

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1056 of 2002

1.Mangalakshmi Ammal (Deceased)

2.Chandrasekaran ..

Appellants/Plaintiff

Versus

1.The Superintending Engineer,
TNEB, Cuddalore

2.The Executive Engineer,
TNEB, Nellikuppam

3.The Assistant Executive Engineer,
Tamil Nadu Electricity Board, Nellikuppam

4.Chandra

5.Jaya

6.Pushpa ..

Respondents/Defendants

(2nd appellant & R4 to R6 brought on record as
LRs of the deceased sole appellant vide order
of Court dated 11.12.2018 made in C.M.P.No.
700 to 702 of 2018 in S.A.No.1056 of 2002)

PRAYER:Second Appeal has been filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 11.12.2001 made in A.S.No.123 of 2000 on the file of Additional District Court, Villupuram District, Villupuram confirming the Judgment and Decree dated 31.08.2000 made in O.S.No.1330 of 1992 on the file of Additional District Munsif Court, Villupuram.

For Appellant

:: Mr.S.T.Dhanyakumar

For R1 to R3

:: Mr.V.Viswanathan

For TNEB

ORDER

The plaintiff in O.S.No.1330 of 1992 is the appellant herein.

2. O.S.No.1330 of 1992 had been filed by the plaintiff-Mangalakshmi in the Additional District Munsif Court, Villupuram against 3 defendants namely the Superintending Engineer, the Executive Engineer and the Assistant Executive Engineer of Tamil Nadu Electricity Board at Cuddalore and Nellikuppam, seeking a Judgment and Decree for a declaration that the demand of the third defendant for a sum of Rs.2,08,338/- pursuant to inspection on 30.03.1992 is not correct and against law and for Permanent Injunction that the defendant should not disconnect the electricity connection of the plaintiff.

3. According to the plaintiff, she is the owner of the Rice Mill at Arpispampalayam village in the name of Mangalakshmi Rice Mill. She has an electricity service connection Number 80 under Tariff IV.

4. On 30.03.1992 at about 11.00 a.m, the third defendant inspected the said service connection and found that there had been theft of the electricity. It was found that there was a hole on the left side of the three phase energy meter and a small broomstick was found inserted into the meter, which arrested the rotation of the meter disc. It was found that the energy stolen worked out to a sum of Rs.2,08,338/-.

5. A notice was issued that the electricity connection would be disconnected if the plaintiff fails to pay the said amount of Rs.2,08,338/- within 15 days from the date of receipt of the said letter. The plaintiff claimed that the entire procedure adopted was illegal and motivated and also stated that she did not indulge theft of electricity. Consequently, the suit was filed for relief as stated above.

6. In the written statement filed by the defendants, it had been stated that the Anti Power theft squad made a surprise inspection on 30.03.1992 and found that the rotation of the meter was arrested by inserting a broomstick. A police complaint was also given. The meter was checked in the presence of the police again. Photographs were taken. The Electricity Board had incurred loss and therefore the Board issued a notice of assessment with the memo of calculation through this defendant and notice was issued on 31.03.1992 calling upon the plaintiff to pay a sum of Rs.2,08,338/-. It was stated that the plaintiff filed a Writ Petition and obtained an

order of re-connection. Subsequently, a show cause notice was issued. Thereafter, a notice of assessment with a copy of calculation memo was issued to the plaintiff asking her to pay a sum of Rs.2,08,338/- towards the extra levy for the energy stolen by the plaintiff. The plaintiff without replying to the notice has rushed to the Court, filed a suit and also obtained an order of Ad-interim injunction against the defendant. It was stated that the suit was not maintainable.

7. On the basis of the above pleadings, the learned Additional District Munsif, Villupuram had framed necessary issues for consideration and invited the parties to let in oral and documentary evidence.

8. During trial, the plaintiff examined two witnesses and marked Exhibits A1 to A5. The notice dated 20.08.1998 was marked as Exhibit A1 and the notice dated 21.10.1992 was marked as Exhibit A2. On the side of the defendants, one witness was examined.

9. On the basis of the oral and documentary evidence, the Additional District Munsif held that the Civil Court had no jurisdiction and that the jurisdiction of the Civil Court was barred. It was stated that the plaintiff should have exhausted remedies under the Electricity Act before filing of the suit.

10. The plaintiff then filed A.S.No.123 of 2000 which came up for consideration before the learned Additional District Judge, Villupuram. The learned Additional District Judge also framed points for consideration and re-appreciated the evidence. During the course of hearing, the plaintiff/appellant also filed I.A.No.56 of 2001 to file additional documents under Order 41 Rule 27 C.P.C. The Appellate Judge also held that the appellant should have availed the remedies under the Electricity Act. Holding that the suit is not maintainable, the appeal was dismissed. The additional document namely a letter of the respondents/defendants was taken on record and marked as Exhibit A6.

11. Challenging that Judgment, the plaintiff had filed the present Second Appeal. This Second Appeal had been admitted on the following Substantial Questions of Law:-

1) Whether the suit is maintainable in the Civil Court without exhausting the departmental remedies?

