



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2017

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.16 of 2014

Premalatha

... Appellant /
Appellant/1st Defendant

Vs.

1. Duraisamy

... 1st respondent/
1st respondent/Plaintiff

2. The Assistant Electricity Engineer,
Tamil Nadu Electricity Board,
Paramakudi City, North Division,
Paramakudi,
Ramanathapuram District.

... 2nd Respondent/
2nd Respondent/2nd Defendant

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 22.11.2011, made in A.S.No.18 of 2011 by the learned Subordinate Judge, Paramakudi, confirming the judgment and decree, dated 25.10.2010, made in O.S.No.4 of 2006 by the learned District Munsif, Paramakudi.

For appellant ... Mr.G.Prabhu Rajadurai
For 1st respondent ... Mr.G.Aravindan
For 2nd respondent ... Mr.C.Selvaraj

JUDGMENT

The unsuccessful first defendant has filed this appeal aggrieved by the concurrent findings of the Courts below. The suit was filed by the plaintiff restraining the second defendant / Electricity Board from giving the service connection to the first defendant's house through the plaintiff's property and if already such service connection is effected, for a mandatory injunction to remove the same.

2. According to the plaintiff, the suit property originally belonged to one Ramakrishnan S/o. Ramanujam Pillai and his son Krishnamoorthy and from them, one Sundaramoorthy and Balasubramanian had purchased the same on 11.03.1996. The plaintiff, on 07.10.1998, had purchased the property from the said Sundaramoorthy and Balasubramanian. There is a three feet common pathway east of the



suit property which also found mentioned in the sale deed. According to the plaintiff, though it is stated that there is a three feet pathway, actually there is only two feet available. When the first defendant had applied for getting a service connection with the second defendant, on a spot inspection, it was actually stated by the second defendant that the said pathway is not exclusively belonging to the plaintiff and it is a common pathway. Hence, the plaintiff has come up with the suit restraining the second defendant in any way erecting or putting any new electricity pole and giving new connection to the first defendant's property through the said pathway.

3. The suit was resisted by the first defendant stating that the entire extent of the land in that area was cultivable lands, which have, later, been converted into house sites. During such conversion, three feet lane was left out for the purpose of common usage like laying drainage pipes, etc. The plaintiff also has purchased the property on 07.10.1998 from his vendors only on the same conditions. Therefore, the plaintiff cannot have any objection in drawing the wire from the common pathway. Though the plaintiff has claimed the suit pathway as his absolute lane, the second defendant has obtained legal opinion, from which it is clear that the suit property was only a common pathway and it is not exclusively belonging to the plaintiff.

4. The second defendant has also filed a written statement stating that a spot inspection was done, after receiving the application from the first defendant for service connection. It is stated that during the spot inspection, the plaintiff claimed to have exclusive right over the said pathway. However, on perusal of the documents, the second defendant had reliably understood that the suit pathway is a common pathway and not the exclusive pathway of the plaintiff. As the plaintiff cannot have any objection of drawing the wire through the common pathway, the second defendant already effected the service connection to the first defendant's house.

5. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW1 and another witness was examined as PW2 and Exs.A1 to A16 were marked. On the side of the defendants, one witness was examined as PW1 and Exs.B1 to B16 were marked. The Advocate Commissioner's report and sketch were marked as Exs.C1 and C2. On the above pleadings, the Courts below have concurrently held that the plaintiff is entitled for the relief.

6. At the time of admission, the following questions of law were framed for consideration:

- "1. Whether the Courts below are correct in law in overlooking the bar of jurisdiction as provided under Section 145 of the Electricity Act, 2003?
2. Whether the Courts below erred in law in



granting injunction against the supply of electricity without any plaintiff's pleading or proof of the violation of the provisions of Electricity Act, 2003 or the Electricity Supply Code?

3. Whether the Courts below are correct in law in placing the entire burden upon the defendants overlooking the legal principle that the plaintiff has to prove his own case?"

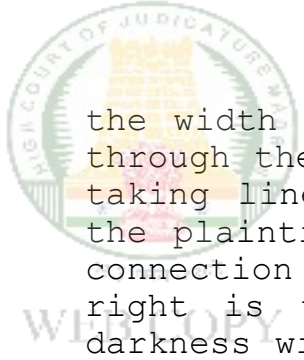
7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

8. The learned counsel appearing for the appellant/first defendant contended that the second defendant has got power conferred upon them under the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code, 2004 and entitled to grant service connection in exercise of their powers through the common pathway. Hence, the judgment and decree passed by the Courts below are liable to be set aside.

9. The plaintiff has claimed that the suit pathway absolutely belonged to him. But, later, the second defendant, on verification, found that it is only a common pathway. Hence, the second defendant has absolute right to proceed with the supply of electricity connection as per the Indian Electricity Supply Code, 2004 and the Indian Telegraphic Act. The Electricity Supply Code and the Telegraphic Act amply empowers and enables the 2nd defendant to take the overhead line even over the houses of private owners. If only the lines are drawn through the exclusive lane of the plaintiff, the plaintiff will be entitled for compensation. However, in this case, when the lines are drawn only through common pathway, the plaintiff cannot have any objection with respect to the same. It is not the case of the plaintiff that the electricity lines are drawn through his land or his property. The plaintiff is only adjoining owner of the first defendant. The electricity lines are now drawn to the first defendant's property for the purpose of supply of electricity at his own expenses on the common pathway.

10. The plaintiff has not proved as to how he would be affected by drawing the lines through the common pathway. The execution of the work under the Electricity Act by the second defendant is only a statutory function. Unless the plaintiff establishes that drawing of the electricity lines would endanger the life of the people, he cannot have any objection and he cannot prevent the execution work done by the second defendant.

11. It is stated that the said three feet common pathway has now been reduced to two feet. It is not the case of the plaintiff that taking the electricity service lines through the said pathway would affect any of his day-to-day activities like taking out his vehicle, transportation of any goods, etc. When it is stated that



the width of the pathway is only two feet, only one person can go through the same. In the absence of any substantial objections for taking lines through the common pathway, the relief sought for by the plaintiff cannot be granted, as the supply of domestic service connection is a basic necessity to the first defendant. If such right is taken away, the first defendant will have to live in darkness without power supply. The said common pathway is also not capable of vehicular movement. Only one person can go through the same. Hence, the objections raised by the plaintiff are unsustainable.

12. When the second defendant has got no objection and he has already given service connection, based on the request of the first defendant, the claim of the plaintiff at this point of time is unsustainable and the relief sought for him cannot be granted. It is advised that the usage of electricity has become a human right and the plaintiff and the first defendant being neighbours can live in peace without picking up quarrels on this petty issues. As the supply of electricity is given to the first defendant only through the common pathway, the case of the plaintiff does not stand scrutiny. Thus, the questions of law are answered in favour of the appellant holding that there is no violation of the provisions of the Electricity Act, 2003 or the Tamil Nadu Electricity Supply Code, 2004 by the second defendant in giving service connection to the first defendant. Accordingly, the findings of the Courts below are liable to be set aside.

13. In the result, this second appeal is allowed and the judgment and decree passed by the Courts below are set aside and the suit is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Paramakudi.
2. The District Munsif, Paramakudi.
3. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 74989
+ 1 CC TO Mr.G.ARAVINTHAN, ADVOCATE IN SR No. 74816

GCG

TE/KP/SAR-III : 18/09/2017 : 4P/6C

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