



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

25.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

S.A.(MD)No.347 of 2016

WEB COPY

Johnson

:Appellant/Appellant/Plaintiff

Vs.

- 1.The Junior Engineer,
TNEB [Distribution],
Tholayavattai, Vilavancode Taluk,
Kanyakumari District.
- 2.The Junior Engineer,
TNEB [Distribution],
Puthukadai & Post,
Vilavancode Taluk,
Kanyakumari District.
- 3.The Assistant Engineer,
TNEB [Distribution],
Kuzhithurai, Vilavancode Taluk,
Kanyakumari District.
- 4.The Superintending Engineer,
TNEB, Nagercoil, Kanyakumari District.
- 5.Siluvaidhas

:Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree made in A.S.No.79 of 2011, dated 27.11.2013, on the file of the Subordinate Court, Kuzhithurai, confirming the Judgment and Decree made in O.S.No.502 of 2001, dated 27.01.2010, on the file of the Second Additional District Munsif Court, Kuzhithurai.

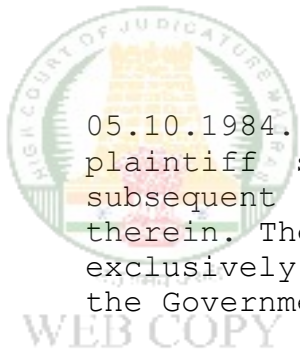
For Appellant	: Mr.M.Kalifullah
For Respondent Nos.1 to 4	: Mr.R.Velmurugan
	Government Advocate

JUDGMENT

The appellant herein, who is the unsuccessful plaintiff in the suit for mandatory injunction, damages and for cost, has come forward with the present Second Appeal challenging the concurrent findings rendered by the Courts below.

2. The case of the plaintiff, as culled out from the plaint, for the purpose of disposal of the Second Appeal, is as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>
The plaint Schedule property and its adjacent land measuring to an extent of 6^{1/2} cents, together measuring an extent of 12 cents, were purchased by the plaintiff, by way of a registered sale deed, dated



05.10.1984. From and out of the above said 12 cents of land, the plaintiff sold an extent of $6^{1/2}$ cents to the fifth defendant and subsequent to the purchase, the fifth defendant had constructed a house therein. The plaintiff was enjoying the remaining $5^{1/2}$ cents separately and exclusively. The plaintiff obtained patta and he was also paying tax to the Government.

2.1. The fifth defendant applied to the defendants 1 to 4 seeking electric service connection to his house. When the fifth defendant started works in his house for getting service connection, the plaintiff requested him not to draw electric line through the plaint schedule property. The fifth defendant has also agreed for the same. The fifth defendant has stated to the plaintiff that he would draw electric line through the western property, for which the owner of the western property has given consent to him.

2.2. When the matters stood thus, the plaintiff came to know that the fifth defendant was trying to draw electric line through the plaint schedule property. Therefore, the plaintiff made a request to the defendants on 28.09.2001, thereby raising objections not to draw electric line through and crossing the plaint schedule property. On 30.10.2001, the plaintiff forwarded a written objection through registered post with acknowledgement card to the defendants 1 to 3, in addition to the telegram to the fourth defendant on 07.10.2001, requesting to remove the service line. In spite of the objections made by the plaintiff, the defendants 1 to 4 gave service connection to the fifth defendant, on 05.10.2001, drawing electric line through the plaint schedule property, without obtaining consent from the plaintiff. By drawing such electric line, the right of the plaintiff over the road frontage of the property was prejudiced and the plaintiff was unable to put up any building, as electric line passes through the plaint schedule property.

2.3. On account of the above unauthorized drawing of the service line across the plaint schedule property, the value of the plaint schedule property, more specifically on the western side, has gone down and the plaintiff was not in a position to put up buildings and the plaintiff has incurred heavy loss, which would be about Rs.50,000/- and thus, the plaintiff is entitled to realize the same from the defendants. With the above allegations, the plaintiff sought for the relief, as stated supra.

3. Resisting the suit, the first defendant filed a Written Statement contending that the plaintiff has to prove his right over the plaint schedule property. The fifth defendant applied for service connection for his residential building. The application was registered under one day scheme, vide priority No.204/2K-1-2K2 dated 04.02.2001. The service connection for the said house was effected on 04.10.2001, by way of service connection No.D424 V2m, without crossing the property of the plaintiff. The service connection was effected through the property of one Thiru.M.Balakrishnan, S/o. Monikom, Iyyamkovil Vilai, Puthulckadai Post, after obtaining necessary permission from him, which will not cause any hardship or prejudice to the plaintiff. Thus, according to the first defendant, the authorities of the Tamil Nadu Electricity Board had discharged their statutory duties. Based on the above pleadings, the first defendant prayed that the suit is not maintainable and it was liable to be dismissed.



