

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..11..2015

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.310 of 2009

- 1.Superintending Engineer,
Coimbatore Electricity Distribution Circle/North,
Tamil Nadu Electricity Board,
Tatabad, Coimbatore 641 012.
- 2.The Executive Engineer, Distribution,
Tamil Nadu Electricity Board,
Thudiyalur, K.Vadamadurai,
Coimbatore.
- 3.The Assistant Executive Engineer/O & M,
Tamil Nadu Electricity Board,
Saravanampatti, Chinnavadampatti (P.O.),
Coimbatore-6.
- 4.The Assistant Executive Engineer,
Anti Power Theft Squad,
Tamil Nadu Electricity Board,
Coimbatore 641 012. ... Appellants/ Defendants

-Versus-

- 1.M.Venkatasamy Naidu
- 2.V.Venugopal ... Respondents/ Plaintiff

This second appeal is filed against the judgment and decree dated 21.03.2007 made in A.S.No.13 of 2007 by the learned III Additional Subordinate Judge, Coimbatore, confirming the judgement and decree dated 16.03.2006 made in O.S.No.1180 of 2003 on the file of the learned I Additional District Munsif, Coimbatore.

For Appellants : Mr.V.Viswanathan

For Respondents : Mr.N.Damodaran

JUDGMENT

The respondents 1 and 2 herein filed O.S.No.1180 of 2003 on the file of the learned I Additional District Munsif, Coimbatore for a decree and judgement declaring the order passed by the 1st defendant on 29.07.2003 calling upon the plaintiffs to pay a sum of Rs.2,77,737/- on account of the alleged electricity theft committed by them as null and void and not sustainable in law; and for a permanent injunction restraining the defendants from enforcing the order of the 1st respondent dated 29.07.2003. The trial court, by decree and judgement dated 16.03.2006, decreed the suit as prayed for. Aggrieved by the same, the appellants herein filed an appeal in A.S.No.13 of 2007 before the learned III Additional Subordinate Judge, Coimbatore. By decree and judgement dated 21.03.2007, the first appellate court, dismissed the appeal thereby confirming the decree and judgement of the trial court. Challenging the same, the defendants are now before this court with this second appeal.

2. This Second Appeal has come up today for admission. Today, it is submitted by the learned counsel for the respondents that the 1st respondent/1st plaintiff is no more. However, he would submit that the 2nd respondent being the son of the 1st respondent, may be recorded as a legal representative of the 1st respondent. According, it is recorded.

3. The case of the plaintiffs in brief is as follows:- The land comprised in S.F.No.787 at Idikarai Village belongs to the 1st plaintiff. The 2nd plaintiff is his son. It is alleged that there is a bore-well in the said property. It is further alleged that on 23.07.2001 when the Assistant Engineer, TNEB along with a team of officials had inspected the said village, he found an electric motor in the said bore-well functioning with electricity. It was found that electricity was taken from the nearby electricity service line by using PVC wires. In short, it was a theft of electricity by the 2nd plaintiff. In that regard, a notice was issued, enquiry was held and an order was passed holding that the plaintiffs are liable to pay a sum of Rs.2,77,737/- to the board. As against the same, the plaintiffs filed an appeal to the Appellate Authority and the same was dismissed. Thereafter, the plaintiffs filed the present suit questioning the impugned order and also for a consequential relief of permanent injunction.

4. In the written statement, it was contended by the defendants that since there was electricity theft, the impugned order came to be passed. The impugned order has been passed after affording sufficient opportunity and by following the procedure established by law. Therefore, the impugned order cannot be called in question before the civil court.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case on the side of the plaintiffs, 3 witnesses were examined and 5 documents were exhibited. On the side of the defendants, 2 witnesses were examined and 13 documents were exhibited.

6. Having considered all the above, the trial court decreed the suit as prayed for which was later confirmed by the first appellate court. That is how, the defendants are now before this court with the present second appeal.

7. I have heard the learned counsel for the appellants and the learned counsel appearing for the respondents and also perused the records carefully.

8. In this second appeal, the learned counsel for the appellants would submit that the jurisdiction of the civil court under Section 9 of the Code of Civil Procedure has been barred by the provisions of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board.

9. But, the learned counsel for the respondents would submit that the said procedure to be followed under the Terms and Conditions of Supply of Electricity is applicable only in respect of a consumer in the event if he commits electricity theft and it is not applicable to a third party. Thus, according to him, the civil suit is not barred.

10. I have considered the above submissions carefully.

11. In my considered view, there is no substantial question of law at all in this second appeal warranting any decision inasmuch as the said question has already been answered by this court in a catena of judgments. As a matter of fact, in P.Subramaniam v. The Assistant Divisional Engineer and 2 others, 1994 Writ L.R. 197, this court has held that the civil court has jurisdiction and the jurisdiction of the civil court has been barred in respect of an order passed only against a consumer. In such view of the settled position, I hold that the present civil suit at the instance of the plaintiffs is maintainable.

12. In the above said judgement, this court has also held that if any theft has been committed by a third party to recover the loss caused to the electricity board, the remedy available for the electricity board is to only file a suit and not to pass any order against him as it has been done in the present case.

13. In such view of the matter, I am of the considered view that the impugned order is not at all sustainable in law. The two courts below have properly appreciated the facts in the light of

the above judgement and have come to the conclusion that the order under challenge in the suit is liable to be declared as void and consequentially, the plaintiffs are entitled for injunction as prayed for. In the said conclusion arrived at by the courts below I do not find any infirmity at all warranting admission of the second appeal and the second appeal must therefore fail.

14. In the result, the second appeal is dismissed and the decree and judgement of the courts below are confirmed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

kmk

To

- 1.The III Additional Subordinate Judge, Coimbatore.
- 2.The I Additional District Munsif, Coimbatore.

1 cc to M/s.V. Viswanathan, Advocate, Sr. 63817

1 cc to M/s. N. Damodaran, Advocate, Sr. 63799

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