
(1995) 03 MAD CK 0126
In the Madras High Court
Case No : O.S.A. No. 305 of 1994

M/s Bharat Petroleum Corporation

APPELLANT

Vs

V. Antony and Others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Citation : (1995) 03 MAD CK 0126

Hon'ble Judges : Srinivasan, J;S.S. Subramani, J

Bench : Division Bench

Advocate : K. Ramu, for the Appellant; T. Srinivasaraghavan for Respondent No. 1 and Mr. E.S. Raja, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—This appeal by the third defendant in C.S. No. 1664 of 1993. on the file of this Court, is against the order passed by a learned Single Judge of this Court in Application NO.4334 of 1994.

2. The suit was originally filed before the City Civil Court, Madras, as OS. No.3978 of 1991, for passing a mandatory injunction, directing the appellant and respondents 2 & 3 (defendants in that suit) to restore electric connection to the plaintiffs bunk described in the plaint schedule, which was cut off by the defendants on 1.6.1991.

3. The material averments as seen from the plaint are as follows:

Land bearing Plot No. 1-A, Nungambakkam High Road, measuring about 13625 sq.ft. i.e. 5-1/2 grounds and comprised in DS. No. 156 and Door No.2, Nungambakkam High Road, Madras belonged absolutely to one Arunachalam Chettiar. The said land was leased to the then Burmah Shell Oil Storage and Distributing Company of India limited in the year 1961. Under the provisions of the Burmah Shell Acquisition of Undertakings in India, Act, 1976 (Central Act 2 of 1976), the undertakings of Burmah Shell Oil Storage and Distributing Company of India Limited at various places vested in the Union Government of

India which in turn stood transferred and vested in the 3rd defendant-Corporation (appellant herein).

4. One Seshadri Iyer, father of respondents 2 and 3 herein (defendants 1 and 2), was running a petrol bunk. On the death of Seshadri Iyer, defendants 1 and 2 continued to be the licensees. It is the case of the plaintiff that he was inducted by the said Seshadri Iyer as a tenant in respect of the south-eastern portion of the said land in the year 1981. He has installed a bunk in the demised portion measuring 12" x 12 ft. He has paid a sum of Rs.5,000/- as advance and is paying rent of Rs.600/- per month. According to him, he has taken that portion on lease for running a cool drinks shop. Accordingly, he was running a cool drinks shop under the name and style of "Gemini Cool Drinks Bar" in the demised portion. According to the plaintiff, the defendants 1 and 2 are running several businesses in the land mentioned above. They are, Gemini Auto Service, Gem Carriers and Gemini Financial services. It is further averred that in the bunk put up by him, he is vending only cool drinks, and that he is not selling coffee, tea, beedi or cigarettes. The original lessor Seshadri Iyer never issued any receipt for the rent paid by the plaintiff on the ground that since he was only a licensee he could not give anything in writing. For the same reason, he did not issue any receipt for the advance paid. It is alleged by the plaintiff that the defendants, with an ulterior motive and evil design, attempted to disturb the plaintiff's peaceful possession and enjoyment of the bunk and his business, and this compelled him to file O.S.No.3433 of 1991 for a perpetual injunction restraining the defendants from in any way evicting or dispossessing the plaintiff from the suit property otherwise than by due process of law. In that suit, he also filed an application for injunction and the same is pending before the III Assistant Judge, City Civil Court, Madras. In that injunction application, notice was ordered. While so, according to the plaintiff, the defendants on 1.6.1991 illegally and unlawfully cut off the electricity connection to the plaintiff's bunk. According to the plaintiff, he is vending cool drinks only in the schedule bunk and the cooling process is done by electric power. According to him, he has installed in the bunk two cooling plants (deep freezers), and without electric power, he cannot virtually carry on the business. He further says that electricity is drawn from Gemini Auto Services run by defendants 1 & 2, and they have provided separate meter for the plaintiff, and he has been paying charges for the electricity consumed. It is further said that the electric connection stands in the name of the third defendant and the connection was available to him for the last more than 12 years, and from February 1987 onwards the electricity connection stands in the name of the plaintiff and that he is paying the charges. According to the plaintiff, the cause of action for the suit arose on 1.6.1991 when the electricity was disconnected by the defendants. Making the above statement, he has sought for the mandatory injunction.

