

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.515 of 1999

1. Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur Dam.
2. Junior Engineer (O & M),
Tamil Nadu Electricity Board,
Kolathur (Rural), Mettur Dam. ... Defendants/Appellants

Vs

- 1.A.Elangovan
- 2.T.A.Gopal
- 3.P.Subramani ... Plaintiffs/Respondents

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 29.08.1997 in A.S.No.51 of 1995 on the file of the Subordinate Court, Sangagiri, confirming the Judgment and Decree dated 13.01.1995 in O.S.No.71 of 1989 on the file of the District Munsif Court, Mettur.

For Appellants : Mr.V.Viswanathan
For Respondents : Mr.R.Nalliappan

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 29.08.1997 in A.S.No.51 of 1995 on the file of the Subordinate Court, Sangagiri, confirming the Judgment and Decree dated 13.01.1995 in O.S.No.71 of 1989 on the file of the District Munsif Court, Mettur.

2.The averments made in the plaint are as follows:-

The plaintiffs are close relatives and they are residing in the same place and they are adjacent land owners. They are also active members of the Agricultural Association called Ulavar Discussion Forum, Chinnathanda, Mettur Taluk, Salem District. The first plaintiff is the owner and consumer of Electric Service Connection No.21, the second plaintiff is the owner and consumer of Electric Service Connection No.24 and the third plaintiff is the owner and consumer of Electric Service Connection No.73 in Chinnathanda Distribution. The first plaintiff's father executed an

agreement with the defendants for 7.5 H.P. for his Service Connection No.21 but he has availed and installed only 5 H.P. with the consent of the defendants. Similarly, the second plaintiff also executed agreement for 7.5 H.P. but availed and installed only 5 H.P. and the third plaintiff executed agreement for 5 H.P. but availed and installed only 3 H.P. with the consent of the defendants. The plaintiffs are continuously using the above availed load for the last 25 years and are regularly paying the Electric Consumption charges without any default. Previously, the defendants charged the Electric consumption charges for the actual meter reading. Further, according to the present policy, the defendants have to charge for the Horse Power connected in the suit service connection. But they are charging the Electric Consumption Charges as per their sanctioned load and not as per the actual load availed. Therefore, on 10.02.1989 the plaintiffs questioned the officers and so, the defendants issued assessment notice on 10.02.1989 to the plaintiffs for the entire sanctioned load. So, the plaintiffs sent money order on 14.02.1989 to the second defendant for the actual load connected. But the second defendant refused to receive the same. On the other hand, the defendants illegally without giving any disconnection notice and without informing the plaintiffs, they have disconnected the suit service connection on 16.02.1989. Since the plaintiffs are not able to irrigate their lands since the defendants disconnected the suit Electricity Service Connection, they were constrained to file a suit for declaring the impugned demand notice dated 10.02.1989 as illegal, arbitrary, null and void and to permanently restrain the defendants and their staff from collecting the amount demanded therein and also for mandatory injunction directing the defendants to restore the suit service connection.

3.The gist and essence of written statement filed by the second defendant which was adopted by the first defendant are as follows:

It is true that prior to 15.09.1984, the Department was charging the electric consumption on the actual meter reading and that too, if the usage of electricity exceeds the Contract minimum load. Subsequent to 15.09.1984, all the meters fixed for the Pumpset Service Connections were removed and the agriculturists were given concessions to the effect that they will have to pay only RS.75/- per HP per year irrespective of the utilization of the engergy for their agricultural pumpset connection. It is false that the Department over charged for the connected load alone. As per the revised Rules of the Board and as contemplated in G.O.Ms.No.482, PWD, dated 22.03.1989 of the Tamil Nadu Electricity Boad Gazatte, the farmers are to be charged at the lumpsum rate of Rs.75 per HP for the contracted load per annum. In the present case, the contracted load for the plaintiffs 1 and 2 is 7.5 HP and 5 HP for the third plaintiff. So, all the plaintiffs have to pay the lumpsum amount of Rs.75 HP as per the contract load irrespective of the fact that the suit service connections are connected with 5 HP and 3 HP respectively. It is true that the plaintiffs 1 and 2 sent Money

Orders for Rs.187.50 each and the third plaintiff for RS.112.50 towards the Half Yearly minimum for the period 2/89. But as the total assessed amount was not sent along with the above amount, the Department had to reject the money order. There is nothing illegal in doing so and it is the duty of the plaintiffs to pay the entire arrears in one lumpsum. Since the assessed amount was not paid by the plaintiffs within the stipulated time, the service connection has been disconnected. Hence, he pray for dismissal of the appeal.

