

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 07.12.2017
PRONOUNCED ON:13.12.2017
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.801 of 2001

1.Palanisamy (Deceased)

2.P.Sundararaj

3.P.Sanjeev Kumar

(Appellants 2 and 3 brought on record as L.R's of the deceased sole appellant vide Order of the Court dated 27.11.2017 made in C.M.P.Nos.19067 to 19069 of 2017 in S.A.No.801 of 2001) ... Appellants/Appellant/Plaintiff

Vs.

1.The Assistant Executive Engineer,
Tamilnadu Electricity Board
Distribution/CEDC/North,
Periyanaickanpalayam,
Coimbatore.

2.The Executive Engineer,
Tamilnadu Electricity Board,
(Distribution),
Thudiyalur,
Coimbatore.

... Respondents/Respondents 1&2
Defendants 1& 2

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 14.10.1998 in A.S.No.144 of 1997 on the file of Principal District Judge's Court, Coimbatore preferred against the judgment and decree dated 28.11.1996 in O.S.No.312 of 1995 on the file of I Additional District Munsif's Court, Coimbatore.

For Appellants : Mr.C.R.Prasanan

For Respondent : Mr.V.Viswanathan
Standing counsel for TNEB.

J U D G M E N T

Challenge in the second appeal is made to the judgment and decree dated 14.10.1998 passed in A.S.No.144 of 1997, on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 28.11.1996 passed in O.S.No.312 of 1995 on the file of the I Additional District Munsif Court, Coimbatore.

2. Parties are referred to as per the rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. Inasmuch as the main point that has been focused in the second appeal is, as regards the maintainability of the suit laid by the plaintiff and if the determination of the same by this Court is in agreement with the findings of the Court below as regards the same, this Court, in the interest of justice, refrains from touching upon the merits of the case in detail, as they, if gone into, would prejudice the interest of the parties concerned.

5. The gist of the plaintiff's case is that, he had obtained the subject service connections and according to him, the defendants men came and inspected the service connections and on their own accord made some arrangements with the service connections and thereby, issued a notice as if, the plaintiff had tampered with the meter and committed theft of electricity and issued the notice dated 20.02.1995 and according to the plaintiff, he has sent a suitable reply to the same and despite the reply given by the plaintiff, according to the plaintiff, by the impugned notice, the defendants directed the plaintiff to pay the sum of Rs.4,950/- towards the alleged theft of energy said to have been committed by him. Inasmuch as the plaintiff has not committed any theft of energy by tampering the meter as alleged by the defendants, according to the plaintiff, he has been necessitated to lay the suit for the reliefs of declaration and permanent injunction as regards the impugned notice dated 20.02.1995.

6. The defendants contested the plaintiff's case alleging that the plaintiff had committed the theft of energy by tampering with the service connections and the meter and the same had been detected during the surprise inspection conducted by the Anti Theft Squad and accordingly, the defendants issued the notice and further issued the impugned notice directing the plaintiff to pay the sum quantified as loss, due to the commission of the theft of energy by the plaintiff and

therefore, it is contended that the reliefs sought for by the plaintiff are liable to be negatived and further according to the defendants, if at all the plaintiff is aggrieved by the impugned notice, it is stated that the plaintiff should approach only the appellate authority constituted under the Board, as per law and the plaintiff without availing the appeal remedies provided under law, is not entitled to maintain the Civil suit as regards the impugned notice issued by the defendants and on that score also the defendants sought for the dismissal of the suit.

7. In support of the plaintiff's case, PW1 has been examined. Exs.A1 to A7 were marked. On the side of the defendants, DWS 1 and 2 were examined and Exs.B1 and B2 were marked.

8. The Courts below on a consideration of the oral and documentary evidence adduced by the respective parties and submissions made, did not find acceptance with the plaintiff's case and accordingly dismissed the suit. The first appellate Court has also held that the suit laid by the plaintiff in the Civil forum without exhausting the appeal remedy provided under the relevant Act is not maintainable. Aggrieved over same, the second appeal has come to be laid.