2) Whether in any event after Ex.A6, the jurisdiction of Civil Court is barred?

3) Whether the decision of Criminal Court on identical facts bars the defendants from taking departmental action?

12. The appellant who was the plaintiff in O.S.No.1330 of 1992 on the file of the Additional District Munsif Court, Villupuram was running a Rice Mill under the name of Mangalakshmi Rice Mill at Aripisampalayam village. There was an Electricity service connection No.80. On 30.03.1992, the Anti Power theft squad made a surprise visit and inspection and found that the meter was tampered with. It was found that the department lost Rs.2,08,338/- owing to theft of energy. In view of this, a show cause notice was issued calling upon the plaintiff/appellant to pay the said amount. Instead of replying to the show cause notice and proceeding in accordance with the provisions of the Electricity Act, the appellant had filed the Civil Suit.

13. In 1995 (2) MLJ 151, it had been, under very similar circumstances where a plaintiff was also charged with electricity theft, this Court had held as follows:-

"The plaintiff, if aggrieved, should avail the remedy provided under the Electricity Act and the instructions issued by the Board without resorting to Civil Court. Only after exhausting these remedies has the plaintiff got the right to file a suit. The suit is not maintainable under law. Also the lower Court's approach relating to the question of law is wrong".

14. It is seen that the suit itself is not maintainable without exhausting the departmental remedies. Both the Courts have concurrently held that the Civil Suit is not maintainable. Both the Courts have also concurrently held that the theft of electricity had been proved. As a fact, both the Courts have also concurrently held that the loss suffered to the respondent was Rs.2,08,338/-.

15. In view of the concurrent findings of both the Courts below, I find that the appellants had not made out any reason to interfere with the judgment of the First Appellate Court and the Trial Court.

16. With respect to the first Substantial Question of Law, I hold that the jurisdiction of the Civil Court is barred under the provisions of the Indian Electricity Act. I also hold that the jurisdiction of the Civil Court is not granted by Exhibit A6

which had been filed before the First Appellate Court and also hold that the departmental action taken by the respondents would not preclude them from issuing show cause notice to the appellant for theft of electricity.

17. In view of the above reasons, this Second Appeal is dismissed with costs. The judgments and decrees of the First Appellate Court and the Trial Court are confirmed.

Sd/-
Assistant Registrar(CS IV)

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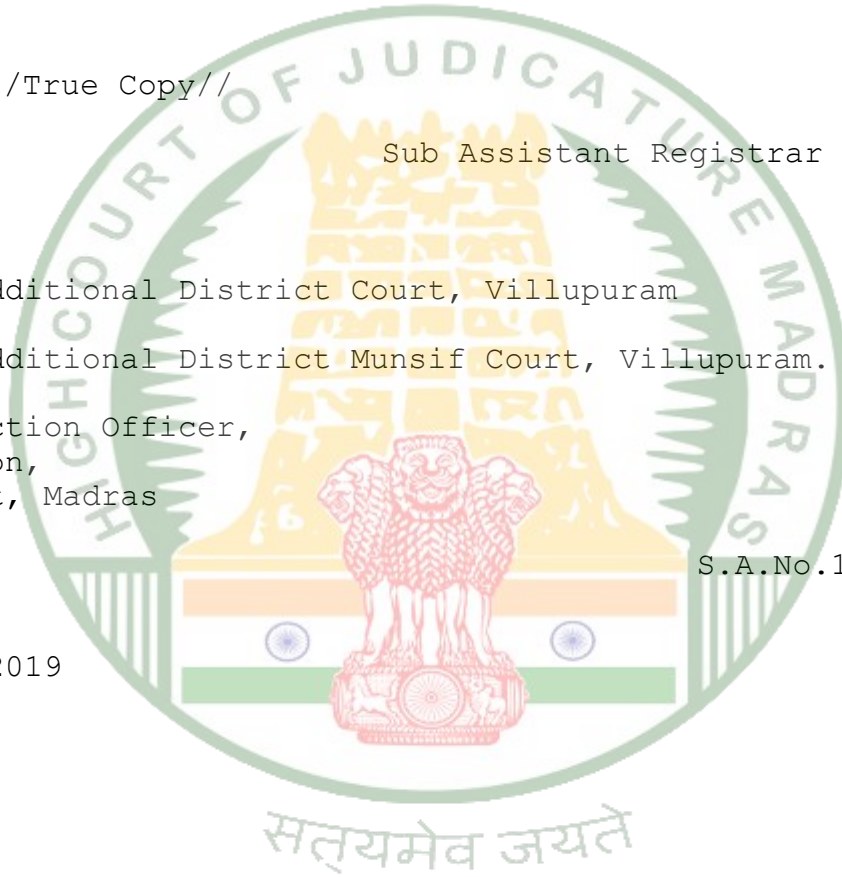
Sub Assistant Registrar

To

1. The Additional District Court, Villupuram
2. The Additional District Munsif Court, Villupuram.
3. The Section Officer,
V.R Section,
High Court, Madras

S.A.No.1056 of 2002

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nr 14/05/2019



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