
(2015) 04 GAU CK 0067
In the Gauhati High Court
Case No : CRP No. 211 of 2009

Abdul Rahman

APPELLANT

Vs

Egmal Seikh and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 115
Specific Relief Act, 1963 — Section 38, 38(3)

Citation : AIR 2015 Guw 113

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : J.C. Gaur, J. Choudhury and J. Bhagwati, for the Appellant

Final Decision : Allowed

Judgement

Hrishikesh Roy, J—Heard Mr. J.C. Gaur, the learned Counsel appearing for the petitioner. Also heard Ms. B. Choudhury, the learned Counsel appearing for the respondents 2, 6, 7 & 8. The Standing Counsel, ASEB Mr. N. Goswami, appears for the respondents 3, 4 & 5. The petitioner is the plaintiff in the Title Suit No. 17/1999 before the learned Civil Judge Jr. Division, Tezpur. He applied for a perpetual injunction under Section 38 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") to prohibit the defendants from disconnecting electricity to the schedule house, under Holding No. 2961 of Ward No. 13 within the Tezpur Municipal Board. According to the plaintiff, he was legitimately occupying a plot of land at Polo field of Tezpur town taken on lease from the owner Abdul Gafar in the year 1951 and he constructed a house on the said land with due permission from the Tezpur municipal authorities.

2. Subsequently the landowner Abdul Gafar donated his property for charitable purpose to the Dakhowali Panchayat and thereafter the plaintiff paid monthly rent to the successor owner. After residing without electricity for some years, the occupier applied for power connection to the ASEB and after formalities were completed, electricity supply was given to the suit premises on 30.1.1999. But

on complaint of the Secretary of the Dakhowali Panchayat, the ASEB issued a notice on 5.3.1999 directing the plaintiff to produce a No Objection Certification from the Dakhowali Panchayat or otherwise, the electricity will be disconnected. Thus when the optimum enjoyment of his leased property with electricity was threatened, the plaintiff applied for protection under the Act by filing the suit.

3. The learned Munsiff, Tezpur observed that the plaintiff is not the owner of the suit land and since the electricity connection was obtained without permission of the owner, there is no obligation on the part of the ASEB to continue with electricity supply. Moreover as no legal obligation was found to exist in plaintiff's favour, the Court opined that the relief under Section 38 of the Act can't be granted and on this basis, the mandatory injunction was refused and the suit was dismissed on 21.11.2006 (Annexure-D).

4. The aggrieved plaintiff then filed the Title Appeal No. 25/2006 but the learned Appellate Court opined that perpetual injunction can only be granted where there is existing obligation in favour of the plaintiff and since injunction can be granted to prevent the breach of an existing obligation and noticing the absence of obligation in plaintiff's favour, the Title Appeal No. 25/2006 was found to be without merit and the same was accordingly dismissed on 23.3.2009 (Annexure-F).

5. At the outset, Ms. B. Choudhury, the learned Counsel for the respondent questions the maintainability of the Revision petition by projecting that the Court conclusively determined the rights of the parties in the suit and therefore the impugned order amounts to a decree of the Court against which Appeal lies and therefore, the Revision petition under Section 115 of the CPC is not maintainable. But Mr. J.C. Gaur, the learned Counsel submits that order granting/refusing injunction is not a decree of Court and therefore Appeal doesn't lie against such injunction refusal order and in that case, the remedy of Revision is available to the aggrieved party.

6. The petitioner also argues that when the enjoyment of the property by the plaintiff is threatened by the defendants, under Sub-Section (3) of Section 38 of the Act, the Court may grant perpetual injunction. But the Court failed to consider the grievance of the plaintiff vis-a-vis Sub-Section (3) of Section 38 of the Act and this resulted in a jurisdictional error.

7. The Standing Counsel, ASEB Mr. N. Goswami appearing for the respondents 3, 4 & 5 on the other hand submits that the ASEB issued electricity disconnection notice only because of the complaint made by the defendants Dakhowali Panchayat and he further submits that under the applicable norms of the ASEB, electricity connection with separate meter can be provided to the legal occupier even without the consent of the owner of the property.

8. What is significant here in this case is that the owners/defendants do not question to the legitimacy of the occupation of the property by the plaintiff. But they are primarily concerned with securing electricity connection by the occupier,

without consent of the owner. The perpetual injunction under Sub-Section (3) of Section 38 of the Act can be granted when the defendants invades or threaten to invade the plaintiff's right to fully enjoy the occupied property. Electricity is an essential requirement for any occupied premises and if a occupier is threatened with disconnection of power, it certainly amounts to invasion of the right of the plaintiff to fully enjoy the property occupied legitimately, by the plaintiff.

9. But in the case is hand, the learned Courts failed to consider the plaintiff's right under Sub-Section (3) of Section 38 of the Act as the plaintiff is lawfully occupying the property with due permission of the owner. While the owner may not be obliged to provide electricity connection, he can't certainly obstruct the electricity connection to the occupied property, when the same can be legally secured by the occupier under the norms of the ASEB, even without permission of the owner.

10. On the maintainability objection to this Revision petition raised by the respondent owners, a Second Appeal under Section 100 of the CPC could have been a remedy only if the case raises a substantial question of law but in the present case when interpretation and application of Section 38(3) of the Act is the core issue, a 2nd Appeal may not lie, since no substantial question of law arises out of the impugned decision. Therefore according to me, this Revision is maintainable to challenge the impugned decisions as the Courts failed to exercise their due jurisdiction under the Act.

11. Following the above conclusion and after considering all the facts and circumstances of the case and taking note of the Clause 3.7.3(3) of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations 2004, (First Amendment) 2007 [hereinafter referred to as "the Regulations"] applicable for electricity connections by the ASEB, I permit the legal occupier to apply for separate electricity connection by offering 3 times the normal load security, under Sub-Clause (3) of Clause 3.7.3 of the Regulations of the ASEB. The plaintiff may apply within 3 weeks and be considered by the ASEB authorities, in terms of the applicable norms. Till a decision is taken on the plaintiff's application for separate connection by the ASEB, the present arrangement will continue. It is ordered accordingly.

12. In view of the above order, the impugned order dated 23.3.2009 (Annexure-F) in the Title Appeal No. 25/2006 rendered by the learned Civil Judge, Sonitpur at Tezpur and the leaned Trial Judge's order dated 21.11.2006 (Annexure-D) in the Title Suit No. 17/1999 are quashed and the Revision petition is disposed of in terms of the directions in the preceding paragraph. No cost. The Registry is directed to return the L.C.R. with a copy of this order to the concerned court.