5. Alongwith the suit, he has also moved an application for the grant of an interim injunction on the same lines. But no orders were passed therein. While so, the third defendant in the suit, appellant herein, filed another suit, namely,

C.S. No. 677 of 1992, for evicting the plaintiff. By orders of transfer, the suit filed by the plaintiff was withdrawn to this Court and renumbered as C.S. No. 1664 of 1993. Even though the earlier injunction application is still pending, without giving effect to the same, the plaintiff filed the present application for the very same relief.

6. A detailed counter was filed by the appellant, stating that the entire lease right has now vested in it, and Seshadri Iyer was only a licensee and on his death, his sons, respondents 2 and 3 herein are running a retail outlet on behalf of the appellant herein. It is further stated that the appellant being a Government of India Undertaking, can function only according to its objects and cannot deviate from the same. It cannot sublet any portion to any third party to locate a cool drinks shop. Seshadri Iyer has no right to sub-let any portion of the demised premises. Even the electric meter stands in the name of the appellant. The rights of defendants 1 and 2 are only that of licensees and they cannot sub-let any portion. Legally, possession is with the third defendant. It has also denied the claim of the plaintiff that he was induced by the late Seshadri Iyer. It is also, contended that the application filed by the plaintiff before the City Civil Court, seeking for an order of injunction was dismissed and the same has become final. It has also stated that it has not cut off the electricity connection to the bunk, and there is no privity of contract between the third defendant and the plaintiff. So long as there is no privity of contract, the suit as against it is not maintainable, and it is not obliged to restore electric connection. It has also stated that the fact that some people were standing near the bunk shop and were smoking, cigarettes was brought to the knowledge of the third defendant by the Controller of Explosives (South Circle), Madras. From this, the third defendant came to know that the plaintiff has been selling cigarettes and has been permitting people to stand near the bunk shop to smoke cigarettes, which is highly dangerous. The third defendant-Corporation is running a retail petrol outlet and the substances are highly inflammable. The petrol bunk is situated in a busy thoroughfare, namely, Nungambakkam high Road, Madras, and is surrounded by many commercial and residential complexes. If the plaintiff is allowed to run a shop, it will lead to dangerous consequences.

7. It is also averred that in O.S.No.677 of 1992 filed by it for eviction, it claimed a relief of injunction restraining the plaintiff from tampering with the electricity service connection. An order was granted in O. A.No.471 of 1992 and the same is still in force. It is further averred that the main relief prayed for in the suit and the relief sought for in the interim application are one and the same, and, if the relief is granted in the application, it will amount to decreeing the suit itself, and, therefore, the same cannot be allowed.

8. It is further averred that the earlier application was not allowed by the VII Assistant Judge, City Civil Court, Madras, finding that the prayer in the application as well as the suit are one and the same, and therefore, the suit itself was posted for trial.

9. It is also stated that the application is an abuse of process of Court. Where an earlier application is pending, without obtaining an order in that, a second application for the same relief should not have been filed. The third defendant (appellant herein) has prayed for the dismissal of the Application.

10. As per the order dated 22.11.1994, the learned Single Judge, without discussing the rival contentions, held that the respondent shall restore the electricity connection to the applicant/plaintiff and the applicant shall run on his business as usual. The learned Judge further ordered that the applicant shall not vend in his shop cigarettes and beedies and shall vend only cool drinks and other food articles. The learned Judge further held that the conduct of the applicant will be watched for a period of two months and thereafter an Advocate-Commissioner will be appointed to verify the position, and that the expenses for restoration shall be borne by the applicant. The learned Judge directed the applicant to directly approach the Electricity Board for the such purposes. It is against the said order, the third defendant (third respondent in the Original Application) has filed this OS. Appeal.

