

The Executive Engineer Vs. Balarama Reddy

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Court : Chennai

Decided On : Apr-09-2012

Judge : V.Periya Karuppiah. J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Section 100

Appeal No. : Second Appeal No.906 of 2001

Appellant : The Executive Engineer

Respondent : Balarama Reddy

Advocate for Def. : Mr.N.R.Anantharamakrishnan, Adv.

Advocate for Pet/Ap. : Mr.V.Viswanathan, Adv

Judgement :

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 30.03.2001 made in A.S.No.11 of 2000 on the file of the Sub Court, Ponneri, confirming the judgment and decree dated 28.04.1999 made in O.S.No.47 of 1998 on the file of the District Munsif Court, Ponneri.

JUDGMENT

1. This appeal is directed against the judgment and decree passed by the first appellate court in A.S.No.11 of 2000 dated 30.03.2001 in confirming the judgment

and decree passed by the trial court in O.S.No.47 of 1998 dated 28.04.1999 in decreeing the suit.

2. The appellants herein were the defendants and the respondent herein was the plaintiff before the trial court.

3. The case of the plaintiff as stated in the plaint would be as follows:-

On 15.03.1982, the plaintiff applied to the defendants/ Electricity Department for agricultural electric service connection to his land in S.No.208/2A in Mangavaram Village, Gummidipoondi Taluk. Acknowledging the same, the defendants department sent a communication dated 16.03.1982 to the plaintiff calling him to furnish details regarding the ownership of the land of the plaintiff. The defendants did not effect any agricultural electric service connection despite the plaintiff produced all the relevant records i.e., ownership certificate from the Tahsildar and Chitta Adangal extract in relation to the land belonging to him and fulfilled all the formalities required by the defendants for the purpose of effecting agricultural service connection. The plaintiff had sought for effecting electricity service connection on priority basis on several occasion, but the plaintiff was driven pillar to post without any favourable result, even though many subsequent applicants had been granted electric service connection for the reason best known. Hence, the plaintiff issued a notice dated 08.08.1997, which was duly acknowledged by the defendants. But the defendants did not sent any reply notice and had been been promising the plaintiff to give service connection. But so far, they have not done so. Therefore, the plaintiff is forced to approach this Court seeking mandatory injunction.

4. The objections of the defendants filed by the first defendant and adopted by other defendants in their written statement would be as follows:-

The plaintiff has approached the defendants department during 1996 for an agricultural service and the same was registered as PR.No.27/96-97 dated 06.07.1996. As the plaintiff has not paid initial amount of Rs.500/- within the specified time, he has lost the priority to avail the supply under self-finance scheme. However, the plaintiff's case will be considered under normal category

according to priority as and when his turn comes, as services have been effected to applicants, who have been registered up to 30.10.1990. If the plaintiff had given application as alleged during 1982, action would have been taken for effecting supply, if he was eligible, since services have been given for the applicants, who have been registered up to 30.10.1990. The allegation of the plaintiff that he is the earliest applicant and later applicants have been considered is not true. The service will be given to the plaintiff as and when his priority comes. The plaintiff has not complied with any formalities as stated by him to avail supply. Now, his case is pending under normal category and his application will be considered in the order of priority and subject to feasibility for providing new service as requested by him. Hence, the suit may be dismissed with costs.

5. The trial court has framed necessary issues on the above pleadings and had come to the conclusion of decreeing the suit in favour of the plaintiff and directed the defendants to give electricity connection within a period of one month. Aggrieved against the said judgment and decree, the defendants have preferred an appeal before the first appellate court in A.S.No.11 of 2000. The first appellate court heard both sides and had come to the conclusion of dismissing the appeal and thereby, the judgment and decree passed by the trial court was confirmed.

6. Aggrieved by the said judgment and decree passed by the first appellate court, the defendants have preferred the present appeal before this Court.

7. On admission of the appeal, this Court had formulated the following substantial questions of law for the disposal of the appeal :-

- 1) Whether the courts below are correct in decreeing the suit ?
- 2) Whether the courts below are correct in not appreciating the evidence of DW.1 and DW.2 that the application filed in the year 1982 and 1986 for different purpose ?
- 3) Whether the courts below are correct in giving finding that Ex.A6 is the acknowledgement given for the reminder received for the agricultural service application in the year 1982 ?

4) Whether the courts below are correct in not appreciating the evidence of DW.1 and DW.2 that the application given in the year 1982 has already been reported and only the application submitted in the year 1996 is pending and the same will be considered under seniority ?

8. Heard Mr.V.Viswanathan, learned standing counsel for the appellants / defendants and Mr.N.R.Anantharamakrishnan, learned counsel for the respondent / plaintiff.