9. At the time of admission of second appeal, the following substantial questions of law were formulated for consideration:

1. Whether in law the Courts below erred in overlooking that the civil court could be approached for getting declaration that the statutory notice of demand Ex.A4 was arbitrary and honest in the eye of law, when there was a failure on the part of the respondent in not even conducting a domestic enquiry amounting to failure of principles of natural justice as laid down in the dictum 1995 II LLJ 728?

2. Whether in law the courts below erred in holding that the appellant could have filed an appeal against the notice of demand, instead of filing a suit, overlooking that he can always elect and choose between two forums when his right arose out of a right under general or common law as laid down in the judgment reported in 1998 L.W.377?

3. Whether in law the courts below

overlooked that the respondents, after receipt of Ex.A2 and noting down its contents had not conducted any enquiry which would vitiate the very issue of Ex.A4?

10. At the foremost, both the plaintiff's counsel as well as the counsel for the defendants made submissions only as regards the maintainability of the suit in the Civil forum and according to the plaintiff's counsel, inasmuch as he has sought for the relief of declaration also as against the impugned notice and the consequential relief of permanent injunction, the suit laid by the plaintiff is maintainable. Per contra, according to the defendants' counsel, the plaintiff without exhausting the appeal remedies as provided under relevant Act is not entitled to lay civil action and hence the suit laid by the plaintiff is not maintainable.

11. The issue is whether the suit laid by the plaintiff is maintainable or not. The position has already been determined in the various decisions of the Apex court and our High Court and in particular, in the decision reported in 1997 (5) SCC 120, (Punjab State Electricity Board and another Vs. Ashwani kumar), it has been held by the Apex Court that the suit laid challenging the notice issued by the Electricity Board for payment of the sum as in this case is not maintainable without the plaintiff first availing the remedy provided under the Electricity (Supply) Act and the instructions issued by the Board. The above said decision of the Apex Court has been followed by our High Court in the decisions reported in 2008 (3) CTC 395 (Superintending Engineer, Virudhunagar Electricity Distribution Circle, Tamil Nadu Electricity Board, Virudhunagar Vs. Murali Raja), 2002(2) CTC 544 (The Superintending Engineer, Periyar Electricity Distribution Circle, Erode and 2 others Vs. Pavathal (deceased) and 3 others), 2008(5) CTC 307 (Assistant Engineer, Acquisition, Tamil Nadu Electricity Board, Rural Court Road, Tanjore Town and two others Vs. S. Baskaran), 2007 (5) CTC 467 (Ponni Gounder Vs. The Superintending Engineer, TNEB, Tatabad, Coimbatore and others) and 2007 (5) MLJ 58 (Nahar Enterprises, rep. By its partner, J. Behrual Nahar, Chennai Vs. Chairman, Tamil Nadu Electricity Board, Chennai and others). It is thus further found that in a catena of decisions, the Apex court and our High Court has held that Civil suit is barred in respect of such suits and the plaintiff has to avail only the appeal remedies provided under the relevant Act and hence, accordingly held that the Civil suits of such nature are not maintainable. The counsel for the plaintiff has been very fair enough to cite all the above decisions though the above said decisions have been rendered against the case of his client.

12. However the plaintiff's counsel would contend that in all the above suits only the relief for permanent injunction has been prayed for and as in the present suit, the relief of declaration had also been claimed, according to him, the decisions rendered in the above said authorities are required to be reconsidered and therefore, according to him, the suit laid by the plaintiff is maintainable. However, considering the position that the impugned notice had been issued following the surprise inspection conducted by the men of the defendants and that they having noticed tampering of the meter and theft of energy committed by the plaintiff, though the plaintiff had sent a reply to the same, it is seen that when the mechanism for such disputes between the consumer and the Board are set out in the Act, it is found that even if the plaintiff has sought for the relief of declaration as regards the impugned notice, in my considered opinion as the main relief of permanent injunction sought for by the plaintiff flows from the relief of declaration as such and in so far as this case is concerned, when the plaintiff has also been mulcted with criminal action for the theft of energy committed by him as detected by the defendants men, it is seen that the contention of the plaintiff's counsel that merely because he had included the relief of declaration, that by itself would not be sufficient to hold that the civil action is maintainable without exhausting remedies provided under the relevant statute. It is therefore found that the plaintiff's inclusion of relief of declaration in the suit would not alter the position and therefore, I hold that the suit laid by the plaintiff, following the above said decisions, is not maintainable and the plaintiff has to only approach the appellate forum as provided in the Act and on that score it is seen that there is no need for any further determination of the merits of the plaintiff's case further.

