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S.A. No.1



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 1079 of 2012
and M.P. No.1 of 2012**

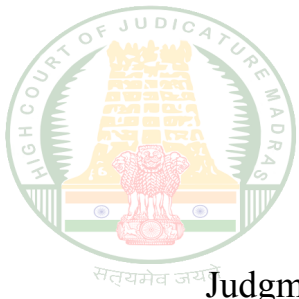
Pavithra Masi

... Plaintiff/ Appellant/ Appellant

Vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Distribution Circle,
Dharmapuri District.
2. The Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board, Harur,
Dharmapuri District.
3. The Assistant Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board, Harur,
Dharmapuri District.
4. The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Town, Harur,
Dharmapuri District.
5. The Assistant Account Officer,
Revenue Branch,
Tamil Nadu Electricity Board,
Harur.

... Defendants/ Respondents / Respondents



Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 04.09.2012 made in A.S. No.16 of 2011 on the file of Court of Subordinate Judge, Harur, confirming the Judgment and Decree dated 27.01.2011 made in O.S. No.213 of 2006 on the file of the District Munsif Court, Harur.

For Appellant : Mr. A. Jenasenan

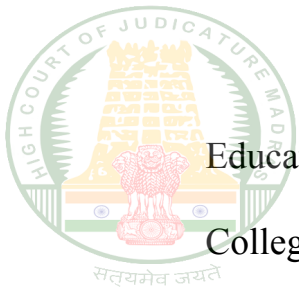
For Respondents : M/s. J. Hemalatha Gajapathy
(Standing Counsel for TNEB)

JUDGMENT

This second appeal is filed challenging the concurrent finding of the Courts below in dismissing the suit for declaration and injunction against the defendants from disconnecting the electricity connection of the plaintiff/ Appellant herein.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court. The brief facts leading to filing of this appeal by the plaintiff are as follows:

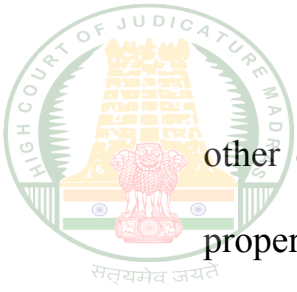
2.1 The plaintiff is the Vice President and Secretary of Thiru Amman



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Educational Trust, which is running a college named "Muthu Arts and Science College" at Harur Town, Dharmapuri District. The college is having a consumer electricity connection bearing D.No.533 and on 08.11.2005, the second defendant has sent a letter stating that the electricity connection reading recorded in the consumer card varies with the actual electricity consumed by the plaintiff's college. However, the plaintiff has not replied immediately due to sudden demise of the plaintiff's father on 29.01.2006, subsequently, on 24.06.2006, the plaintiff had sent a reply letter calling upon certain clarification in this regard. On 29.04.2006, the defendants have sent a notice and demanded Rs.12,83,690/- as the electricity consumption charge from the plaintiff's college. Subsequently, the fourth defendant has also sent a letter dated 21.07.2006, stating that the user's meter is proper. On 08.11.2005, the second defendant has sent a letter stating that the meter was examined by the respondent and found that the meter reading is proper and entries in consumer card have been improperly made by one of the staff, who does meter reading. Aggrieved over the demand for payment of Rs.12,83,690/-, made by the second defendant, the plaintiff has come forward with the suit for declaration to declare that the notice dated 08.11.2005 issued by the second defendant is null and void and consequent injunction.

