

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2018

PRONOUNCED ON : 23.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.568 of 2015

1.Malliga
2.Pannerselvam

...

Appellants

Vs.

1.Tamil Nadu Electricity Board,
Rep.by it's Chairman
Anna Salai, Chennai.

2.The Assistant Executive Engineer
(Operations & Maintenance)
O/o.Tamil Nadu Electricity Board,
Kuttalam, Nagapattinam District.

3.The Assistant Engineer
(Operations & Maintenance)
O/o.Tamil Nadu Electricity Board,
Makkirimangalam, Kuttalam Taluk,
Nagapattinam District.

4.The Assistant Executive Engineer (Enforcement)
O/o.Tamil Nadu Electricity Board,
Thanjavur.

5.Kannan
6.Santhanasamy
7.Paulraj

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.08.2014 passed in A.S.No.4 of 2012 on the file of the Principal Sub-Court, Mayiladuthurai, confirming the Judgment and Decree dated 01.02.2011 passed in O.S.No.214 of 2010

on the file of the Additional District Munsif, Mayiladuturai.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.V.Viswanathan
Nos.1 to 5

For Respondent : No appearance
Nos. 6 & 7 set exparte vide order
dated 24.10.2018

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.08.2014 passed in A.S.No.4 of 2012 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the Judgment and Decree dated 01.02.2011 passed in O.S.No.214 of 2010 on the file of the Additional District Munsif Court, Mayiladuturai.

2.The second appeal has been admitted on the following substantial questions of law:

"(a).Whether the disputed electric poles erected by respondents in suit property are deemed to have been erected in accordance with law in the absence of consent from owner or sanction from District Magistrate as required under Section 152 of Electricity Act?

(b).Whether the judgments Courts below are vitiated by perversity in it's ignoring the Advocate Commissioner's report and plan namely Exhibits C1-C3 which prove

draining of water into the suit pond as alleged by respondents is physically impossible?

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.Suffice to state that the plaintiffs have laid the suit against the defendants seeking for the relief of declaration that the electric posts fixed by the third defendant in the items 2 & 3 of the plaint schedule property are illegal and consequently, directing the third defendant to remove the same and also sought for the return of one sovereign gold jewel or the equivalent sum of Rs.12,000/- received from the first plaintiff by the defendants 2 to 7 and also sought for the relief of declaration that the notice sent by the second defendant dated 07.07.2010 is illegal invalid and null and void and consequently, restraining the second defendant or his men from taking any further action pursuant to the abovesaid notice and for other allied reliefs.

5.The main grievance of the plaintiffs seems to be that at the instigation of the Panchayat President, the defendants acted hand in glove with him and thereby, put up the electric posts in the property belonging to the plaintiffs with a view to obstruct the plaintiffs from carrying on their agricultural activities in the plaint schedule property and

therefore, the defendants should be directed to remove the posts illegally fitted by them. However, considering the materials placed on record by the respective parties, it is seen that the plaintiffs have miserably failed to establish that the electric posts in question had been fitted by the defendants in the lands belonging to the plaintiffs. On the other hand, as rightly putforth by the counsel for the defendants, even as per the commissioner's report and plan, it is seen that the two electric posts at points 6 & 7 in the commissioner's plan Ex.C2 are situated or fitted south of the road and north of the suit lands. Therefore, the case projected by the plaintiffs that the defendants had fixed the electric posts in question in the lands belonging to the plaintiffs falls to the ground. Furthermore, as rightly determined by the Courts below, there is no material placed by the plaintiffs to hold that by way of the erection of the two posts in question to the north of the plaintiffs' lands, the plaintiffs had been hindered or prevented from engaging in the agricultural activities in their lands. Even the commissioner's report and plan have not stated anything that on account of the erection of the two posts in question, the plaintiffs had been prevented from having access to their lands or hindered from carrying on their agricultural activities in their lands and such being the position, when there is no acceptable and reliable material placed on the part of the plaintiffs to hold safely that the electric posts in question had been fixed by the defendants in the lands belonging to the plaintiffs as projected by them, in such view of the matter, the argument putforth by the plaintiffs' counsel that the defendants are not entitled to fix the

electric posts without their consent, as such, cannot be accepted. As rightly contended by the counsel for the defendants only when the posts are erected in the lands belonging to the plaintiffs, their consent would be required and as determined by the Courts below, the electric posts had been erected not in the lands belonging to the plaintiffs and on the other hand, they had been erected to the north of the lands of the plaintiffs. Resultantly, it is seen that the defendants are not required to obtain any consent or permission of the plaintiffs to fix the same and as abovenoted, inasmuch as the erection of the two posts in question are done to the north of the suit lands, the plaintiffs are unable to place any material to evidence that they had been restrained or prevented from carrying on agricultural activities in their lands or in having access to their lands and accordingly, the determination of the Courts below that the defendants are not required to obtain the consent of the plaintiffs for erecting the posts in question and that the posts in question had been erected to the north of the lands belonging to the plaintiffs do not warrant any interference. When the position being above, the argument putforth by the plaintiffs' counsel that the electric posts had been fixed by the defendants without obtaining the consent or permission of the plaintiffs does not arise for consideration in this matter and accordingly, the same is rejected.

