

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 13.02.2018****PRONOUNCED ON : 21.02.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.1922 of 2003**

- 1.Tamil Nadu Electricity Board
rep.by its Superintending Engineer,
Mettur Dam.
 2. The Assistant Executive Engineer
Tamil Nadu Electricity Board, Velur
 3. The Junior Engineer,
Tamil Nadu Electricity Board,
Pandamangalam. ...
- Appellants

Nettaiyampalayam Sri Mariyamman
Small Farmers Lift Irrigation Society
by its President K.Palaniappan. ...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.03.2001 made in A.S.No.100 of 1998 on the file of the Sub Court, Namakkal, reversing the Judgment and Decree dated 29.07.1998 made in O.S.No.212 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Paramathi.

For Appellants : Mr.V.Viswanathan
Standing Counsel for TNEB

For Respondent : Mr.K.Ramanraj

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 12.03.2001 passed in A.S.No.100 of 1998 on the file of the Subordinate Court, Namakkal, reversing the Judgment and Decree dated 29.07.1998 passed in O.S.No.212 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Paramathi.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff's society is a registered society and the plaintiff's society has purchased an extent of 0.1083 ares of lands in Survey No.13/15 and also dug a Well in the suit property and with the permission of the Government, been irrigating the lands of the villagers concerned and accordingly, the plaintiff's society has obtained service connection Nos.524, 530 and 534 from the defendants by way of installing three 120 HP Electric Motor in the Well situated in the above said property, accordingly, the plaintiff's society had been irrigating the lands as aforesaid and inasmuch as the Well, in which, the above said motor pumpsets were erected became dry, according to the plaintiff, they had dug a new Well in the same survey number and accordingly, shifted the motor pumpset with service connection to the new Well and irrigating the lands. While so, on 02.02.1995, the second defendant

inspected the motor pumpsets and service connection shifted to the new Well and finding that shifting of motor pumpsets with service connection to the new Well has been done in contravention of the rules and regulations of the electricity board without the permission of the defendants, directed the plaintiff to restore the motor pumpsets with service connection in the old Well, for which, the permission had been granted by the electricity board, failing which, service connection will be disconnected and on the other hand, inasmuch as the plaintiff had only shifted the motor pumpset with service connection to the new Well situated in the same survey number, there is no violation of any order or rules of the electricity board and by way of the same, the electricity board has not been put to any loss or supply of the additional electricity and inasmuch as the defendants had threatened snapping of the service connection for the above said reasons, according to the plaintiff, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the electric service connection was extended to the plaintiff's society to draw water from the Well with three electric motors of 120 HP each in service connection Nos.524, 530 and 534 by the defendants and the above said service connections were granted subject to the rules and regulations and as per the same, the Well should be dug at a distance of 50 metres or

more away from the Cauvery River Basin and inasmuch as the above said service connection was extended subject to several conditions and the plaintiff had also agreed to abide the conditions imposed by the defendants for the supply of electric energy and inasmuch as the plaintiff's society is now drawing water from the Well sunk within 15 metres from the Cauvery River Basin, which is prohibited as per G.O.No.109 (P.W.D) dated 07.02.1994 and the reason given by the plaintiff that inasmuch as the old Well became dry, they had dug a new Well and shifted the service connections without the permission of the electricity board cannot be accepted. The defendants had no knowledge about the shifting of the service connections by the plaintiff's society and the plaintiff's action being in violation of the rules and regulation of the electricity board without proper notice and permission, the service connections effected are liable to be disconnected and the plaintiff has no cause to maintain the suit and the defendants have complained of the violation of the rules committed by the plaintiff and hence, the suit, without any cause of action, is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A2 were marked. On the side of the defendants, DW1 has been examined and no document has been marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit laid by the plaintiff. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

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

" (i) Whether the lower appellate Court is right in granting the relief of Permanent injunction even after finding that the plaintiff Sangam had acted in violation of the Terms and conditions of supply of Electricity, which are statutory in nature.

(ii) Whether the lower appellate Court is right in granting the relief of mandatory injunction, when the suit itself is one for permanent injunction."

9. It is not in dispute that the suit service connections were effected by the defendants in favour of the plaintiff's society and accordingly, it is seen that the service connections had been installed in

the old Well shown as W4, W5 and W6 of the plaintiff's property as depicted in the commissioner's report and plan marked as Exs.C1 & C2. It is not in dispute that the suit service connections were effected only subject to the rules and conditions of the electricity board and as per the Government Order No.109 (P.W.D) dated 07.02.1994, inter alia, one of the conditions imposed is that the Well, in which, the service connections are effected should be sunk 50 metres or more away from the Cauvery River Basin. Accordingly, it is found that the Well shown as W4, W5 & W6 complying with the above said conditions as well as the other rules and regulations of the defendants, the suit service connections had been granted.

10. Now, according to the plaintiff, inasmuch as the Well shown as W4, W5 & W6 had become dry, they had dug a new Well shown as W1, W2 and W3 in the suit property belonging to the plaintiff and accordingly, shifted the suit service connections to the new Well and been drawing water for the purpose of irrigating their lands. It is admitted by the plaintiff that for shifting the service connections to the new Well shown as W1, W2 & W3, they had not obtained the permission of the defendants and they had not even informed about the same to the defendants. It is thus found that when the service connections involved in the suit had been extended in favour of the plaintiff subject to the various conditions of the Government as per the G.O. above sated as well as the rules and

regulations of the electricity board and when according to the plaintiff, the old Well, in which, the service connections had been originally extended had become dry, as rightly put forth by the defendants' counsel, while shifting the service connections to the new Well sunk by them, the plaintiff should have intimated the defendants and after obtaining the necessary sanction of the defendants, they should have shifted the service connections to the new Well dug by them in the suit property.

