

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 27.07.2017****Coram****WEB COPY****The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****S.A(MD)No.601 of 2014**

Nadesan

.. Appellant/Appellant/Plaintiff

Vs.

1.Vishnukala

2.Junior Engineer,
Tamil Nadu Electricity Board,
Eraniel Division,
Neyyoor P.O.,
Eraniel Village,
Kalkulam Taluk,
Kanyakumari District.

3.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Parvathipuram,
Nagercoil,
Kanyakumari District.

.. Respondents/Respondents/Defendants

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 30.09.2013 made in A.S.No.28 of 2013 on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 30.04.2013 made in O.S.No.171 of 2000 on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel at Kanyakumari District.

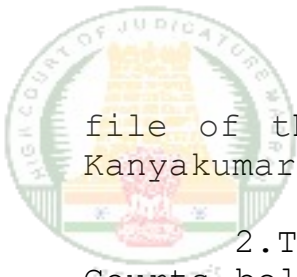
For Appellant : Mr.S.Ramakrishnan

For R - 1 : Mr.S.C.Herold Singh

For RR 2 & 3 : No appearance

JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 30.09.2013, passed in A.S.No.28 of 2013, on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 30.04.2013, passed in O.S.No.171 of 2000, on the

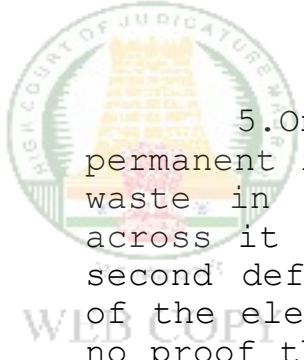


file of the District Munsif cum Judicial Magistrate, Eraniel at Kanyakumari District.

2.The plaintiff, who has lost concurrently before the Courts below, is the appellant. The suit is filed for a direction to remove the electrical pole erected in the plaint schedule property by the defendants and for permanent injunction restraining the defendants from committing any act of waste in the plaint schedule property by drawing any electric line or any other manner.

3.Originally, the suit was filed as O.S.No.171 of 2000 and the same was dismissed on 27.02.2004 and an appeal in A.S.No.97 of 2004 was filed and thereby it was directed to implead the TANGEDCO and the matter was remanded back to the trial Court again for fresh trial. After remand also, the Courts below have dismissed the suit.

4.It is the case of the plaintiff that the suit property belonged to him and in support of the same, Ex.A.1 has been filed. Though it was contended that the vendor of the plaintiff had subsequently cancelled the said sale deed, the Courts below have held that unilateral cancellation of the sale deed is bad, based on the decision of the Full Bench this Court in **Latif Estate Line India Limited, rep. By its Managing Director Habib Abdul Latiff Vs. Hadeeja Ammal and others** reported in **2011 (2) MLJ page 596**. Accordingly, the Courts below have held that as per Ex.A.1, B.3 and B.4, the suit property belongs to the plaintiff. The suit relief is that for a mandatory injunction to remove the electric poles erected in the plaint schedule property and for permanent injunction from committing any act of waste in the plaint schedule property. The plaintiff also has produced Ex.A.2, which is a patta passbook, in which, patta has been granted for 22 ares. It is found by the Courts below that in the patta pass-book, there is a material alteration including 6-1/2 cents. When the document of the plaintiff is only for 5-3/4 cents, patta passbook cannot mention 6-1/2 cents. The Courts below have concurrently held that the plaintiff has deliberately included 6-1/2 cents in the patta passbook to show his possession. As this material alteration done by the plaintiff is to prove his possession, the Courts below have disbelieved the case of the plaintiff that he was not in possession of 6-1/2 cents. Other than the patta, the plaintiff has produced Ex.A.4, which is a kist receipt. It was also held that based on that, possession cannot be interfered with based on the kist receipt. The Courts below have proceeded on the footing that the plaintiff has sought for permanent injunction restraining the defendants from interfering with their possession of the suit property and that it was found that the plaintiff is not possession of the suit property.



5. On a perusal of the prayer in the plaint, it shows that permanent injunction is sought for only from committing any act of waste in the plaint schedule either by drawing electric line across it or any other manner. The written statement filed by the second defendant also does specifically speak about the erection of the electric pole in the suit property. However, there is also no proof that there was electric pole erected in the suit property as alleged by the plaintiff. In the absence of any evidence to show that the defendants had erected electric pole in the suit property, the Courts below have rightly dismissed the relief of grant of permanent injunction also. As the plaintiff has not come to Court with clean hands, having materially altered the patta pass-book, the Courts below have dismissed the suit, which does not warrant any interference by this Court and there is no substantial question of law arising for consideration and accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (Co)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Padmanabhapuram.
2. The District Munsif cum Judicial Magistrate,
Eraniel at Kanyakumari District.

Copy to

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.C.Herold Singh, Advocate in SR.No.68249
+1cc to Mr.D.Christenson Jugunu, Advocate in SR.No.68582

ps
AE/JC/SAR3/21.08.2017/3P/6C

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27.07.2017