9. The learned counsel for the appellants/defendants would submit in his argument that both the courts below have failed to appreciate the evidence of DWs.1 and 2 that the application given by the plaintiff for agricultural electricity service connection and the application filed in 1986 for domestic purpose and acknowledgement given for registration in the year 1986 marked as Ex.A6 was misconstrued as a reminder for the agricultural service connection application given in the year 1982 and had come to a conclusion against the defendants. He would further submit that the application filed by the plaintiff in the year 1986 was for domestic service connection only, for which service connection was effected on 19.02.1986 itself, however the acknowledgement card signed by the defendants was misconstrued to be a reminder for agricultural service connection. He would also submit in his argument that the application given by the plaintiff would be considered in seniority and only after attaining seniority, the service connection could have been effected. He would also submit that the evidence of DWs.1 and 2 are to the effect that the application given by the plaintiff was returned as early as on 16.03.1982 itself and the said application was not re-presented by the plaintiff so as to consider the same in the order of seniority. He would also submit that the plaintiff has submitted a fresh application only on 06.07.1986 for the agricultural service connection and at that time, he was advised to remit a sum of Rs.500/- within 30 days for considering his application under Revised Self-Finance Scheme (Rs.1000/-) or it will be registered in the normal free service priority and however, the plaintiff has not remitted the registration fees of Rs.500/- and therefore, his application has been registered under the normal free service category. He would further submit in his arguments that the reason stated for by the plaintiff to issue direction against the defendants to give electricity service connection are not

sustainable, however, both the courts below have found that the defendants are bound to give agricultural electricity connection without any payment. He would also submit that the judgment of both the courts below are not in accordance with the evidence adduced by the parties and the evidence of DWs.1 and 2 were not considered by both the courts below. He would, therefore, request this court to hold that the said judgments have been affected by perversity and they are liable to be interfered and be set aside and thus, the appeal may be allowed and consequently, the suit may be dismissed.

10. The learned counsel for the respondent / plaintiff would submit in his argument that the first appellate court had confirmed the judgment and decree passed by the trial court and accordingly, both the courts have perceived the evidence in a proper manner and had correctly directed the defendants to effect agricultural electricity service connection to the plaintiff. He would further submit that the application submitted by the plaintiff in the year 1982 was acknowledged by the first defendant and it is not correct to say that the said application was returned by the defendants which was not re-presented by the plaintiff. He would further submit in his arguments that the acknowledgement could be evidenced by the communication sent by the defendants on 16.03.1982 to furnish details regarding the ownership of the land of the plaintiff. He would also submit that the defendants did not effect any agricultural service connection, despite the plaintiff produced all relevant records i.e., his ownership certificate obtained from the Tahsildar, including Chitta and Adangal Extract in relation to the land belonging to the plaintiff and fulfilled all the formalities required by the defendants for the purpose of effecting agricultural service connection. He would further submit in his arguments that the plaintiff had sought for effecting agricultural electricity service connection on priority basis on several occasion, but the plaintiff was driven pillar to post and therefore, he has to approach the Court for getting redressal and thus, it was rightly ordered by the trial court as well as the first appellate court. He would further submit that the findings reached by both the courts below would expose the lethargic attitude of the appellants / defendants and despite the orders, even passed by both the courts below, the defendants have not effected any agricultural electric service connection still and it would be very very pathetic for the plaintiff to wait for getting the service connection for more than 30 years and he is yet to see

the light of the day. He would, therefore, request the court to dismiss the appeal by confirming the judgment and decree passed by the courts below and direct the appellants/defendants to effect agricultural electricity service connection immediately.

11. I have given anxious thoughts to the arguments advanced on either side.

12. The admitted facts on the pleadings and evidence would be that the plaintiff is an agriculturalist and he had applied for agricultural electricity service connection on 15.03.1982 on priority basis and the said application was not considered, so far, by the defendants. For that he has filed a suit for mandatory injunction directing the defendants to effect agricultural electricity service connection on, most priority basis, to grant and install in land in S.No.208/2A in Mangavaram Village, Gummidipoondi Taluk, Thiruvallur District. The said claim of the plaintiff was spoken to through the evidence of PW.1 and through the documents produced by him in Exs.A1 to A6. However, the defendants have examined the second defendant as DW.1 and the first defendant Executive Engineer as DW.2, apart from producing, Exs.B1 to B3. The said evidence were considered by the trial court and the suit was decreed in favour of the plaintiff. The first appellate court had confirmed the judgment and decree passed by the trial court and granted time limit to effect the agricultural service connection to the plaintiff, as sought for.

13. The main contention raised by the defendants would be that the application given by the plaintiff on 15.03.1982 was returned and it was not re-presented at all. However, both the courts below have considered the acknowledgement card produced in Ex.A6 as the acknowledgement card for reminder sent by him and found fault with the defendants. If really the said application dated 15.03.1982 was returned, there would not be any reply from the defendants in Ex.A1, a communication issued by the Divisional Electrical Engineer seeking the requirements for effecting the service connection. Therefore, the argument advanced by the learned counsel for the appellants/defendants that the application was returned, cannot be sustainable.

