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Court : Chennai

Decided On : Aug-11-2010

Judge : M.Jaichandren, J,

Appeal No. : S.A.No.1429 of 2007

Appellant : Arunachalam.

Respondent : Assistant Superintending Engineer Tamil Nadu Electricity Board, and ors.

Advocate for Def. : Mr.N.Muthuswami, Adv.

Advocate for Pet/Ap. : Mr.S.Senthilnathan, Adv.

Judgement :

1. This second appeal has been filed against the judgment and decree, dated 19.1.2007, made in A.S.No.89 of 2006, on the file of the Additional Subordinate Court, Vridhachalam, Cuddalore District, confirming the judgment and decree, dated 31.3.2006, made in O.S.No.297 of 2003, on the file of the I Additional District Munsif Court, Vridhachalam, Cuddalore District.

2. The plaintiff in the suit, in O.S.No.297 of 2003, is the appellant in the present second appeal. The defendants in the said suit are the respondents herein. The plaintiff had filed the suit, in O.S.No.297 of 2003, on the file of the I Additional

District Munsif Court, Vridhachalam, Cuddalore District, praying for a decree of permanent injunction restraining the defendants from disconnecting the electricity service connection, belonging to the petitioner, in T.V.Pudur electricity agricultural service connection No.739, in survey No.154/4 of Vannankudikadu Village, and for costs.

3. The plaintiff had obtained the electricity service connection No.739, for his property comprised, in survey No.154/4, in Vannankudikadu Village, on 26.5.2000. For the said service connection, he had paid Rs.11,065/-, towards deposit. The plaintiff had to pay various amounts of money for the different periods, from the years 2000 to 2003. However, when the plaintiff had gone to Rajendirapattinam electricity board to pay Rs.1,563/-, for the period of July, 2003, the accountant at the said office had refused to receive the amount. Therefore, the plaintiff had issued a legal notice, along with the demand draft for Rs.1,600/-. The said demand draft had been returned by the defendant, on 25.8.2003, stating that the plaintiffs electricity service connection had already been disconnected, on 17.8.2000.

4. The plaintiff had also stated that no notice had been issued to him, under Section 24 of the Indian Electricity Act. Without issuing such a notice, the defendants were making arrangements to disconnect the electricity service connection of the plaintiff, on 27.8.2003. Hence, the plaintiff had preferred the suit, in O.S.No.297 of 2003.

5. In the written statement filed on behalf of the defendants, it had been stated that the plaintiff had been given a service connection, in electricity service connection No.739, for 12.5 H.P., on payment of the necessary charges. However, the plaintiff should have paid Rs.530/-, for the period 7/2000, on 16.8.2000. However, the said amount had not been paid by the plaintiff. Consequently, the electricity service connection had been disconnected, on 17.8.2000. In respect of the electricity bill for the period 1/2001, the plaintiff should have paid Rs.1,563/-. In view of the said default, the aerial connection through the electricity posts had also been disconnected.

6. It had also been stated that the plaintiff did not pay any amount to the defendants, from 7/2000. As per the terms and conditions of the Electricity Board,

no notice under Section 24 of the Indian Electricity Act is necessary. On 1.8.2003, the plaintiff had given a letter admitting the disconnection of the electricity service connection and he had made a request to receive the entire arrears and for reinstallation of the service connection. However, he had suppressed the said facts, in the plaint.

7. In view of the averments made on behalf of the plaintiff, as well as the defendants, the following issues had been framed by the trial Court for its consideration:

"1. Whether the plaintiff is entitled to perpetual injunction, as prayed for?

2. Whether the electricity service connection was disconnected, in respect of service connection No.739, on 17.8.2000, by the defendants?

3. To what relief the plaintiff is entitled to?"

8. The plaintiff had been examined as P.W.1 and another witness had been examined as P.W.2. Exhibits A.1 to A.7 had been marked on behalf of the plaintiff. Two witnesses had been examined on behalf of the defendants, as D.W.1 and D.W.2. Exhibits B.1 to B.7 had been marked on behalf of the defendants. Exhibits C1 and C2 had been marked as Court documents.

9. The trial Court had found that there is no dispute, with regard to the title of the plaintiff, in respect of the survey No.154/4, Vannankudikadu Village. The trial Court had come to the conclusion that since, D.W.2 had denied the receipt of the electricity bills in question, from the plaintiff, he should have taken steps to send for the bills and the Account books from the electricity board, for the period 7/2000 to 1/2003. Further, Exhibit A.6 legal notice, filed by the plaintiff, did not disclose the information about the receipts taken by D.W.2 and there was nothing stated about the handing over of the receipts by D.W.2. Further, it had been found, on a perusal of Exhibit A.7, that the payment, alleged to have been made by the plaintiff, for the period, from 7/2002 to 7/2003, had been denied.

