



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.382 of 2015

and

M.P(MD).No.2 of 2015

The Executive Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation Ltd.,
(Operation and Maintenance),
Rural Karur,
Karur.

... Appellant /
Appellant/Defendant

Vs.

Veerappan

... Respondent /
Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 13.08.2013, passed in A.S.No.13 of 2013 by the learned Principal Subordinate Judge, Karur, confirming the judgment and decree dated 10.12.2012 passed in O.S.No.615 of 2011 by the learned Principal District Munsif, Karur.

For appellant
For respondent

... Mr.V.Meenakshi Sundaram
.... No appearance

JUDGMENT

The defendant, who had lost before both the Courts below, has filed this appeal. The suit was filed for mandatory injunction to restore the electricity service connection in SE No.477.

2.The case of the plaintiff is that the defendant, based on the inspection conducted on 28.07.2003, had issued a notice, dated 20.08.2003, directing the plaintiff to pay a sum of Rs.1,79,786/- for theft of electricity, on or before 15.09.2003. Since the plaintiff had failed to pay the said amount, the service connection No.477 was disconnected and a criminal case was registered in Crime No.192 of 2003, which was, after trial, ended in acquittal on 09.06.2005. In the meanwhile, the defendant had filed a suit in O.S.No.190 of 2005 on the file of the Subordinate Court, Karur, for recovery of a sum of Rs.2,47,037/- together with interest for the alleged loss caused by the plaintiff. After full trial, the said suit was decreed. But, on appeal in A.S.No.61 of 2008, filed by the plaintiff, the suit was dismissed. As against the said judgment and decree, the defendant had not preferred any appeal. As there was no response to the petition, dated



18.05.2011, filed by the plaintiff for restoration of service connection No.477, the present suit was filed for mandatory injunction, directing the defendant to restore the electricity service connection No.477.

3.The defendant resisted the suit contending that the defendant is taking steps to prefer second appeal as against the judgment and decree passed in A.S.No.61 of 2009. Since the the Superintending Engineer and Managing Director of TANGEDCO have not been impleaded in the suit, the suit is bad for non-joinder of necessary parties. Thus, he prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW1 and Exs.A1 to A6 were marked. On the side of the defendant, one Rajarathinam was examined as DW1 and Exs.B1 to B3 were marked.

5.On consideration of oral and documentary evidence, both the Courts below have concurrently decreed the suit as prayed for. Aggrieved by the same, the defendant has preferred the above second appeal.

6.At the time of admission, only notice was ordered.

7.Heard the learned counsel for the appellant. Though the matter was listed for several times and though it is listed today at the request of the learned counsel for the respondent, there is no representation for the respondent.

8.Admittedly, the suit filed by the defendant in O.S.No.190 of 2005 for recovery of alleged monetary loss caused by the plaintiff was dismissed by the first appellate Court in A.S.No.61 of 2008. Even the criminal case ended in favour of the plaintiff. Though the defendant had stated that aggrieved by the judgment and decree passed in A.S.No.61 of 2008, an appeal was preferred, no record was produced in order to substantiate the same. Thus, the judgment and decree passed in A.S.No.61 of 2008 had become final, which would, automatically, disentitle the defendant from resisting the relief sought for in the present suit viz., O.S.No.615 of 2011.

9. The other grounds raised by the defendant have already been dealt with in detail by the Courts below. There is no reason to interfere with the same. Both the Courts below have rightly decreed the suit as prayed for. In the light of the above facts and in the absence of any question of law arising for consideration, this second appeal is liable to be dismissed.

10. It is seen that during the pendency of the appeal, the defendant had approached this Court in W.P.(MD).No.8472 of 2014 and obtained an order on 23.05.2014 directing the defendant / Electricity Department to give new service connection in the very



same suit property and therefore, though the judgment and decree passed by the Courts below may be confirmed, the decree cannot be executed.

11. In the result, this second appeal is dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Karur.

2.The Principal District Munsif, Karur.

+1cc to M/S.D.NALLATHAMBI, Advocate SR.No. 80405

S.A.(MD) No.382 of 2015
21.09.2017

GCG

JM/SV MMS/SAR 1/26.10.2017/3P/4C