13. The principles of law outlined in the other decisions relied upon by the plaintiff's counsel reported in 2005 (2) SCC 673 (Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another), 1966 (2) SCC 553 (Ram Swarup and others Vs. Shikar chand and another) and the decisions of our High Court dated 09.01.2015 passed in S.A.No.1490 of 2002 are taken into consideration and followed as applicable to the case at hand. The Plaintiff's counsel submitted that in the event this Court holding that the Civil suit laid by the plaintiff is not maintainable, he prayed that the plaintiff should be permitted to move the appellate authority for exhausting his remedy as per law. The above said request of the plaintiff's counsel is accepted. Accordingly, the plaintiff is given the liberty to avail the appeal remedy before the competent authority as against the impugned notice and the appellate authority shall entertain the same without reference to the point of limitation prescribed thereof provided that the plaintiff prefers the appeal within a period of 4 weeks from the

date of receipt of the copy of the judgment.

14. With the above observations, the second appeal is disposed of. No costs. Connected miscellaneous petition if any, is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

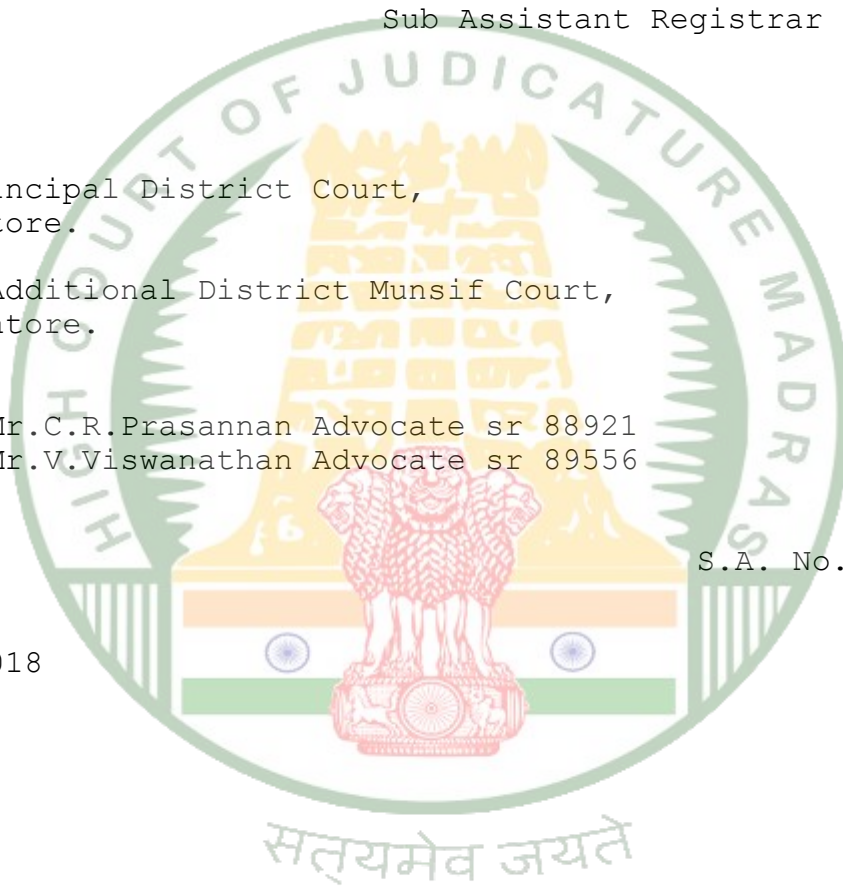
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To

- 1.The Principal District Court,
Coimbatore.
2. The I Additional District Munsif Court,
Coimbatore.

+1 cc to Mr.C.R.Prasannan Advocate sr 88921
+1 cc to Mr.V.Viswanathan Advocate sr 89556

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