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Court : Kolkata

Decided On : Apr-30-2012

Judge : Prasenjit Mandal

Appeal No. : C.O.NO. 626 OF 2012

Appellant : Pranab Banerjee and Others

Respondent : Smt. Bithika Mahato and Another

Judgement :

Prasenjit Mandal, J.

This application is at the instance of the defendants and is directed against the order dated January 18, 2012 passed by the learned Civil Judge (Senior Division), Purulia in Title Suit No. 107 of 2009 thereby rejecting an application filed by the defendants for restitution of the electricity at their premises.

The short fact is that the plaintiff / opposite party herein instituted a suit for declaration of title, recovery of possession and other reliefs against the petitioners in respect of the suit property as described in the schedule of the plaint. It is the specific contention of the plaintiff / opposite party herein that he had purchased the suit property from the previous owner, i.e., the proforma / opposite party no.2 by a registered deed of sale and the defendants had been in permissive possession of the suit property under the previous owner.

The defendants/ petitioners herein have paid charges for electricity contending, inter alia, that they are in possession of the suit property and they had made construction thereon in 1981 and they are all along in possession of the same. They were enjoying electricity under the previous owner of the suit property, namely, the proforma / opposite party herein and the subsequent purchaser, that is, the plaintiff had disconnected the electricity in respect of the suit property. So, they filed an application for supply of electricity to their premises against the plaintiff. That application was rejected on contest. Being aggrieved, this application has been preferred.

Now, the question is whether the impugned order should be sustained.

Upon hearing the submissions of the learned advocates of both the parties and on perusal of the materials on record, I find that it is not in dispute that the plaintiff / opposite party herein became owner of the suit property by purchase from the proforma opposite party. The plaintiff has admitted that the defendants are in possession of the suit property as described in the schedule of the plaint and that is why they have sought for a decree for recovery of possession along with other reliefs. There is no dispute that the defendants / petitioners were enjoying electricity in respect of the suit property under their possession from the meter of the previous owner. The petitioners did not clearly state under what capacity they are enjoying the suit property. But, it is the admitted position that they are in possession of the suit property. There was no contract between the plaintiff and the contesting defendants that the plaintiff was bound to supply electricity in respect of the property under occupation of the defendants. Therefore, it appears that the plaintiff has no obligation to supply electricity to the defendants in respect of the premises in suit.

Ms. Sulekha Mitra appearing on behalf of the petitioners submits that the plaintiff being the vendee had stepped into the shoes of his vendor, i.e., the proforma / opposite party herein and as such, the plaintiff is bound to supply electricity in the suit property under occupation of the defendants. In support of her contention, she has relied on the following decisions:-

i) Abhimanyu Mazumdar v. Superintending Engineer reported in 2011(2) CHN(Cal) 768 and thus, she submits that a person in settled possession of a property, is free to apply for supply of electricity without the consent of the owner of the same.

This decision in respect of a settler of lands of Andaman Islands is not at all applicable in the instant case.

ii) Mrs. Mitra has next referred to the decision of Amarendra Singh v. The Calcutta Electric Supply Corporation Ltd. and ors. reported in 2008(1) CLJ(Cal) 607 and thus, she submits that the petitioner is entitled to get electricity. That suit was against the Calcutta Electric Supply Corporation Ltd. and as such, I hold this decision will not apply against the owner having an electric meter.

iii) 'Fashion' Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co. Ltd. and ors. Reported in 2009(2) CHN 325 and thus, she submits that the said suit was also against the West Bengal State Electricity Distribution Company Ltd. and as such, I hold that this decision will not be helpful to the petitioners.

On the other hand, Mr. Biswajit Basu appearing on behalf of the opposite party submits that since there is no contractual relationship between the petitioners and the owner of the suit property, the owner is not under any obligation to supply electricity to the petitioners.

Mr. S. Banik supports the contention of the Mr. Basu.

So, in the instant case, the petitioners could not show that either the vendor or the vendee had any obligation to supply the petitioners with the electricity from the meter standing in the name of the previous owner. After purchase by the plaintiff, the petitioners are required to take separate electricity from the West Bengal State Electricity Distribution Company Ltd. Since, the petitioners have failed to show that the vendee is under an obligation to supply electricity, I am of the view that the learned Trial Judge has rightly rejected the prayer of the petitioners for giving direction upon the plaintiff to supply electricity. There is no scope of interference with the impugned order. There is no perversity in the finding.

Accordingly, this application is dismissed.

However, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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