2.2 The fifth defendant filed his written statement, which is adopted by



other defendants. They contended that the meter fixed in D.No.533 is working properly, whereas the concerned staff of the respondent had wrongly entered lesser consumption units than the units, actually consumed by the plaintiff. These false entries were made for the benefit of the plaintiff. The Officers of the defendant institution, inspected the premises and after verification, a notice dated 08.11.2005 was issued to the plaintiff to pay the actual consumption charges, but no reply was sent by the then Managing Trustee of the college. Since the Managing Trustee was died on 29.01.2006, no coercive steps were taken for recovering the due payment till 01.04.2006. On 05.05.2006, a notice was issued to the plaintiff, calling upon them to pay the entire electricity consumption charges on or before 15.05.2006, for which the plaintiff has requested some more time for payment and paid Rs.5,000/- as a first installment for the said arrears along with the electricity consumption charges for the month of April 2006. Thereafter, she has not come forward to pay the electricity consumption charges and filed this suit with an intention, to avoid payment. The fifth defendant also stated that the electricity meter fixed on the plaintiff's college was properly examined by the department to verify any defects or error in it and the same was found to be in order, thereby the plaintiff was asked to pay the actual consumption charges based on the meter reading. Thereby, this suit is liable to be dismissed.

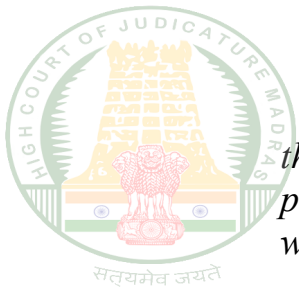


2.3 Both Courts have framed relevant issues and after appreciating the evidence adduced on both sides and more particularly, the (Meter Relay Testing) MRT report, which has been marked by examining the Assistant Executive Engineer as P.W.2, accepted the case of the defendant and dismissed the suit. By marking the MRT report, it has been established that actual electricity consumption units were recorded in the meter, but at the time of recording the consumption units in the electricity consumer card manually by the staff of the Electricity Department, lesser units were recorded.

3. Aggrieved over the dismissal of the suit by both Courts below, the plaintiff has come forward with this second appeal.

4. This Court after considering the submissions on both sides, while admitting the appeal, framed the following substantial question of law:

- 1) *Whether it is open to the respondent Electricity Board to take advantage of its own lapse/ mistake in issuing the impugned demand to the appellant?*
- 2) *Whether it is open to the Electricity Board to rely upon the reading in the defective meter and also to take into account the said reading for claiming the excess charges having regard to the fact that the respondents have not proved before the Court that the meter is in a proper condition?*
- 3) *Whether it is open to the Courts below to render a finding against*

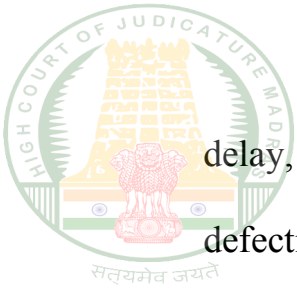


the plaintiff in a situation where admittedly, the Electricity Board had purposely omitted to mention the correct consumption charges in the white meter card and consequently, reject the claim of the plaintiff?

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5. The learned counsel appearing for the appellant/ plaintiff submits that the meter used in the plaintiff's college is a defective one and based on the reading found in the defective meter, the defendants claim more than the actual electricity consumption charges. Similarly, both Courts below have failed to consider that the defendants have not produced any documentary evidence to prove that false entries were made in the electricity consumer card by examining the Meter Reader, thereby prayed to set aside the judgment and decree of the Courts below.

6. Per contra, the learned counsel appearing for the respondents submits that, after inspection and verification of the meter, the defendants have issued notice demanding payment towards the actual consumption charges made by the plaintiff. Further, sufficient time was also granted to the plaintiff to reply and to raise objections with regard to the false entries made in the electricity consumer card than the actual consumption made. Then Managing Trustee of college, had not raised any objections regarding the notice dated 08.11.2005 and the college had actually sought for further time to pay the due amount. After long



delay, they have come forward with the suit with a false ground that the meter is a defective one. The respondents have also proved the case that the meter fixed in the plaintiff's college is not a defective one by examining the meter by MRT and the Meter Examination Report was also marked before the Trial Court. Both Courts have accepted the report and thereby held that the meter is not a defective, and directed the plaintiff to pay the actual electricity consumption charges, therefore, he prayed to dismiss the appeal.

