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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1153 of 2003
and
C.M.P.No.9949 of 2003

Muthusamy Gounder

...Appellant

Vs

1.Superintending Engineer,
Salem Division,
Tamilnadu Electricity Board,
Salem - 1.

2.Executive Engineer (Operation
and Maintenance),
Tamilnadu Electricity Board,
Rasipuram.

3.Assistant Executive Engineer (O&M),
Tamilnadu Electricity Board,
Namagiripet.

4.Junior Engineer (O&M),
Tamilnadu Electricity Board,
Pudupatti.

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.56 of 1999 dated 17.07.2002 on the file of the learned Subordinate Judge, Namakkal confirming the Judgment and Decree dated 19.02.1999 passed in O.S.No.403 of 1991 on the file of the learned District Munsif, Rasipuram.

For Appellant : Mr.R.Thirugnanam
for Mr.CH.Pandian

For Respondents : Mr.N.Muthuswaami



JUDGMENT

The above Second Appeal is filed by the plaintiff challenging the concurrent Judgment and Decree passed by the Courts below.

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2.The brief facts of the case are as follows:

The appellant had filed a suit O.S.No.403 of 1991 on the file of the learned District Munsif, Rasipuram, to declare the demand in Letter No.EE/R/AC1/F.DKT/SC.481/TF.IV/R.P. Patty/91, dated 01.11.1991 and Lr.No.EE/R/AC1/F.DKT/SC.481/TR.IV/N.Karadu/91, dated 07.11.1991 issued by the 2nd defendant, w.r.t. S.C.No.481 as null and void and for an injunction, restraining them from disconnecting S.C.No.481.

3.The case of the appellant was that he is an agriculturist and running a Poultry farm. In the year 1985, he had got a service connection in Service Connection No.481 for the well situate in Survey No.451/2. The Service Connection was issued for the use of 1.5HP motor. Thereafter, since the appellant wanted to fix an air compressor with a capacity of 2HP, he has submitted an application to the respondents for providing extra line and also for a changeover. However, instead of granting his request, the 3rd respondent had issued a show cause notice on 14.10.1991 alleging that during the inspection conducted on 13.10.1991, the respondents had observed that the appellant was committing theft of energy by using 2HP motor, though a consumption line was only for 1.5HP motor. By an order dated 01.11.1991, the total levy was quantified as Rs.58,500/- and by another order dated 07.11.1991, the appellant was directed to pay the said amount in four instalments of Rs.11,435/-, constraining the appellant to approach this Court.

4.The respondents herein had resisted the said suit inter alia contending that during the inspection, they had discovered that the appellant was using 2HP motor though he was only granted permission to use 1.5HP motor. In fact, the respondents had contended that the appellant had installed 2HP motor in his well and using a changeover switch was operating the said motor. They also denied that the appellant had requested for an additional line as well as a changeover. The 3rd respondent would contend that when they had visited the property, all of a sudden on 13.10.1991, the theft was noticed. The inspection was done only after notice was given to the appellant of the inspection. After the inspection, they had also reported the theft to Namagiripet Police Station and since there was a violation on the side of the appellant, the respondents had initiated action.



5.The trial Court had framed four issues and the appellant had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5. On the side of the respondents, one Maadhu was examined as D.W.1. He was the Official, who had inspected the appellant's property and discovered the theft of energy. The respondents had marked Ex.B.1 to Ex.B.3.

6.Considering the oral and documentary evidence, the learned District Munsif, Rasipuram, returned the finding against the appellant and dismissed the suit. Challenging the said Judgment and Decree, the appellant has filed A.S.No.56 of 1999 on the file of the learned Subordinate Judge, Namakkal. The learned Subordinate Judge confirmed the Judgment and Decree of the learned District Munsif, Rasipuram. Challenging the said Judgment and Decree, the appellant has filed the present Second Appeal.

7.The appeal was admitted on the following Substantial Questions of Law:

"(i)Whether the Courts below are right in law in accepting the case of the respondents, when admittedly there was no independent witness to substantiate the case of inspection conducted on 13.10.1991 by the respondents official?

(ii)Whether the Courts below are right in rejecting to consider the material document marked as Ex.A.5 simply on the ground that it was not binding on them?"

8.Heard Mr.R.Thirugnanam, learned counsel appearing for the appellant and Mr.N.Muthuswaami, learned counsel appearing for the respondents and perused the material on record.

9.The learned Judge had submitted that the criminal case that has been filed against the appellant in C.C.No.25 of 1993 on the file of the learned Judicial Magistrate, Rasipuram, had ended in acquittal which clearly shows that the allegations put forward by the appellant is incorrect. He also argued that no notice whatsoever was issued to the appellant prior to undertaking the inspection and there was no independent witness for the said inspection. On perusal of the Judgment of the Court below would indicate that the criminal case had ended in acquittal only on the ground of benefit of doubt and there is no categorical finding that the appellant did not commit any theft of energy. Be that as it may, the Judgment of the Criminal



Court is not binding on the Civil Court and there are judicial pronouncement to that effect. In fact, the appellate Court has relied on the Judgment of the Hon'ble Supreme Court in AIR 1971 Supreme Court 1244 [M/s.Karamchand Ganga Pershad and another v. Union on India and others], wherein the Hon'ble Supreme Court has held as follows:

"It is well established principle of law that the decisions of the Civil Court are binding on the Criminal Courts. The converse is not true."

10.As regards the second point, it is seen that both in the written statement as well as in the evidence, the respondents have stated that prior notice was given to the appellant's wife and she was present when the inspection was done. This fact has not been refuted by the appellant. In these circumstances, the arguments advanced by the appellant cannot be countenanced. Both the Courts below have concurrently found against the appellant. This Court sitting in Second Appeal has to only consider whether there is a question of law and that too a Substantial Question of Law. From a perusal of the records, it is seen that both the questions of law which have been raised in the Second Appeal has to be held against the appellant, since the appellant's wife was given advance notice and she has been present during the inspection. Further, the Judgment of the Criminal Court is not binding on the Civil Court.

The Second Appeal is therefore dismissed and the Judgment dated 19.02.1999 in O.S.No.403 of 1991 on the file of the learned District Munsif, Rasipuram, confirmed in A.S.No.56 of 1999 on the file of the learned Subordinate Judge, Namakkal, is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Namakkal.

2.The District Munsif,
Rasipuram.



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3.The Superintending Engineer,
Salem Division,
Tamilnadu Electricity Board,
Salem - 1.

4.The Executive Engineer (O&M) ,
Tamilnadu Electricity Board,
Rasipuram.

5.The Assistant Executive Engineer (O&M) ,
Tamilnadu Electricity Board,
Namagiripet.

6.The Junior Engineer (O&M) ,
Tamilnadu Electricity Board,
Pudupatti.

Copy To

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.R.Thirugnanam, Advocate SR.No.73544

S.A.No.1153 of 2003
and
C.M.P.No.9949 of 2003

RGN(CO)
GMY(22/09/2021)