

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.552 of 2013

and

M.P.No.1 of 2013

K.Devaraj

...Appellant/Plaintiff

Vs.

1.Tamil Nadu Electricity Board,
Rep. By its Executive Engineer,
(Operation and Maintenance),
Katpadi, Vellore District.

2.The Junior Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board,
Katpadi, Vellore District.

...Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 12.01.2012 made in A.S.No.39 of 2011 on the file of the learned Subordinate Judge, Vellore, Vellore District reversing the judgement and decree dated 10.03.2011 made in O.S.No.184 of 2009 on the file of the learned District Munsif, Katpadi, Vellore District.

For Appellant : Mr.T.P.Prabhakaran

For Respondents : Mr.V.Viswanathan

JUDGEMENT

The plaintiff in O.S.No.184 of 2009 on the file of the learned District Munsif, Katpadi, Vellore District is the appellant herein. The respondents are the defendants in the suit. The plaintiff filed the said suit for declaration that the disconnection notice issued by the second defendant to disconnect the electricity Service Connection No.653 is illegal and void and also for permanent injunction to restrain the defendants from giving effect to the said notice. The trial Court decreed the suit as prayed for. As against the same, the respondents filed an appeal in A.S.No.39 of 2011 on the file of the learned Subordinate Judge, Vellore. By decree and judgement dated

12.01.2012, the First Appellate Court allowed the appeal thereby setting aside the decree and judgement of the trial Court and dismissed the suit. As against the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

3.The case of the plaintiff is as follows:-

The plaintiff proposed to construct a marriage hall in the name and style of "Sowbakiyammal Krishnappa Thirumana Maligai" at Chinna Vallimalai, Vallimalai Post, Katpadi Taluk, Vellore District. For constructing the same, he had obtained electricity temporary service connection under S.C.No.552 from the defendants in the year 2000. He had deposited a sum of Rs.69,000/- as security deposit. He was regularly paying the electricity consumption charges and there was no arrears. After the construction of the marriage hall was completed, permanent electricity service connection was given to the plaintiff under S.C.No.653. While so, the defendants, suddenly, issued a notice on 21.03.2004, calling upon the plaintiff to pay a sum of Rs.76,391/- in respect of temporary service connection S.C.No.552. But, no details were given. The plaintiff disputed the said claim made. Thereafter, notice of termination was issued. Challenging the same, the plaintiff filed the present suit.

4.In the written statement, it is stated that, it is true that the plaintiff was given temporary service connection for the period between 31.05.2002 and 01.09.2003. According to the defendants, for the electricity consumption, instead of collecting the charges @ Rs.300/- per unit and 5% as surcharge, less amount, by mistake, was collected. This was noticed only during audit and therefore, the differential amount was demanded from the plaintiff.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff he was examined as P.W.1 and as many as eight documents were exhibited. On the side of the defendants, two witnesses were examined and five documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit which was reversed by the First Appellate Court. That is how the appellant/plaintiff is before this Court with this second appeal.

7.In this second appeal, it is contended by the learned counsel for the appellant that though, it is the case of the defendants in the written statement that the amount claimed as arrears is relating to temporary service connection S.C.No.552, the First Appellate Court has held that the said amount is due from the plaintiff towards the

temporary Service Connection No.1. This is illegal, the learned counsel submitted.

8.The learned counsel for the respondents would submit that there was a mistake in the demand notice. According to him, the demand should have been made only in respect of Service Connection No.552 and not in respect of service connection No.1. The same mistake occurred in the written statement also. However, evidence was let in wherein, the said mistake was rectified and considering the same only, the First Appellate Court dismissed the suit holding that the plaintiff is liable to pay the amount demanded.

9.From the materials and from the submissions made on either side, I find that the following substantial questions of law have arisen for consideration.

"1.Whether the First Appellate Court was right in directing the appellant to pay the amount demanded in the notice as it relates only to Service Connection No.1 ?

2.Whether the First Appellate Court was right in accepting the evidence of the defendants which is contrary to their own pleadings ?"

10.I have considered the above submissions.

11.A cursory perusal of the documents and the written statement would go to show that the demand was made only in respect of S.C.No.552. It is the admitted case of the plaintiff that the temporary service connection was only S.C.No.552. According to the plaintiff, there was no such service connection at all as S.C.No.1. But, the other documents produced by the defendants would go to show that the amount which is due from the plaintiff is only in respect of temporary service connection No.1. The defendants have not chosen either to amend the written statement or to file any additional written statement.

12.Had it been true that there was some mistake occurred in the written statement, as rightly submitted by the learned counsel for the appellant, now, the defendants cannot be permitted to take a new plea that the amount due from the plaintiff is under Service Connection No.1 which is quite contrary to the plea take in the written statement.

13.Thus, in my considered opinion, I have to answer all the substantial questions of law in favour of the appellant/plaintiff. But, on that score, the case of the defendants cannot be totally negated. According to the defendants, for the simple mistake committed in the written statement, the Tamil Nadu Electricity Board which is a public organisation cannot be deprived off for having

valuable contest in the case. Therefore, in my considered opinion, though, the decree and judgement of the Courts below are liable to be set aside, the matter needs to be re-appreciated by the trial Court on the same being remanded back to the trial Court. This alone, in my considered opinion, would meet the ends of justice.

14. In view of all the above, the second appeal is allowed and the decrees and judgements of the trial Court as well as that of the First Appellate Court are set aside. The suit in O.S.No.184 of 2009 is remanded back to the trial Court with a direction to the trial Court to dispose of the suit afresh. It is further directed that the defendants will be at liberty to amend the written statement suitably in respect of Service connection number of the plaintiff in which case, the plaintiff would be at liberty to file reply statement, if any. The parties shall be afforded further opportunity by the trial Court to let in evidence, if any, both oral as well as documentary. The trial Court shall dispose of the suit within a period of four months from the date of receipt of a copy of this judgement. No costs.

Sd/-
Deputy Registrar (J)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Subordinate Judge,
Vellore.

2. The District Munsif, सत्यमेव जयते
Katpadi, Vellore District.

1 CC to Mr.T.P.Prabhakaran, Advocate SR.No. 18589

1 CC to Mr.V.Viswanathan, Advocate SR.No. 18612

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MSM (CO)
PSI (08.06.2015)