7. I have considered the submissions made on both sides and perused the materials available on record.

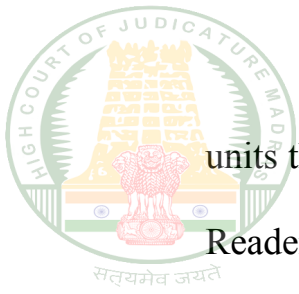
8. The main contention of the plaintiff is that the meter fixed in her college is defective and the readings in the meter is not proper but, the entries made manually in the electricity consumer card is proper. The burden to prove the fact that the meter was not defective lies on the defendant, since the defendants are the persons, who are relying on the meter reading to demand the plaintiff to pay the electricity consumption charges.

9. However, the plaintiff has examined P.W.2 - The Assistant Executive Engineer from the Electricity Department and marked the Ex.A.5 -



MRT Report to prove the fact that meter was defective. Whereas, the P.W.2 in his evidence narrated that, he has conducted the inspection test procedure and given the report that there is no defect in the meter and according to him, he has not noted any fault reading in the meter. The evidence of P.W.2 and Ex.A.5 - meter inspection report supports the case of the defendants and no other evidence produced by the plaintiff to show that the meter was defective. Though, the burden of proving the fact that the meter used by the college was not defective, is on the defendant, as stated in earlier paragraph, plaintiff had taken the risk of examining the expert, who had conducted the test on the meter. Expert's evidence is clearly, in support of the defendants, and the plaintiff was not able to substantiate his case that the meter is defective and evidence of P.W.2 and Ex.A.5 could not be relied as against the defendants. The evidence of P.W.2 and the defendant side evidence probablise the case of the defendants that, the consumption units recorded manually in the electricity consumer card is lesser than the actual units consumed by the plaintiff.

10. Both Courts have elaborately considered the Ex.A.5 - MRT Report and on the basis of the evidence adduced on the side of the plaintiff as well as defendants, have held that the meter is not defective or fault and further held that the test analysis report shows that the plaintiff have consumed more electricity



units than the units manually entered in the electricity consumer card by the Meter Reader. This finding of fact have been now challenged before this Court on the ground that both Courts have failed to consider that the meter is defective.

11. The contention of the plaintiff is that the employee of the defendant had committed error and for the same, the plaintiff shall not be punished and not liable to pay the consumption charges. I am of the view that though, the defendant have not proved the fact, that there was collusion between the then Managing Trustee and the employee of the defendant, the same is not a reason to injunct the respondents from exercising their powers in collecting the proper consumption charges from its consumers. Though, both Courts below have held that the plaintiff has failed to prove the fact that the electricity meter fixed in the plaintiff's college is defective, the defendants were able to establish the fact that the meter is not defective by marking the Test report of meter and by relying on the evidence of the expert.

12. The scope of interfering with the concurrent findings of both the Courts below is well settled and the Hon'ble Apex Court in ***Hero Vinoth (Minor) vs. Seshammal [AIR 2006 SC 2234]*** has reiterated the jurisdiction of High Court to interfere in the concurrent findings of the Lower Courts and has held in



paragraph Nos.12 to 16 as follows:

*“12. We shall first deal with the question relating to jurisdiction of the High Court to interfere with the concurrent findings of fact. Reference was made by learned counsel for the appellant to **Chandra Bhan v. Pamma Bai and Anr.** (2002 (9) SCC 565) **Sakhahari Parwatrao Karahale and Anr. v. Bhimashankar Parwatrao Karahale** (2002 (9) SCC 608). So far as the first decision is concerned, in view of the factual findings recorded by the lower Court and the first Appellate Court it was held that interference with the concurrent findings of fact are not justified. The question related to possession and two Courts primarily considering factual position had decided the question of possession. In that background, this Court observed that jurisdiction under **section 100** CPC should not have been exercised. So far as the second decision is concerned, the position was almost similar and it was held that findings contrary to concurrent findings of lower Courts and having no basis either in pleadings, issues framed or in questions actually adjudicated upon by any of the lower Courts cannot be sustained. That decision also does not help the appellant in any manner as the factual scenario is totally different in the present case.*

