

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.1931 of 1999

1. The Assistant Accounts Officer
Chengalpattu Electricity
Distribution Circle North
Tiruvallur
2. The Assistant Engineer, Operation
and Maintenance, Chengalpattu
Electricity Distribution Circle (North)
Tiruvallur
3. The Assistant Executive Engineer
Operation and Maintenance North
Chengalpattu Electricity Distribution Circle (North)
Tiruvallur
4. The Superintending Engineer
Chengalpattu Electricity Distribution Circle (North)
Tamil Nadu Electricity Board,
Kancheepuram Appellants/Defendants

Vs.

1. Annammal
2. Sivapooshanam
3. Navaneetham
4. Thanikachalam
5. Saraswathi
6. Ganga Devi
7. Vadivelu
8. Yashodha
9. Balaraman Respondents/Plaintiffs

Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.04.1999 made in A.S.No.5 of 1999 on the file of the Subordinate Judge, Trivellore reversing the judgment and decree dated 23.04.1998 made in O.S.No.192 of 1986 on the file of the District Munsif Court, Trivellore.

For Appellants : Mr.V.Viswanathan

For Respondents: Mr.C.Shankar

JUDGMENT

The officials of the Tamil Nadu Electricity Board, Chengalput Electricity Distribution Circle (North), Trivellore, who were the defendants in the original suit, are the appellants in the second appeal.

2. The suit came to be filed by one Gopal Naicker, the consumer in respect of Electricity Service Connection No.901 of Tirupatchur, seeking permanent injunction restraining the defendants from disconnecting the suit service connection. Noticing unauthorized drawal of power using electrical appliances having more horsepower than the sanctioned capacity by connecting an additional appliance at another field by an extension line, a notice was issued to the deceased plaintiff Gopal Naicker on 07.05.1986 directing him to disconnect the additional appliance (motor) having the capacity of 7.5HP within 7 days from the date of receipt of the said notice. The deceased plaintiff Gopal Naicker did so and informed the officials of the Tamil Nadu Electricity Board. Thereupon, for unauthorized drawal of additional power, a provisional assessment was made at Rs.13,316/- and a letter dated 19.08.1986 was sent to the deceased plaintiff Gopal Naicker directing him to pay immediately 50% of the said amount and a sum of Rs.50/- towards supervising charges with a rider that in case of failure, the service would be disconnected. Right of representation against the provisional assessment was also spelt out in the said notice dated 19.05.1986. The said notice dated 19.05.1986 bearing Lr.No.AOB/N/TRL/FDOR/D.282186 was challenged by Gopal Naicker, the sole plaintiff by filing the original suit O.S.No.192 of 1986.

4. After contest, the suit was dismissed by the trial Court. On appeal, the lower appellate Court allowed the appeal and decreed the suit granting the relief of declaration that the said notice was illegal and void and a permanent injunction not to disconnect the service. It is as against the said decree passed by the lower appellate Court in A.S.No.5 of 1999, the present second appeal has been filed.

5. The second appeal was admitted on 13.10.2003 identifying following questions to be the substantial questions of law that have arisen for consideration in the second appeal:-

1) Whether the lower appellate Court is correct in reversing the well considered judgment and decree of the trial Court?

2) Whether the lower appellate Court is correct in not considering the appellant's case that without existing the appeal remedy available under the terms and conditions and Act has approached the civil Court for redressal?

3) Whether the lower appellate Court is correct in view of the Supreme Court ruling reported in 1997 5 SCC 120 Punjab Electricity Board V.Ashwinin Kumar?

6. The second appeal stands listed today for disposal on merits. Meanwhile, the parties had a negotiation which resulted in a consensus, pursuant to which the learned counsel for the appellants has submitted a memo to the effect that the appellants are waiving the belated payment surcharge on the penalty assessed for unauthorized drawal of excess power. However, the memo does not contain the amount which was accepted by the appellants before the trial Court as the principal amount of penal assessment for unauthorized drawal of excess powers.

