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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1197 of 2008

and

M.P.No.1 of 2008

Jayapal,
Son of Ramachandra Gounder,
Nadukkuppam Village,
Vinnamangalam Post,
Arni Taluk.

... Appellant/Plaintiff

Vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai.

2. The Executive Engineer,
Tamil Nadu Electricity Board (O&M),
Arni.

3. The Assistant Executive Engineer,
Tamil Nadu Electricity Board (O&M),
West Arni.

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge's Court, Cheyyar at Tiruvannamalai dated 22.03.2007 in A.S.No.23 of 2006, reversing the judgment and decree of the Additional District Munsif Court at Vandavasi dated 30.06.2006 in O.S.No.76 of 2004.

For Appellant : Mr.T.R.Gayathri
for Sarvabhauman Associates

For Respondents: Mr.V.Viswanathan
* * * *

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 22.03.2007 passed in A.S.No.23 of 2006 on the file of the Subordinate Court, Cheyyar, reversing the judgment and



decree dated 30.06.2006 passed in O.S.No.76 of 2004 on the file of the Additional District Munsif Court, Vandavasi.

2. The suit has been laid by the appellant/plaintiff against the defendants seeking for the relief of declaration that the letters sent by the defendants dated 19.08.1996 and 20.09.1996 as void and illegal and restraining the defendants by means of permanent injunction from disconnect the schedule service connection on the strength of the abovesaid letters.

3. From the pleas putforth by the respective parties, it is noted that the plaintiff would claim that to save his crops, he had out of necessity, taken the line from the neighbours Balaraman pump set and electric service connection on 26.07.1996 and due an electrical accident a bull got electrocuted and died on 27.07.1996 and thereafter he had removed the line and whereas the defendant would state that the plaintiff had tapped the electricity power from the over head line directly from SC.No.7 and thereby the plaintiff had committed the theft of energy by illegally tapping the electricity from over head line and accordingly alleged that the plaintiff had committed the offence of theft and resultantly, it is found that the notices have been issued by the defendants calculating the loss sustained by the Electricity Board and the same mentioned therein and challenging the abovesaid notices issued by the defendants, the suit has come to be laid by the plaintiffs.

4. The defendants would putforth the defence that the plaintiff had committed the theft of energy by tapping the power illegally from the over head line and not from the neighbour's service connection as claimed by him and thereby the show cause notices have been issued calling upon the plaintiff to pay the loss sustained by the Electricity Board. Therefore, the plaintiff's suit is not acceptable and liable to be dismissed.

5. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A4 were marked. On the side of the defendants', D.W.1 was examined. No document has been marked.

6. On an appreciation of the materials placed on record, both oral and documentary and the submissions putforth by the respective parties, the trial court was pleased to decreed the suit in favour of the plaintiff as prayed for. Impugning the judgment and decree of the trial court, the defendants preferred the appeal and the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and resultantly by way of allowing the appeal preferred by the defendants, dismissed the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred by the



plaintiff.

7. Considering the materials placed on record, as rightly concluded by the first appellate court, when it is noted that the plaintiff has admitted the commission of theft and when in the criminal action initiated against the plaintiff, he has also admitted his guilt before the Magistrate Court and paid the fine in C.C.No.287 of 1986, the same has been rightly taken into consideration by the first appellate court. Therefore, it is obvious that the plaintiff has tapped the electricity from the over head line without the authority/permission of the defendants and an accident had also occurred consequent thereto, hence the defendants are found to have taken into consideration, the loss sustained by them by the acts of the plaintiff and accordingly calculating the loss sustained by them, issued notices to the plaintiff directing him to pay the loss. The plaintiff is found to have failed to move the concerned appellate authority, despite the intimation of the same to the plaintiff by the defendants. On the other hand, the plaintiff has rushed to the Civil Court seeking the reliefs.

8. In the light of the factual matrix available on record, as rightly held by the first appellate court, when the plaintiff has admitted the commission of theft, as put forth by the defendants and thereby the loss had been sustained by the defendants and accordingly the defendants have calculated the loss sustained by the department and called upon the plaintiff to pay the same by issuing the notices, in such view of the matter, the plaintiff's case is that the defendants have issued the show cause notices without any basis as such cannot be countenanced in any manner. In such view of the matter, the first appellate court is found to be justified in not accepting the case projected by the plaintiff and rightly dismissed the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the plaintiff's suit.

9. From the abovesaid factors, when it is found that the first appellate court has properly appreciated the materials placed on record in the right perspective both on factual matrix and also on the points of law and no valid reason has been projected by the plaintiff warranting interference in the judgment and decree of the first appellate court and the points raised by the plaintiff in the second appeal are only based on the factual matrix and not any legal plea, resultantly, I hold that no substantial question of law is involved in the second appeal.

10. For the reasons aforesaid, the judgment and decree dated 22.03.2007 passed in A.S.No.23 of 2006 on the file of the Subordinate Court, Cheyyar, reversing the judgment and



decree dated 30.06.2006 passed in O.S.No.76 of 2004 on the file of the Additional District Munsif Court, Vandavasi are confirmed and consequently the second appeal is dismissed with costs. Consequently connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sub Court,
Cheyyar.

2.The Additional District Munsif,
Additional District Munsif Court,
Vandavasi.

+lcc to M/s.Sarvabhauman Associates, Advocate, S.R.No.6392
+lcc to Mr.V.Viswanathan, Advocate, S.R.No.6602

S.A.No.1197 of 2008
and
M.P.No.1 of 2008

CA(CO)
CB(17/09/2021)