(2016) 04 P&H CK 0154

In the Punjab And Haryana At Chandigarh

Case No : R.S.A. No. 587 of 2016 (O&M)

Uttar Haryana Bijli Vitran Nigam Ltd. APPELLANT

Vs

Daulat Ram RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 37, 38

Citation : (2016) 4 LawHerald 3044 : (2016) 3 PLR 656

Hon'ble Judges : Mr. Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Mr. Anil Chawla, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J. (Oral)—This is the second appeal, filed by defendants No.1 and 2 before the learned Additional Civil Judge (Sr. Divn.), Karnal, in a suit filed by respondent No.1-plaintiff (hereinafter referred to be as "the plaintiff"), seeking permanent injunction against the appellants-defendants (hereinafter referred to be as "the defendants"), against effecting a recovery of Rs.96,909/-, demanded by the notice dated 26.11.2010. The present respondent No.2 was defendant No.3 before the learned Civil Judge, being the allottee of an electricity connection in respect of which the recovery was sought to be effected.

2. As per the facts taken from the judgment of the learned Additional Civil Judge (Sr. Divn.), Karnal, the two sons of the plaintiff (not parties in the suit) purchased land measuring 15 kanals and 8 marlas, situated in Village Dodwa, Tehsil Nilokheri, District Karnal, from respondent No.2 (defendant No.3) (hereinafter referred to be as "Durga Devi"), vide registered sale deed dated 09.03.2007.

Prior to that, a rice mill by the name of M/s Narain Rice Mills was functioning over the land and an electricity connection bearing A/c No.14 Naraina R/M, had been installed by the defendants on the property, prior to its sale to the sons of the plaintiff. However, upon the sale being made, Narain Dass, father of Durga Devi, dismantled the building and took away the machinery, leaving the plot vacant.

The plaintiff applied for an electricity connection to the defendants and consequently an electricity connection bearing A/c No.ST21-1934 was sanctioned in the name of the plaintiff (the date of which is not given in either of the judgments of the Courts below and is not known to the learned counsel for the appellant-Corporation either). It is not disputed that the electricity connection in favour of the plaintiff was a fresh connection and not a transfer of the connection from the previous owner.

3. Thereafter, the plaintiff received notice No.5205, dated 26.11.2010, from the appellant-Corporation (defendants) raising a demand of Rs.96,909/- in respect of the previous connection No.MS-14, allotted/sanctioned in favour of M/s Narain Rice Mills.

Consequently, the plaintiff raised an objection with the appellant-Corporation, that he was not concerned with the earlier electricity connection allotted to the previous user of the land and hence, he was not liable to pay the outstanding bills as were sought to be recovered vide the impugned notice.

The appellant-Corporation not agreeing to the said objections, plaintiff filed the suit out of which this second appeal arises.

4. On notice issued, the appellant-Corporation (defendants) filed a written statement taking preliminary objections on suppression of material facts, jurisdiction etc., and on merits submitted that at the time of applying for the new connection, the plaintiff had concealed the factum of a previous connection running on the site.

It was further contended that as the sum of Rs.96,909/- pertains to an electricity connection that was affixed and running on the same site where the plaintiff had been allotted the electricity connection, therefore, the subsequent purchaser of the land was liable to discharge the debt that accrued thereupon.

5. Durga Devi (defendant No.3) filed a separate written statement, stating that the electricity connection had been permanently disconnected 7- 8 years earlier and as such, the amount could also not be recovered from her as the notice was time barred, in terms of Section 56(2) of the Electricity Act, 2003.

However, thereafter Durga Devi did not put in appearance before the learned Addl. Civil Judge and was accordingly proceeded against ex-parte, vide order dated 04.09.2012.

6. With no replication filed, the following issues were framed by the learned Addl. Civil Judge:-

"Issue No.1: Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP

Issue No.2:Whether the suit of the plaintiff is maintainable?OPD

Issue No.3: Whether the plaintiff has got no locus standi and cause of action to file the present suit? OPOD

Issue No.4: Whether the suit of the plaintiff is not property valued for the purpose of Court fee and jurisdiction?OPD

Issue No.6: Relief."

7. By way of evidence, the plaintiff examined himself as PW-1, testifying in terms of his plaint and also swore an affidavit Ex.PW-1/A.

He also led by way of documentary evidence, the impugned notice as Ex.P-1, a bill as Ex.P-2 and a copy of the sale-deed vide which the land had been purchased by his sons, as Ex.P-3.

The defendant-Corporation examined its Jr. Engineer as DW-1, who also tendered his affidavit, reiterating the contents of the written statement. The said witness also proved on record a copy of a register as Ex.D-1 and "LL-i" report as Ex.D-2.

8. Upon appraising the evidence, the pleadings and the arguments raised, the learned Addl. Civil Judge found that the amount sought to be recovered from the plaintiff by the impugned notice, was actually due towards connection bearing A/c No.MS-14, running in M/s Narain Rice Mills. The said mill was admitted to be no longer in existence and the electricity connection allotted to it, to be also no longer running.