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.3, D.W.1 and Exs.A1 to A6, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.51 of 1995 on the file of the Subordinate Court, Sangagiri.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the defendants.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"Whether the Courts below are correct in holding that the defendant Board is entitled to collect electricity charges only for the actual load connected and not the contracted load?"

7.Challenging the concurrent finding of both the Courts below, the learned counsel appearing for the appellants would submit that the respondents/plaintiffs are not relatives, they are different persons and so, there is no same cause of action and hence, the suit itself is not maintainable. That factum was not considered by both the Courts below. He further submitted that before G.O.Ms.No.482, PWD, dated 22.03.1989 of the Tamil Nadu Electricity Board Gazette came into effect, the Agriculturists - Service Connection holder has to pay only the consumed electricity charges. But whereas after the G.O.Ms.No.482, PWD, dated 22.03.1989 of the Tamil Nadu Electricity Board Gazette has been passed, whether they consumed or not, they have to pay Rs.75/- per HP. The respondents 1 and 2/plaintiffs 1 and 2 though executed agreement for 7.5 HP, they installed only 5 HP and the third respondent/third plaintiff though executed agreement for 5 HP, he installed only 3HP. So, they have to pay the amount demanded in the impugned notice. That factum was not considered by both the Courts below. Hence, he pray for setting aside the judgment and decree passed by both the Courts below.

8. Resisting the same, the learned counsel appearing for the plaintiffs would submit that the appellants/defendants have not filed any document to show that there is an agreement between the appellants and the respondents. Further, even though they entered agreement for 7.5 HP and 5 HP respectively, but there is no evidence to show that only 5 HP and 3 HP respectively have been availed. That factum was rightly considered by both the Courts below. He further submit that G.O.Ms.No.482, PWD, dated 22.03.1989 of the Tamil Nadu Electricity Board Gazette came into effect only after issuance of the notice. So, the notice itself is not in consensus with the G.O.Ms.No.482, PWD, dated 22.03.1989. He has also relied upon the decision reported in AIR 2007 SC 1247 (Prem Lal Nahata and another vs. Chandi Prasad Sikaria) and submits that when the defendant is one and the same, cause of action is one and the same, in such circumstances, the suit is maintainable. Hence, he pray for dismissal of the appeal.

9. Considered the rival submissions made on both sides and also perused the typed set of papers.

10. Admittedly the respondents are having Service Connections. The first respondent has the Service Connection No.21 and he executed an agreement for 7.5 HP but installed only 5 HP in the year 1962. Similarly, the second respondent having Service Connection No.24 and he also executed agreement for 7.5 HP but installed only 5 HP and the third respondent having Service Connection No.73 also executed agreement for 5 HP but installed only 3 HP. To prove that the respondents have availed 7.5 HP and 5 HP respectively, the appellants have not filed any documents. It is admitted by the learned counsel appearing for the appellants that before G.O.Ms.No.482 PWD dated 22.03.1989 came into effect, the agriculturists are liable to pay the Electricity charges for their actual consumption. In paragraph No.4 of the written statement, it was specifically mentioned that "as per the revised Rules of the Board and as contemplated in G.O.Ms.No.482, PWD, dated 22.03.1989 of the Tamil Nadu Electricity Board Gazette, the farmers are to be charged at the lumpsum rate of Rs.75 per HP for the contracted load per annum". On perusal of the records shows that G.O.Ms.No.482, P.W.D. came into effect on 22.03.1989, but whereas the impugned demand notice has been issued on 10.02.1989, much prior to the G.O. came into effect. In such circumstances, the Trial Court has held that the impugned demand notice dated 10.02.1989 is illegal, arbitrary and null and void. Furthermore, the appellants are custodian of all the documents and agreements and they have not filed any iota of documents before the Court to show that the respondents herein have availed 7.5 HP and 5 HP respectively. In such circumstances, once the G.O.Ms.No.482 has not been came into effect on the date of issuance of impugned demand notice, the notice itself is null and void and without giving opportunity the appellants have disconnected the service connection and it is illegal. Hence, both the Courts below have considered all the aspects in proper perspective and came to the correct conclusion.