14. Similarly, it was argued by the learned counsel for the appellants/defendants that the plaintiff was entitled to get free service connection in seniority basis on his application given in the year 1996 and therefore, he would not be entitled to the prayer as sought for by him in the plaint. No doubt, the said argument advanced by the learned counsel for the appellants/defendants could be true. In fact, the plaintiff has applied for free electricity service connection in the year 1996. However, the suit filed by the plaintiff was to enforce his application made in the year 1982. It is also an admitted fact that the plaintiff was not given any agricultural electricity service connection even on the foot of the application submitted by him in the year 1996 either on priority basis or on free service connection. It has also been submitted by the learned counsel for the respondent/plaintiff that so far no agricultural electricity service connection has been given and the respondent/plaintiff could not also pay the amount as directed by this Court in the order passed in the stay application filed by the appellants in the year 2002. However, he has argued that the plaintiff is entitled to the agricultural service connection on priority basis as sought for by him and there was no bar in not availing the said opportunity as per the order of this court passed in the year 2002. The said argument of the learned counsel for the respondent/plaintiff is quite right and it purely depends upon the merits of the appeal and the plaintiff is entitled to have agricultural electricity service connection and there would be no bar in not availing the electricity service connection by virtue of the conditional order passed by this Court in the year 2002.

15. The plaintiff is admittedly an eligible person for getting agricultural electricity service connection and the documents produced by him were not considered by the defendants in time and no orders have been passed. The courts below have detailedly discussed the factual aspects regarding the consideration of the application and the lethargic attitude of the defendants and have come to the conclusion that the defendants were bound to effect agricultural electricity service connection to the plaintiff. The trial court had discussed elaborately regarding the destruction of the register kept in that regard and the evidence of DW.2 and had come to the conclusion that the plaintiff is entitled to the relief as sought for by him.

16. The first appellate court had also framed necessary points and had discussed the evidence of both sides and found the points in favour of the plaintiff, which was in consonance with the judgment and decree passed by the trial court. Therefore, the finding of the fact by the first appellate court that the defendants defaulted in effecting a service connection to the plaintiff as sought for by him in the year 1982, are in order and therefore, I do not find any perversity or bias attitude on the part of the first appellate court in coming to the conclusion against the defendants.

17. The judgment of this Court reported in 2002(2) MLJ 659 (Ponnaiyan v. Karuppakkal) is applicable to the present case and the relevant passage would run thus:

"25. No doubt, interference with the concurrent findings of the Courts below by the High Court under Sec.100, C.P.C. must be avoided unless warranted by compelling reasons. In a case where the finding is recorded without any legal evidence on record or misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse the High Court can set aside the findings and take a different view."

18. Apart from that, the judgment of the Honourable Apex Court reported in AIR 2003 SC 1905 (Bondar Singh vs. Nihal Singh) has laid down as follows:

" 4.An appeal under S.100, C.P.C. can be entertained by the High Court only on a substantial question of law. There can be no quarrel with this legal proposition. The scope of powers of High Court under S.100 C.P.C. is a matter of settled law. The learned counsel for the appellant cited several judgments in support of his contention. We do not consider it necessary to discuss these decisions because so far as the question of powers of High Courts under S.100 C.P.C. is concerned, it needs no discussion. If the findings of the subordinate Courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under S.100 C.P.C. A High Court cannot shut its eyes to perverse findings of the Courts below. In the present case, the findings of fact arrived at by the lower appellate Court were contrary to evidence on record and, therefore, perverse and the High Court was fully justified in setting aside the same resulting in the appeal being allowed and suit being

decreed."

In the aforesaid judgments, it has been categorically mentioned that if any perversity or biased attitude have been found in the decision of the first appellate court or in the concurrent finding of the first appellate court, then only it could be interfered. But, I do not find any perversity or bias in the judgment passed by the first appellate court, and therefore, the Judgment and Decree passed by the first appellate court cannot be interfered. In the circumstances, I have no hesitation to uphold the concurrent judgment rendered by the first appellate court, which ended in favour of the plaintiff, on the correct perception of the evidence. Accordingly, the Second Appeal is liable to be dismissed.

18. In fine, the Second Appeal is dismissed without costs. The judgment and decree passed by the first appellate court in confirming the judgment and decree passed by the trial court are hereby confirmed. However, the defendants are directed to effect agricultural electricity service connection as sought for by the plaintiff in the suit O.S.No.47 of 1998 on the file of the District Munsif Court, Ponneri, within a period of two months from today i.e., on or before 09.06.2012.

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