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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.216 of 2012

and M.P.No.1 of 2012

(Through Video Conferencing)

- 1.Assistant Executive Engineer (Rural),
(Operation and Maintenance)
Tamil Nadu Electricity Board,
Mailaduthurai.
- 2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai. ... Appellants/Appellants/Defendants

vs.

- 1.Balu alias T.Balasubramanian
 - 2.T.Sundaramoorthy
- ... Respondents/Respondents/Plaintiff

Prayer: This Second Appeal has been filed under Section 100 of the Code of the Civil Procedure, against the judgment and decree dated 30.11.2011 made in A.S.No.60 of 2010 on the file of the Additional Sub Court, Mayiladuthurai, reversing the judgment and decree, dated 19.10.2009 made in O.S.No.247 of 2008 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellant : M/s.V.Viswanathan

For Respondents : No Appearance

J U D G M E N T

This Second Appeal is directed against the judgment and decree, dated 30.11.2011 in A.S.No.60 of 2010 passed by the Additional Sub Court, Mayiladuthurai.

2. By the impugned judgment and decree dated 19.10.2009, the judgment and decree passed in O.S.No.247 of 2008 by the Principal District Court, Mayiladuthurai has been affirmed. The appellants were the defendants and the appellants in the respective proceedings.



3. This appeal was not admitted after it was listed for admission. As was the practice of this Court, this court had ordered notice of admission on the respondents. Thus, no substantial question of law was framed for being answered.

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4. The respective counsels are present and have made submissions. The appellants have raised the following questions of law in this appeal as substantial questions of law:-

i) Whether the First Appellate Court is correct not in framing an issue with regard to non-joinder of party namely the Panchayat President?

ii) Whether the First Appellate Court is correct in not considering Ex.B.5 filed by the appellant ?

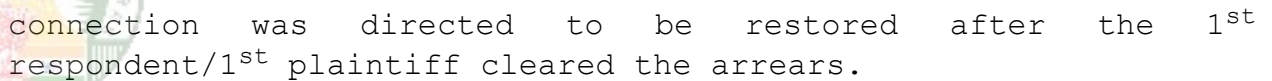
iii) Whether the Lower Appellate Judge is right in confirming the Judgment and decree of the Trial Court stating that the Appellant has not handed over the keys to the respondents?

5. The case of the respondents-plaintiffs before the Trial court was that the respondents along with their father viz., Thangaian had started a cottage industry under the name and style of "Bakya Rubber Factory". They obtained electricity service connection bearing service No.312 from the appellants and ran the factory. The said power service connection stood in the name of the father of the 1st respondent/1st plaintiff.

6. The 1st respondent took over the management of the factory premises in August 2005 and when the appellants the Electricity Board authorities conducted a surprise inspection and allegedly found that there was energy theft. The respondents however blamed one Senthil S/o.Ganesan who was the occupier of the said factory as per the lease agreement dated 20.01.2005 for the excess consumption.

7. The 1st respondent /1st plaintiff appears to have agreed to pay the arrears of Rs.2,90,900/- in 10 equal monthly instalments along with Rs.70,000/- towards compounding charges.

8. The 1st respondent however defaulted after paying three instalments. The 1st respondent/1st plaintiff appears to have paid three instalments and thereafter filed the suit in O.S.No.433 of 2005. The suit was partly decreed and the power



10. The appellants thereafter issued a show cause notice dated 16.06.2007 to the 1st respondent/1st plaintiff and called upon the 1st respondent/1st plaintiff to pay for the alleged loss caused due to the theft.

11. The 1st appellant admitted the fact that the factory premises was locked on 14.06.2007 and the key was handed over to the Panchayat Board President as the occupants fled from the factory.

12. Since the appellants did not hand over the key of the factory to the 1st respondent/1st plaintiff, the respondents filed O.S.No.247 of 2008 for the following reliefs:

i) to declare the acts of the appellant in handing over the key to a third party other than the respondents and for not restoring the possession of the factory to the respondents was illagal;

ii) for mandatory injunction directing the appellants to hand over the key/keys of the factory premises to the respondents;

iii) compensation /loss sustained by the respondents for not restoring the possession of the factory premises once again after the alleged inspection and for putting them away/out of possession for the past one year or till the keys are returned ; awarding costs for this suit .

13. The 1st appellant filed written statement and contended that the respondents and their brothers' son and relatives



jointly continuously committed energy theft and a criminal case was pending against them therefore the respondents were not entitled to any relief without paying the amounts due to the Electricity Board.

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14. It was further submitted that when the criminal case was pending before the Assistant Sessions Judge, Mayiladuthurai, the above suit was not maintainable.

15. It was further submitted that respondents were not entitled to declaration, mandatory injunction or compensation. Hence, they have prayed for dismissal of the suit. The above suit was decreed as prayed for. Further, appeal filed by the appellants in AS No.60 of 2013 was also dismissed.

16. The learned counsel for the appellants further submits that without paying the arrears, the respondents once again committed theft which was found during surprise inspection on 14.06.2008. It is submitted that the occupier absconded from the factory. It was under those circumstances, the factory was locked out and the key was handed over to the Panchayat Board President.

17. I have considered the arguments advanced by the learned counsel for both sides and I have also perused the Judgment and decree passed by the First Appellate Court and the grounds of appeal raised by the learned counsel for the appellants.

18. No substantial questions of law arises in this appeal. If at all, the appellants have remedy under the provision of the Electricity Act, 2003 read with relevant Supply Code for the energy theft committed by the respondents. There are no merits in the present appeal filed by the appellants.

19. Therefore, this Second Appeal is dismissed as no substantial questions of law arises for consideration in this appeal. Therefore, the judgment and decree passed by both the Courts below is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



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To:

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- 1.The Additional Sub Court,
Mayiladuthurai.
- 2.The Principal District Munsif,
Mayiladuthurai.

+lcc to M/s.V.Viswanathan, Advocate Sr.28891

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srg 28/10/2021