*13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction under **Section 100** CPC is very limited, and re-appreciation of evidence is not permissible where the trial Court and/or the first Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference under **Section 100** CPC after formulating a substantial question of law.*

*14. As was noted in **Yadarao Dajiba Shrawane (dead) by Lrs. v. Nanilal Harakchand Shah (dead) and Ors.** (2002 (6) SCC 404) if the judgments of the trial Court and the first Appellate Court are based on mis-interpretation of the documentary evidence or consideration of inadmissible evidence or ignoring material evidence or on a finding of fact has ignored admissions or concession made by witnesses or parties, the High Court can interfere in appeal.*

*15. In **Neelakantan and Ors. v. Mallika Begum** (2002 (2) SCC 440) it was held that findings of fact recorded must be set aside where*



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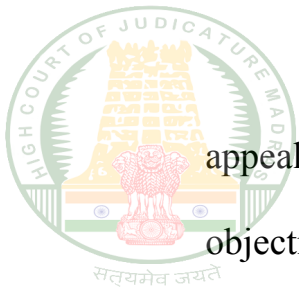
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*the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity which materially prejudices the case of one of the parties. (See: Krishna Mohan Kul alias **Nani Charan Kul and Another v. Pratima Maity and others** [(2004) 9 SCC 468]).*

*16. It is now well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms or a term of a document is a question of law. Construction of a document involving the application of a principle of law, is a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under **Section 100** CPC. If a document creating an easement by grant is construed as an 'easement of necessity' thereby materially affecting the decision in the case, certainly it gives rise to a substantial question of law."*

13. Admittedly, in the case in hand, the plaintiff had never questioned the Ex.A.5 - MRT Report and since the test report is standing against the plaintiff, which has been accepted by the Courts below, the plaintiff is not entitled to once again contend that the meter is defective. This Court finds that, based on evidence placed on record, both Courts have rendered their findings that, the meter is not defective and as per actual meter reading, the plaintiff has to pay the consumer charges. Admittedly, the show cause notice issued to the plaintiff was not immediately replied by the plaintiff. Similarly, there is also evidence placed on record to show that the plaintiff had paid some amount as first installment, for the amount claimed under the notice dated 08.11.2005 - Ex.A.1, while paying the consumption charges for the month of April 2006. The plaintiff had not filed any



appeal against the final order passed by the defendants. Having failed to raise objection immediately after issuance of notice - Ex.A.1, after lapse of more than six months, plaintiff has chosen to sent a letter seeking some clarification. Since the meter reading reveals that, the plaintiff has consumed the units recorded in the meter, the consumption units recorded manually in the consumer card is not conclusive proof to prove the actual consumption of electricity.

14. The Electricity Authority have not taken advantage of their mistake, per contra based on inspection and based on actual reading of the meter, the demand of consumption charges were made. Further, on the basis of representation of the plaintiff, the meter was also tested and found that the meter was functioning without any default. this test report is sufficient to accept the case of the defendants and they are entitled to collect the consumption charges as quantified by them and the same is valid. Accordingly, the substantial questions of law raised herein is answered.

15. In view of the above, this Court finds no merits in this appeal and no reason to interfere in the judgment and decree of the Courts below. Accordingly, this second appeal is dismissed. Consequently, connected miscellaneous petition stands closed. There shall be no order as to cost.



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Index: Yes/No

Speaking Order : Yes/No

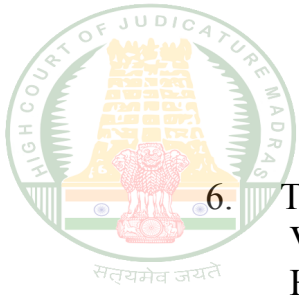
Neutral Citation Case : Yes/No

To:

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Tamil Nadu Electricity Board,
Dharmapuri Distribution Circle,
Dharmapuri District.
2. The Executive Engineer,
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Tamil Nadu Electricity Board, Harur,
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Tamil Nadu Electricity Board, Harur.

K. RAJASEKAR, J.

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6. The Section Officer,
VR Section,
High Court, Madras.

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