It was also found that the electricity connection allotted to the plaintiff in the year 2007, was after his sons had purchased the land from its previous owner and as such, the connection of the plaintiff had a completely different account number, i.e. A/c No.ST-21/1934, in the plaintiffs'' name.

9. As regards the recovery sought from the plaintiff, it was held that there was no privity of contract between the plaintiff and the defendant- Corporation qua the electricity connection allotted to M/s Narain Rice Mills and simply because the plaintiff/his sons had purchased the land upon which the earlier electricity connection was installed, would not make the plaintiff liable to discharge the liability of arrears not paid by the allottee of the previous connection. It was also noticed by the learned Addl. Civil Judge that had there been any condition attached to the allotment of the new connection in the name of the plaintiff, that the outstanding dues against the allottee of the electricity connection earlier installed on the same land, were to be paid as a pre-condition to the grant of a new connection, then the defendant- Corporation could have proved the liability of the plaintiff. But without any such condition imposed, the plaintiff could not be held liable to discharge the liability of another person.

10. Other than that, the learned Civil Judge further held that in terms of Section

56(2) of the Electricity Act, 2003, no sum due from any consumer, was recoverable after a period of two years from the date on which such sum first became due, unless it could be shown that the said sum was being continuously shown to be recoverable as arrears of charges for electricity supply, where the supply had not been cut off.

In the case at hand, the recovery being for a period prior to 2007 and the notice having been issued on 26.11.2010, the recovery was held to be time barred, as no evidence was led to show that the said recovery amount was being continuously shown in the bills issued to M/s Narain Rice Mills.

11. The issue of the maintainability of the suit not having been pressed by the defendant-Corporation, the suit was decreed in favour of the plaintiff and the Corporation was restrained from recovering the sum demanded vide the impugned notice. The defendant-Corporation was further restrained from disconnecting the supply of electricity connection No.ST-21/1934, of the plaintiff .

12. In the first appeal filed by the appellant-Corporation, the learned Additional District Judge also found that the electricity supply to the defaulter M/s Narain Rice Mills had been cut off and as such, the question of continuous recovery shown as arrears of charges, in terms of Section 56 (2) of the Act of 2003, did not arise.

Hence, the notice was held by that Court to be beyond the statutory limitation given in the Act.

13. It was also found that the officials of the defendant-Corporation did not visit the site before sanctioning the new connection in favour of the plaintiff and as such, the question of any condition having been imposed, with regard to payment of dues of the connection previously installed on the site, in the name of M/s Narain Rice Mills, also did not arise.

Consequently, the first appeal was also dismissed by the learned Additional District Judge.

14. Before this Court, Mr. Anil Chawla, learned counsel appearing for the appellant-Corporation, submitted that firstly the learned Courts below had erred in holding that the charges due on the connection allotted to M/s Narain Rice Mills were not being shown as continuously recoverable charges. As a matter of fact, he submitted that they were being so shown. However, on query, learned counsel submitted that no bills in that regard had been produced by way of evidence before the Courts below.

15. Mr. Chawla next contended that the electricity connection sanctioned to M/s Narain Rice Mills, having been installed on the land purchased by the plaintiff/his sons (respondents No.1 herein), all liability pertaining to such land, would devolve upon the successor-in-interest of the previous land owner.

Upon query, he again could not refer to any statutory provision by which the electricity connection allotted to one person, could be held to be the liability of the subsequent purchaser of the land, especially with their being no family or business relation between the previous and subsequent owner of the land.

Of course, even if any such relationship existed, the question of personal liability of a successor-in-interest with regard to an electricity connection installed on land purchased, with the electricity connection itself not transferred to the subsequent purchaser, would be a matter which would be gone into on its own merit, again in terms of any statutory provision or contractual liability.

Admittedly, in the present case, on specific query put to the learned counsel, the connection in favour of the plaintiff (respondent No.1 herein), was not a transfer of the old connection of M/s Narain Rice Mills but a wholly new sanction of a new electricity connection, not concerned at all with the previous electricity connection allotted/sanctioned to the previous owner.

16. Hence, having considered the arguments of the learned counsel, I am unable to agree with him, both, on the issue of the notice being valid as contended, it having been issued beyond the statutory period of two years stipulated in Section 56(2) of the Electricity Act; as also on the issue of the liability of respondent No.1 herein, to pay the outstanding dues of an electricity connection with which he had no concern.

17. As regards the delay in issuing the notice, I see no error in the reasoning given by the Courts below, with no evidence led to the effect that any bills were being issued to M/s Narain Rice Mills even after the said firm had ceased to exist, especially when the electricity connection sanctioned to that firm had admittedly been cut off.

18. Hence, neither of the two ingredients necessary to negate the two years limitation period stipulated in Section 56(2) of the aforesaid Act, existed to overcome the bar contained in the said statutory provision.

19. In conclusion, to repeat, the appellant-Corporation also not having been able to show at any stage, any statutory provision by which an allottee of a new connection can be held liable to discharge the liability foisted on the owner of a previous connection, even on the same premises, there is no merit in the arguments raised on behalf of the appellant- Corporation.

20. Consequently, this appeal is dismissed, but with no order as to costs.