

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2016

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.194 of 2015
and M.P.No.1 of 2015

1.Ramasamy
2.Kaliyan

... Appellants/Plaintiff

Vs.

1.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Transmission Line Construction,
Villupuram.

2.The Junior Engineer,
Tamil Nadu Electricity Board,
Transmission Line Construction,
Villupuram-605 602.

.... Respondents/Defendants

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 17.10.2014 made in A.S.No.59 of 2013 on the file of Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 06.09.2013 as against O.S.No.401 of 2011 on the file of Principal District Munsif, Kallakurichi.

For Appellant : Mr.V.Manohar
For Respondents : Mr.V.Viswanathan

JUDGMENT

The appellants/plaintiffs, who filed a suit for permanent injunction restraining the respondents/defendants from encroaching their land, constructing and putting up electricity post, line and tower, have filed the present appeal raising the following substantial questions of law.

1. Whether the lower Courts are correct in their approach to come to the conclusion that the plaintiffs did not raise any objections for erection of towers in their lands, when there is substantial proof is available by way of evidence let in by the plaintiffs in the suit and also the plaintiffs have filed writ petition to dispose of their objections?

2. Whether the approach of the lower appellate Court in rejecting the claim of permanent injunction based on the assumption that there was no objection from the plaintiffs is correct in law?
3. Whether the lower appellate Court had considered the right of the appellant to protect the property for his own personal use of constructing a house for his family while deciding the appeal?
4. Whether the lower Courts are correct in accepting the stand of the defendants that by replying to the objections of the appellants as per the High Court order, need not comply with the mandatory provision to approach the District Magistrate or not, when the land owner raised objection?

2. The appellants are the owner of the land in Survey No.75/5 in Mattigaikurichi Village, Kallakurichi Circle, Villupuram District. The grievance of the appellants is that despite the objections raised, the respondents are proceeding with laying of the electricity tower.

3. The trial Court dismissed the suit on the premise that as per the provisions contained under the Indian Electricity Act and the Telegraph Act, no such permission is required. Such a scheme has been approved by the State Government through the Government Order. The appellants were informed on the objection raised. The lower appellate Court has confirmed the judgment and decree of the trial Court and hence, the present appeal.

4. The learned counsel appearing for the appellants submits that the objection of the appellants has not been considered. Therefore, the findings of the Courts below have to be set aside and consequently, the appeal has to be allowed.

5. This Court is afraid that the said contention cannot be accepted. Under Ex.B2, the State Government in G.O.No.44 dated 10.11.2012 has published the decision to have the high tension tower and line. Permission has also been obtained from the Tamil Nadu Electricity Board. In pursuant to the direction issued by this Court in W.P.No.25623 of 2012 dated 01.10.2012, a suitable reply was given under Ex.B4 to the appellants. Even under Ex.B2, time limit has been given to the possible objectors for making such objection within a period of two

months under Sections 164 and 168 of the Electricity Act, 2003. Thus, this Court does not find any question of law involved in the present appeal. However, it is well open to the appellants to work out the remedy under the statute, if so available.

6. The second appeal stands dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Subordinate Judge,
Kallakurichi.

2.The Principal District Munsif,
Kallakurichi.

+1cc to Mr.V.Manohar, Advocate Sr.72350

S.A.No.194 of 2015

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srg 05/01/2017

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