for Service Connection No.60 with a view to operate the Air Compressor for the purpose of drawing water from the Well through bore.

23. Looking at from any angle and also taking note of the facts and circumstances of the present case, this Court comes to an inevitable conclusion that the Suit filed by the Appellant/Plaintiff is not maintainable in law and therefore, the Substantial Questions of Law Nos.1 and 2 are answered against the Appellant/Plaintiff.

24. In the result, the Second Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the Judgment and Decree of the First Appellate Court dated 03.03.1999 in A.S.No.109 of 1998 on the file of the Learned Sub-Court,

Bhavani and that of the trial court dated 05.08.1998 in O.S.No.370 of 1990 are confirmed for the reasons assigned in this Appeal.

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