7. It is an admitted fact that the appellants, who were the defendants before the trial Court, in their written statement admitted that the penal assessment was reduced to Rs.6,392/- from the original provisional assessment of Rs.13,316 indicated supra. However, after reducing the penal assessment, the Electricity Board also claimed interest for the belated payment, naming it "Belated Payment Surcharge". Now, by the present memo, the appellants have come forward to offer waiver of the interest claimed on the penal assessment in the name of "Belated Payment Surcharge".

8. The learned counsel for the respondents, who are the legal representatives of deceased Gopal Naicker, has also made an endorsement on the grounds of second appeal that the respondents concede the claim of the appellants for a sum of Rs.6,392/-; that the respondents are ready to make payment of the same and that the second appeal may be disposed of recording the memo filed on behalf of the appellants and the endorsement made on behalf of the respondents. In view of the settlement arrived at between the parties, no answer need be provided for the questions framed as substantial questions of law.

Accordingly, based on the compromise spelt out by the memo dated 28.10.2015, filed by the counsel for the appellants and by the endorsement made by the counsel for the respondents, the second appeal is allowed. The decree passed by the lower appellate Court is set aside and the suit shall stand decreed for the relief of injunction not to disconnect the service given to S.No.901 alone with a rider that the above said sum of Rs.6,392/- should be paid within 15 days from today. In case the amount is not paid, the suit shall stand dismissed and the appellants (officials of the

Electricity Board) shall be free to proceed with the proposed disconnection. There shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gpa

To

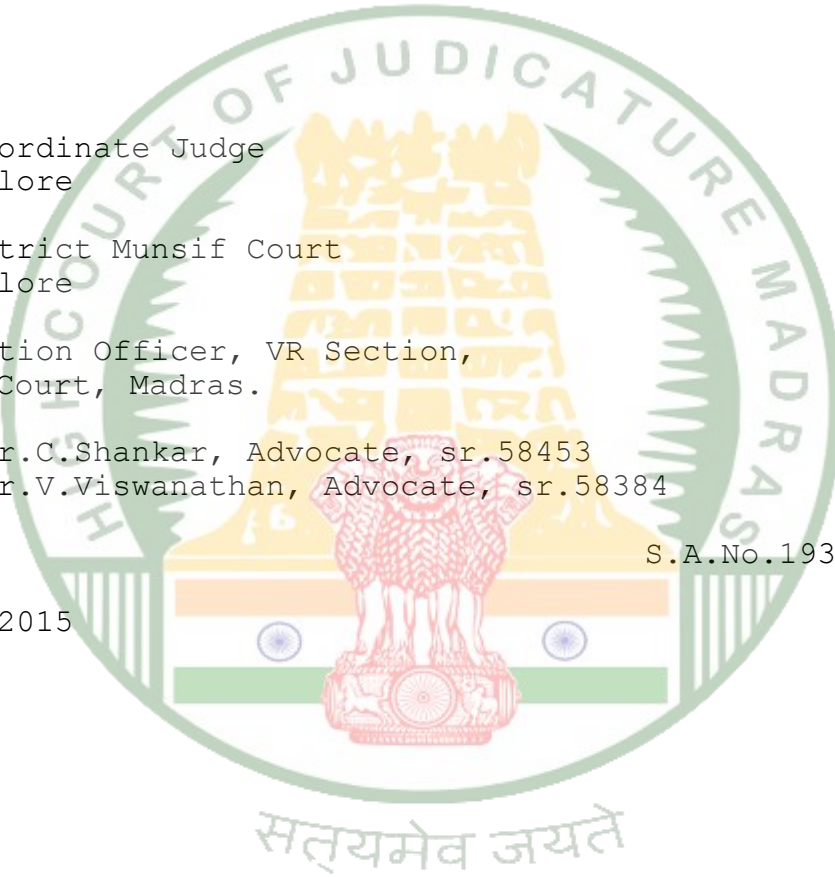
1. The Subordinate Judge
Trivellore
2. The District Munsif Court
Trivellore
3. The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.C.Shankar, Advocate, sr.58453

+1 cc to Mr.V.Viswanathan, Advocate, sr.58384

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