11. Though it is contended that the new Well is situated within 15 metres away from the Cauvery River Basin, the materials placed by way of the commissioner's report and plan would go to show that the new Well shown as W1, W2 and W3 are also dug 50 metres away from the Cauvery River Basin. Still that by itself would not entitle the plaintiff to shift the service connections involved in the suit to the new Well without the knowledge and permission of the defendants. Accordingly, it is found that the plaintiff having shifted the service connection involved in the suit to the new Well without the knowledge and permission of the defendants and when it is seen that for shifting the service connections above stated, necessary fees have to be remitted to the defendants with reference to the same, accordingly, it is found that the plaintiff had violated the rules and regulations of the electricity board by way of shifting the suit service connections to the new Well independently without the prior consent of

the defendants. The first appellate Court also noted that the plaintiff by way of shifting the service connections to the new Well without the knowledge and permission of the defendants had violated the rules and regulations of the electricity board. However, finding that the said violations are being only technical and only a nominal fees has to be remitted to the defendants with reference to the same, accordingly, directed the plaintiff to abide by the said conditions and rules and regulations and in that view of the mater, however, proceeded to accept the plaintiff's case and granted the decree in favour of the plaintiff.

12. As rightly put forth by the defendants' counsel, when it is seen that the plaintiff has committed a clear infraction of the rules and regulations of the electricity board in shifting the suit service connections to the new Well by way of not obtaining the necessary consent of the defendants with reference to the same, when the plaintiff is incumbent to obtain the defendants nod with reference to the same, as rightly determined by the trial Court, the plaintiff having violated the rules and regulations cannot be permitted to seek the equitable relief of permanent injunction as prayed for in the suit to perpetuate the violations committed by them recklessly and indifferently unmindful of the consequences thereof. In such view of the matter, the determination of the first appellate Court that the above said violation is only technical and not serious and the same could be rectified at any point of time by paying the

necessary fees to the defendants as such cannot be appreciated in any manner, particularly, when it is seen that the plaintiff has not obtained the necessary approval of the defendants before shifting the service connections to the new Well. Similarly, merely because the new Well is also situated 50 metres away from the Cauvery River Basin, that by itself could not entitle to shift the service connections to any place as they wish and desire, when the shifting of the service connections should be done only by in adherence to the rules and regulations, particularly, when the plaintiff had agreed to abide by the terms of the extension of the suit service connections to them by the electricity board. In such view of the matter, it is found that the first appellate Court has, by way of granting the relief in favour of the plaintiff, permitted the plaintiff to enjoy the suit service connections, despite the infraction of the rules and regulations committed by them and this approach of the first appellate Court cannot at all be encouraged in any manner.

13. It is also contended by the defendants' counsel, that despite the direction of the first appellate Court enjoining the plaintiff to approach the defendants with reference to the shifting of the service connections to the new Well and also the payment of necessary fees in connection with the same, it is stated by him, till date, the plaintiff has not approached the defendants with reference to the same and thereby, contended that this attitude of the plaintiff would only go to show that they are steadfast

in committing the violation and not intended to comply with the directions given by the first appellate Court, despite the commission of the violation done by them. With reference to the same, the plaintiff's counsel has not given any plausible explanation and in toto, it is therefore, seen that the plaintiff is under the impression that they can do anything and thereby rectify their violations as and when the same is noticed or complained of by the concerned authorities. This attitude of the plaintiff is found to be in utter disregard to the rules and regulations of the electricity board and highly deprecated and I am not inclined to condone the same.

14. Inasmuch as the plaintiff is found to have acted in gross violation of the terms and conditions of the supply of electricity by shifting the service connections involved in the suit to the new Well without the knowledge and consent of the defendants and despite the directions of the first appellate Court, till date, they had also not approached the electricity board for complying with the terms and conditions of the supply of electricity, I am not inclined to sustain the judgement and decree of the first appellate Court granted in favour of the plaintiff. It is therefore found that the first appellate Court has totally erred in granting the equitable relief of permanent injunction even after holding that the plaintiff had acted in violation of the terms of conditions of the supply of the electricity involved in the suit. That apart, it is also found that the first appellate Court has granted the relief in the nature of

mandatory injunction without the same being sought for by the plaintiff and it is therefore found that the first appellate Court is found to have acted in favour of the plaintiff without the plaintiff establishing that they are entitled to the same. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

In conclusion, the Judgement and Decree dated 12.03.2001 passed in A.S.No.100 of 1998 on the file of the Subordinate Court, Namakkal are set aside and the Judgment and Decree dated 29.07.1998 passed in O.S.No.212 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Paramathi are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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सत्यमेव जयते

21.02.2018

To

- 1.The Sub Court, Namakkal,
- 2.The District Munsif-cum-Judicial Magistrate Court, Paramathi.
3. The Section Officer, V.R.Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1922 of 2003**

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