



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.490 of 2010

Narayanasamy

... Appellant/Appellant/Defendant

Vs.

The Executive Engineer,
(Distribution),
Tamil Nadu Electricity Board,
Theni.

... Respondent/Respondent/Plaintiff

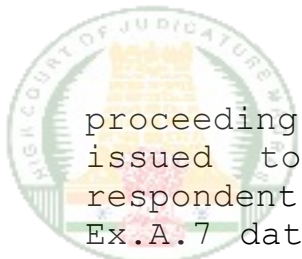
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.6 of 2009, dated 21.10.2009, on the file of the Principal District Judge, Theni, confirming the judgment and decree of dismissal of the suit in O.S.No.58 of 2008, dated 10.02.2009, on the file of the Sub Judge, Theni.

For Appellant : Mr.A.Arumugam,
For M/s.Ajmal Associates.

For Respondent : Mrs.M.Parameswari,
For Mr.S.M.S.Johnny Basha

JUDGEMENT

The defendant in O.S.No.58 of 2008 on the file of the Sub Court, Theni, is the appellant in this second appeal. The appellant was the owner of the land comprised in S.No.76/2, in Vallalnathi Village in Govindanagaram in Theni District. According to the appellant, he had leased out the said property in favour of one Krishnan of Lakshmipuram. It appears that the said Krishnan had indulged in energy theft. That was found out by the Antitheft Squad of TNEB. Thereupon, proceedings were initiated against the appellant and order of assessment was also passed on 31.07.1999. TNEB issued notices calling upon the appellant to pay the assessed amount. Instead of complying with demand set out in the assessment notice, the appellant transferred the land in question in favour of his wife. In view of the change in ownership, TNEB could not recover the assessed amount by



proceeding against the land. Therefore, notice was once again issued to the appellant on 10.01.2003. According to the respondent, the appellant had acknowledged his liability vide Ex.A.7 dated 30.01.2003. Since the liability in terms of Ex.A.3 remained uncleared, TNEB filed O.S.No.58 of 2008 before the Sub Court, Theni, seeking to recover a sum of Rs.2,54,765/- with interest. The suit claim was contested by the appellant herein on various grounds. The officials of TNEB examined themselves as P.W.1 and P.W.2 and Exs.A.1 to A.9 were marked. The appellant examined himself as D.W.1 and Exs.B.1 to B.10 were marked through him.

2.The learned Trial Judge after considering the evidence on record decreed the suit as prayed for vide judgment and decree dated 10.02.2009. Aggrieved by the same, the appellant herein filed A.S.No.6 of 2009 before the Principal District Court, Theni. By judgment and decree dated 21.10.2009, the First Appellate Court dismissed the appeal and confirmed the judgment and decree of the Trial Court. Challenging the same, this second appeal came to be filed.

3.The second appeal was admitted on the following substantial questions of law:-

"(1) Whether the Courts below have committed an error in law in holding that there was an acknowledgement of liability on the part of the appellant herein/defendant?"

(2) Whether the Courts below have committed an error in law in not considering the contention that the acknowledgement said to have been made after the expiry of the period of limitation from the date of arisal of cause of action shall not be a valid one giving a fresh start of limitation?"

(3) Whether the Courts below have rendered a perverse finding that the respondent/plaintiff proved the alleged theft of energy?"

(4) Whether the Courts below failed to consider the absence of evidence as to how the loss occasioned to the Electricity Board was computed by the respondent/plaintiff?"

4.Heard the learned counsel on either side on the aforesaid substantial questions of law.

5.The case was however adjourned in order to enable the learned standing counsel for the respondent to get instructions as



to whether the liability still remains uncleared. Today (ie., 19.04.2021), when the matter was taken up for hearing, the learned standing counsel for the respondent states that the appellant's wife in turn had sold the property to a third party. From the said subsequent purchaser, TNEB was successful in recovering the suit amount. Thus as on date, the respondent has no enforceable claim against the appellant. In view of this subsequent development, I suggested that instead of answering the substantial questions of law, the impugned judgment could be set aside and the second appeal allowed by recording the subsequent development. The learned standing counsel after obtaining instruction has no objection for doing so.

6.In this view of the matter, the impugned judgments are set aside and the second appeal is allowed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Principal District Judge,
Theni.

2.The Subordinate Judge,
Theni.

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V.R. Section,

Madurai Bench of Madras High Court, Madurai.

S.A. (MD)No.490 of 2010

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