10. It had also been noted that the demand draft for Rs.1,600/-, said to have been sent by the plaintiff, had been returned by the defendants, vide Exhibit A.7, as

there is no specific address in the demand draft. Thus, the plaintiff had failed to comply with the defects in the demand draft. As such, it was found that the said demand draft had been issued only for the cause of action for filing the suit.

11. The trial Court had also found that D.W.1 had filed Exhibit B.1 Register, maintained for the purpose of noting the disconnection of electricity connection, and Exhibit B.2 Register, maintained for noting the main aerial disconnection in the electricity posts. Further, the plaintiff had admitted, in Exhibit B.3, that the electricity service connection had already been disconnected, on 1.8.2003. In such circumstances, the trial Court had come to the conclusion that the relief sought for by the plaintiff in the suit cannot be granted. Hence, the trial Court had dismissed the suit filed by the plaintiff, by its judgment and decree, dated 31.3.2006, made in O.S.No.297 of 2003.

12. Aggrieved by the judgment and decree of the trial Court, dated 31.3.2006, the plaintiff had filed an appeal before the Additional Subordinate Court, Vridhachalam, Cuddalore District, in A.S.No.89 of 2006. The first appellate Court had confirmed the judgment and decree of the trial Court, by its judgment and decree, dated 19.1.2007.

13. Challenging the judgment and decree of the first appellate Court, dated 19.1.2007, the plaintiff in the suit, in O.S.No.297 of 2003, had filed the present second appeal before this Court, raising the following questions, as substantial questions of law:

"1. Whether the Courts below erred in law after holding that electricity supply connection has been disconnected contrary to Section 24 of the Indian Electricity Act in dismissing the suit?

2. Whether the Courts below erred in law in holding that suit for injunction is not maintainable after considering the report of the advocate commissioner that electric motor of the appellant was working?

3. Whether the Courts below erred in law that mandatory injunction alone will lie when the respondents have not taken any steps to stop the electricity supply to the

appellant herein?"

14. The learned counsel appearing for the appellant had submitted that the judgment and decree of the Courts below are contrary to law, weight of evidence and the probabilities of the case. The Courts below have erred in law in believing the Exhibits B.1 and B.2, filed by the respondents. The courts below ought to have found that the Exhibits B.1 to B.3 were records created by the respondents for the purpose of denying the rightful claims of the appellant.

15. It had also been stated that the Courts below had failed to note that, at the time of the visit of the Commissioner, the service connection had not been disconnected. Since, the disconnection of the electricity supply had been done by the respondents, contrary to the mandatory provisions, in Section 24 of the Indian Electricity Act, the Courts below ought to have held that the disconnection of the electricity supply to the plaintiff's electricity service connection, bearing electricity service connection No.739, is arbitrary, illegal and invalid in the eye of law.

16. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the Courts below had rightly arrived at their conclusions, based on the evidence available on record. The Courts below had held that the relief sought for by the appellant cannot be granted, in view of the fact that he had not shown that the amounts due from him had been duly paid to the respondents. Further, the appellant had admitted in his letter, dated 1.8.2003, that his electricity service connection had been disconnected. As such, since, the second appeal filed by the appellant is devoid of merits, it is liable to be dismissed.

17. In view of the submissions made by the learned counsels appearing for the appellant, as well as the respondents, and in view of the records available, this Court is of the considered view that the appellant has not shown sufficient cause or reason to interfere with the concurrent findings of the Courts below.

18. It is not in dispute that the appellant had obtained the electricity service connection No.739 for his property, comprised in survey No.154/4, in Vannankudikadu Village. However, the appellant had not been in a position to show that he had duly paid the amounts due to the respondent electricity board.

Further, from the letter, dated 1.8.2003, the Courts below had come to the conclusion that the electricity service connection in question had already been disconnected.

19. In such circumstances, the suit filed by the appellant, in O.S.No.297 of 2003, on the file of the I Additional District Munsif Court, Vridhachalam, had been rejected by the trial Court, by its judgment and decree, dated 31.3.2006, made in O.S.No.297 of 2003, and it had been confirmed by the first appellate Court, by its judgment and decree, dated 19.1.2007, made in A.S.No.89 of 2006. As this Court is not inclined to interfere with the concurrent findings of the Courts below, the present second appeal is liable to be dismissed. Hence, it stands dismissed. No costs. Consequently, connected M.P.No.1 of 2007 is closed.

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