4. Based on the above facts, the Trial Court framed appropriate issues. On the side of the plaintiff, three witnesses were examined as PW-1 to PW-3 and as many as 11 documents were marked as EX-A1 to EX-A11. On the side of the defendants, one witness was examined as DW-1 and one document was marked as EX-B1. Having considered all the above, the Trial Court, by Decree and Judgment dated 27.01.2010, dismissed the suit. Questioning the validity of the Decree and Judgment passed by the Trial Court, A.S.No.79 of 2011 was filed by the appellant, which was also dismissed by the Lower Appellate Court, by Decree and Judgment dated 27.11.2013. That is how, the appellant, who is the unsuccessful plaintiff in the suit, is now before this Court with this Second Appeal.

5. I have heard the learned counsel appearing for the appellant, the learned Government Advocate appearing for the respondents 1 to 4 and I have also gone through the materials available on record carefully, including the Judgments rendered by the Courts below.

6. The learned counsel appearing for the appellant/plaintiff submits that the defendants 1 to 4 gave service connection to the house of the fifth defendant crossing over the plaint schedule property, without the consent and knowledge of the appellant/plaintiff. He further submits that EX-A1 is the sale deed, dated 05.10.1984, executed in favour of the appellant/plaintiff. By virtue of the said sale deed, he obtained EX-A2 patta and he was paying house tax and EX-A3 is the tax receipt. The appellant/plaintiff also produced EX-A4 Resurvey plan. On 03.10.2001, he has submitted EX-A5 objections to the defendants through Registered Post. EX-A6 is the postal receipt and EX-A7 and EX-A8 are acknowledgement cards. Apart from the above, according to the learned counsel, in this connection, the appellant/plaintiff has also sent a telegram - EX-A9. In spite of all these objections, the defendants 1 to 4 have effected service connections to the house of the fifth defendant.

7. The learned counsel appearing for the appellant/plaintiff further submits that the commissioner, who has inspected the suit schedule property, has filed report and plan, which were marked as EX-C1 and EX-C2. In the report, the commissioner has categorically stated that G-1 pipe might have been removed, one day before the inspection of the commissioner, but the appearance would show that G-1 pipe was erected outside the compound wall of the property of the plaintiff to draw electric line to the house of the fifth defendant. The learned counsel appearing for the appellant/plaintiff contends that the evidence of the commissioner is a valuable one and thus, the appellant/plaintiff is entitled for compensation.

8. On the other hand, the learned Government Advocate appearing for the respondents 1 to 4 submits that the service connection was effected through the property of one Balakrishnan, after obtaining necessary permission from him and there was no loss caused to the appellant/plaintiff and thus, the appellant/plaintiff is not entitled to claim compensation.

9. I have considered the above submissions.



10. On a close scrutiny of the oral and documentary evidence available on record, it is crystal clear that at present, there is no electric line, which passes through the property of the appellant/plaintiff and also at present, there is no pole erected in the property of the appellant/plaintiff. The only grievance of the appellant/plaintiff is that earlier, electric line was drawn to the house of the fifth defendant through the property of the appellant/plaintiff, by erecting G-1 pipe. However, there are no concrete pleadings to the effect that the appellant/plaintiff sustained loss by drawing line to the house of the fifth defendant. But, appellant/plaintiff has simply averred that by drawing electric line, he has sustained loss, since he could not construct any building. As I have already narrated above, the appellant/plaintiff has not made out a case that he has sustained loss on account of the action of the defendants and furthermore, the damages have not been assessed. Above all, it is the specific case of the respondents 1 to 4 that the service connection was effected to the house of the fifth respondent, through the property belonged to the above said Balakrishnan, on getting approval from him. Thus, this Court is of the view that the appellant/plaintiff is not entitled for the relief sought for.

11. For all the reasons stated above and in view of the concurrent findings rendered by the Courts below, I do not find any substantial question of law involved in this Second Appeal. Therefore, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

Madurai Bench of Madras High Court,
Madurai-23.

To

1.The Subordinate Court, Kuzhithurai.

2.The Second Additional District Munsif Court, Kuzhithurai.

Copy to : The Section Officer,VR Section,

Madurai Bench of Madras High Court, Madurai.

S.A. (MD) No.347 of 2016

25.04.2016

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PBK/NGM-SS/SAR-II 24/05/2016 ::4P-4C::