11. From the admitted facts, it is clear that the appellant is the lessee of the premises and defendants 1 and 2 are having a retail outlet as licensees. Admittedly the electric meter stands in the name of the appellant, and the plaintiff has not stated either in the plaint or in the affidavit filed in support of the application that the third defendant has anything to do with the disconnection of the electricity. It is admitted by the plaintiff himself that he is occupying a small portion under defendants 1 and 2 and that his claim is only as against them. But in the order passed by the learned Judge, the respondent is directed to restore the electricity. Defendants 1 and 2 who are only licensees, are doing business only on behalf of the appellant. The plaintiff has also no case of any privities of contract with the third defendant-Corporation. Since there is no obligation on the part of the third defendant (appellant) to provide electricity, the direction given by the learned Judge that the applicant should restore electricity cannot be supported. It is admitted that defendants 1 and 2 are only licensees and they cannot give a better right to the plaintiff who claims to be a licensee under them. A licensee who has no interest in the land and who is occupying the same under permission, cannot give a larger right creating an interest in land in favour of the plaintiff.

12. Further, it is admitted even in the plaint that electricity connection was disconnected on 1.6.1991. and. by his own admission, he was not having electricity till the impugned order was passed in 1994 i.e. for nearly 3-1/2 years. The plaintiff did not say that he was put to any hardship on account of non-availability of electricity. The Appeal was filed on 19.12.1994, and an interim order was passed staying the operation of the order of 22.12.1994. But in the meanwhile, the plaintiff, on the basis of the impugned order, moved an application before the Electricity Board and got electricity connection. According to the plaintiff, he got the electricity connection on 20.12.1994 and hence the

interim order passed in the Appeal has become infructuous. It is also contended that in view of the obtaining of the electricity connection, the appeal itself has become infructuous.

13.. As per our order dated 23.1.1995, we directed the plaintiff to file an affidavit stating the correct date and time as to when, how and by whom the restoration of electricity connection was effected. On the basis of the said order, he filed an affidavit stating that on 12.12.1994 he paid to the Electricity Board a sum of Rs. 1,050/- under various heads for restoration and reconnection. It is further averred in the affidavit that electricity was restored and electricity connection was given to his bunk on 20.12.1994. It is also stated in the affidavit that the Assistant Engineer, Nungambakkam, the Line Inspector. Foreman, all of the Electricity Board with two workmen, of their department came to the suit property on 20.12.1994 and gave electricity connection at 10:15 a m on 20.12.1994.

14. When this affidavit was filed, we directed the concerned section officer of the Electricity Board to produce before us the relevant file for verification. Accordingly, the Officer concerned produced before us the file relating to the electricity connection given to the first respondent herein. A photo copy of the file, which was also produced by him, was retained by us.

15. On perusing the file, we find that the plaintiff has obtained a new service connection for commercial lighting quite against the order of this Court. The learned Judge only directed restoration of the electricity connection which was available in the premises in question before 1.6.1991. In the affidavit filed by him on 21.10.1991 also. what the plaintiff has stated is, that he has obtained only restoration and reconnection. and the electricity was restored to him. For getting, electricity connection, we find that the plaintiff has also filed air indemnity bond on the allegation that the owner has refused to give his consent in writing for that purpose. It is also seen from the bond that the plaintiff is claiming himself as the owner of the premises. Pending suit, the plaintiff has no right to get a new connection. Some mis-representation has been made before the Electricity Board and we also find that nothing was stated in the bond about the order of the learned Judge in this case, and there is no statement regarding the pendency of the case. It was by suppressing the dispute inter se between the parties, the plaintiff has obtained a new service connection of the premises in question. It is not restoration of electricity connection as stated in the counter affidavit.

16. No case was made out by the plaintiff to get a mandatory injunction against the appellant. So far as the appellant is concerned, the occupation of the plaintiff is only that of a trespasser. Without considering the legal relationship between the parties, the learned Judge should not have given such a direction to restore the electricity Further. the said direction amounts to decreeing the suit itself without hearing the parties. The order, therefore, has to be set aside, and we do so accordingly.

17. A question may arise as to what will happen to the new service connection. Since the connection was obtained by the plaintiff suppressing the litigation between the parties and that too when the same is against the directions of this Court, the same is liable to be disconnected. The plaintiff is not entitled to get any new connection pending disposal of the suit. The appellant, is therefore, entitled to make a representation to the Electricity Board and get the new service connection obtained by the plaintiff disconnected. The order of the learned Single Judge is set aside, and the appeal is allowed. No costs.