11.The only point to be decided is whether the suit is bad for misjoinder of cause of action. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the respondents in AIR 2007 SC 1247 (Prem Lala nahata and another vs. Chandi Prasad Sikaria), wherein it was held that if the interest is one and the same as against the same defendant, the plaintiffs may unite in the same suit. It is appropriate to incorporate paragraph No.11 of the decision, which reads as follows:

"11.Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order I, Rule 1 and order I, Rule 3 on the one hand, or Order II, Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to rejection. This is clear from Rules 3A, 4 and 5 of Order I of the Code, and this is emphasised by Rule 9 or Order 1 of the Code which provides that no suit shall be defeated by reason of non-joinder or misjoinder of parties and the Court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order I which enables the Court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order II deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interest against the same defendant may unite such causes of action in the same suit. Rule 6 enables the Court to order separate trials even in a case of misjoinder of causes of action in a plaint filed."

12.Considering the above dictum laid down in the above citation along with the facts of the present case, the above decision is squarely applicable to the present case and hence, the suit is not hit by misjoinder of cause of action. So, both the Courts below have rightly held that the respondents are entitled to the decree as prayed for in the plaint. Hence, the decree and judgment passed by both the Courts below does not warrant any interference and the same are hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

13.In fine,

- Second appeal is dismissed.

- The decree and judgment passed by both the Courts below are hereby confirmed.
- There is no order as to costs.

s/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

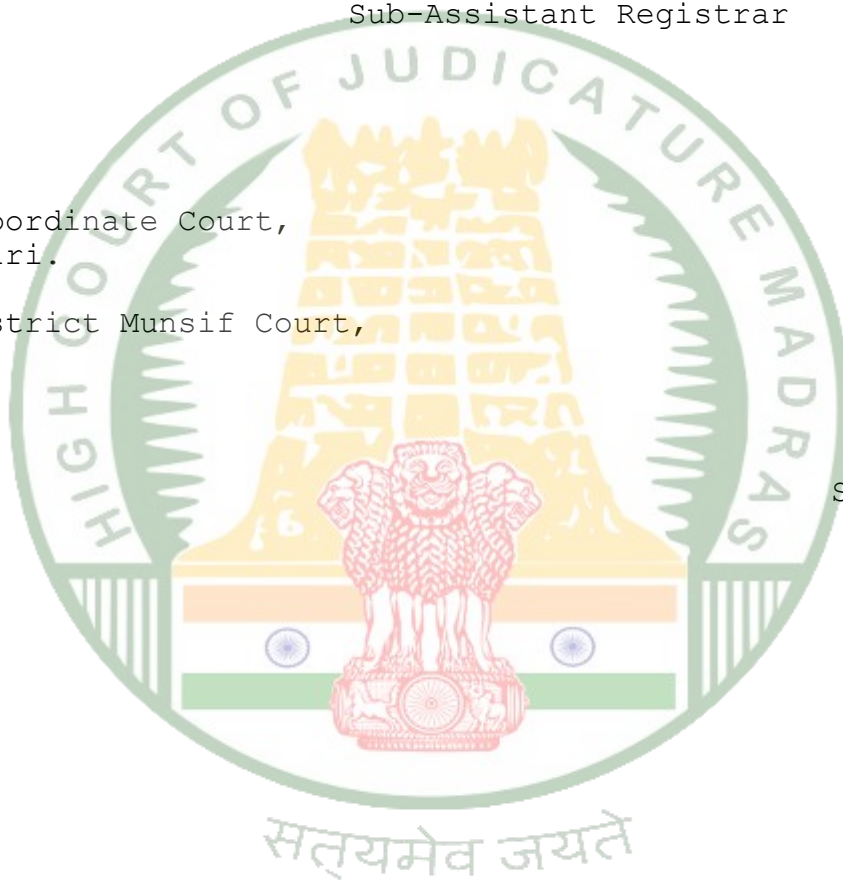
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To

1. The Subordinate Court,
Sangagiri.
2. The District Munsif Court,
Mettur.

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