

(2014) 11 RAJ CK 0092
In the Rajasthan High Court
Case No : Civil Second Appeal No. 115/2010

Champa Lal

APPELLANT

Vs

Ajmer Vidhyut Vitaran Nigam Ltd.

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Citation : (2014) 11 RAJ CK 0092

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Jai Prakash Gupta, Advocate for the Appellant; Ambika Desai, Advocate for the Respondent

Judgement

Nisha Gupta, J.—This second appeal has been filed on behalf of the plaintiff-appellant u/S.100 CPC against the judgment & decree dated 19/02/2010 passed by Additional District Judge (Fast Track) No. 2, Beawar District Ajmer whereby, it has allowed Civil Appeal No. 18/2009 filed by the defendant-respondents and set-aside the judgment & decree dated 20/03/2004 passed by Additional Civil Judge (Junior Division) No. 2, Beawar decreeing the suit in favour of the plaintiff-appellant for permanent injunction and declaration.

2. The facts giving rise to the filing of this appeal in brief are that plaintiff-appellant filed a civil suit for declaration and permanent injunction on the ground that he is khatedar of the land bearing Khasra No. 18 situated at Village Chavni Nayanagar in which, a Well is also situated. He installed an electricity pumping set and took an electricity connection for agricultural purposes from the defendant-respondents bearing Account No. 1131-1515-0079. It is further pleaded that the plaintiff took the electricity connection on 25/06/1996. He demanded for the agricultural purpose but he has been allowed the electricity connection in the category of Agricultural Nursery. It was decided by the electricity department on 22/06/1998 that the electricity connection, which was given in the category of Agricultural Nursery shall be converted into Flat Rate Agricultural Category after completion of two years from the date of issuance of

electricity connection and from the next billing month the electricity charges will be charged at flat rate general category according to the horse power. Plaintiff's electricity connection was installed on 25/06/1996 and after completion of two years, it was converted into the electricity connection of flat rate and meter has been removed by the defendants. Thereafter, the department again has tried to convert the category and they are charging the electricity expenditure other than the flat rate hence, therefore, an injunction has also been prayed claiming Rs. 1140/- to be refunded to him, which was decreed by both the courts below. The court below has restrained the defendants to convert the category of electricity connection, which was reversed in first appeal. Hence, this second appeal.

3. Contention of the defendants in the written statement was that initially, the plaintiff was allowed Agricultural Nursery electricity connection, which was converted into Flat Rate general category electricity connection but vide order dated 27/02/1999, it was decided by the department that the Agricultural Nursery electricity connections, which are situated in urban areas should again be converted into general category electricity connections and electricity charges would be recovered as per the tariff prevailing for general category electricity connections. The appellate court has rightly allowed the contention of the defendants and dismissed the prayer of the appellant in this regard hence, no interference is needed.

4. Contention of the learned counsel for the appellant is that findings on Issues No. 3 and 4 of the appellate court are against the pleading and evidence. There is no evidence that electricity connection of the appellant is situated at urban area. Only reliance has been placed on a report, which was never a part of the record. In fact, the plaintiff's electricity connection is situated at the rural area and the trial court has rightly allowed the relief to him.

5. Per contra, the contention of the learned counsel for the respondents is that there is no infirmity in the findings of the appellate court and no interference is needed.

6. Heard learned counsel for the parties and perused the impugned judgments.

7. A bare perusal of the judgment of the appellate court goes to show that the facts are not in dispute that initially, the Agricultural Nursery Electricity connection has been allowed to the appellant, which was converted into Flat Rate electricity connection vide order dated 26/06/1998. Thereafter, the order dated 27/02/1999 has been pleaded by the respondents and rightly contended that since the order dated 27/02/1999 is operative, Flat Rate electricity connection is converted into Agricultural General Category electricity connections, which are situated in the urban areas. Contention of the learned counsel for the appellant is that his electricity connection is situated in the rural area but no such evidence has been submitted before the court below and there is no averment even to the effect that the order dated 27/02/1999 is not operating against him, whereas the order Ex.A1 has been placed on record by DW1 Lal Moolchandani and stated that

vide order dated 27/02/1999, appellant is not entitled for any relief.

8. The contention of the learned counsel for the appellant is that report of the Tehsildar has been looked into. It is true that report of the Tehsildar was not part of the proceedings before the appellate court but to verify the fact that whether particular area falls in urban or rural it has been considered and there seems to be no infirmity in the consideration of the above report. Apart from it, the appellant never pleaded that his electricity connection has been situated in the rural area and no such evidence has been produced, whereas it was the specific plea of the defendants that the order dated 27/02/1999 is operative and appellate court has also rightly held so.

9. No substantial question of law has been pointed out in this appeal and hence, the appeal is liable to be dismissed.

Consequently, this second appeal is dismissed.