6.The electric posts in question are stated to have been erected by the defendants, at the instigation of the Panchayat President, against whom, the plaintiffs are not in good terms and it is stated by the plaintiffs

that on account of the rivalry between them and the Panchayat President, at his instigation, the defendants had put up the electric posts in question. However, when it is noted that the electric posts in question had been erected for the purpose of providing street light and accordingly, the defendants would be required to consult and interact with the panchayat officials with reference to the same and that by itself would not lead to the conclusion that the electric posts had been erected by the defendants only at the instigation of the Panchayat President as sought to be made out by the plaintiffs. When the electric posts are found to be erected for the purpose of providing street light and for that purpose, the defendants would be required to have nexus with the panchayat officials for the accomplishment of the said object and for the better utility of the same to one and all, in such view of the matter, the case projected by the plaintiffs that the defendants had put up or erected the electric posts in question at the instigation of the panchayat president cannot be countenanced and as rightly found by the Courts below, the same had been denied in toto by the defendants both in the written pleas as well as during the course of their evidence and when the materials placed on record with reference to the same are as above, the Courts below are justified in rejecting the version of the plaintiffs that the electric posts had been fixed by the defendants at the instigation of the panchayat president with a view to cause inconvenience and hardship to the plaintiffs.

7.The main grievance of the plaintiffs seems to be the issuance of the notice issued by the defendants dated 07.07.2010 complaining that the plaintiffs had misused the electricity provided to them for the agricultural purpose towards the commercial purpose. Accordingly, it is seen that, based on the materials placed on record, on inspection of the plaintiffs' lands, the defendants had noted that the plaintiffs had misused the service connection provided to them for agricultural purpose and they had utilised the said service connection for filling the water into their fish farm pond meant for commercial purpose and accordingly, thereby noting that the plaintiffs had committed theft of electricity, accordingly, the defendants had made provisional assessment of the theft committed by the plaintiffs by way of the abovesaid acts and accordingly, determined that the plaintiffs are liable to pay a sum of Rs.70,960/- and called upon the plaintiffs to deposit the same and also proceeded further to launch criminal action against the plaintiffs. However, at the request of the plaintiffs and as the plaintiffs had been willing to part with the requisite amount of Rs.12,000/- towards the demand made by the defendants by way of Ex.A1, it is seen that the defendants had acknowledged the receipt of the said amount by way of Ex.A3 receipt. Challenging the same, the plaintiffs have come forward with the present suit. In this connection, the plaintiffs would allege that at the instigation of the Panchayat President, the defendants conducted the inspection and thereby, on their own accord, switched on the motor and obstructing the passage of the channel and thereby, diverted the water to the fish farm

pond and consequently, projected a case, as if the plaintiffs had been misusing the power supply intended for the agricultural purpose to commercial activities and hence, according to the plaintiffs, the impugned notice issued by the defendants with reference to the same is illegal and required to be declared as null and void. Though the plaintiffs, in this connection, would claim that they have sent a complaint to the police and District Collector marked as Exs.A4 & 5, as rightly assessed and determined by the Courts below, considering the facts projected by the plaintiffs in the plaint and the nature of the complaint made by the plaintiffs by way of Exs.A4 & 5 and also assessing the evidence adduced by the second plaintiff in the matter, with reference to the same, when it is seen that the second plaintiff examined as PW1 was not at all, even according to the plaintiffs, present in the scenario at the relevant point of time and according to the plaintiffs, only the first plaintiff was present and the defendants, taking advantage of the same, had obtained the signature of the first plaintiff in a blank paper and misused the same, as if the first plaintiff had acknowledged the commission of theft of electricity, however, considering the materials placed on record, particularly, Ex.A7 and the enclosure annexed therewith, the Courts below are correct in appreciating Ex.A1 enclosure and thereby determining that it could not have been prepared and created with the aid of the signatures said to have been obtained from the first plaintiff in a blank paper. Therefore, it is seen that the plaintiffs with a view to avoid Ex.A7 notice complaining of the theft of electricity, had plotted a scheme as if the same had been

created by the defendants with the aid of the first plaintiff's signature said to have been secured in a blank paper. However, the factual scenario as regards the same, being otherwise and when the first plaintiff has not chosen to enter into the witness box and depose about the same and on the other hand, only the second plaintiff had tendered the evidence and when according to the plaintiffs, the second plaintiff was not in the picture at the relevant point of time, as rightly determined by the Courts below, the second plaintiff would not be a competent witness to depose the said facts.

8. Furthermore, the case of the plaintiffs that the defendants had threatened and secured one sovereign of gold from the first plaintiff could also not be accepted and considering the acknowledgement issued by the defendants marked as Ex.A3, it is found that only on the first plaintiff's admission of the commission of the theft of electricity and also her readiness to part with a requisite amount to the defendants at the relevant date, it is seen that the defendants had acknowledged the same by issuing the receipt marked as Ex.A3 and accordingly, the plaintiffs are also unable to explain as to the nature of the alleged gold ornament said to have been secured from them by the defendants with reference to the same. Therefore, as found and determined by the Courts below, the plaintiffs had been making false allegations against the defendants one way or the other with a view to escape from the consequences of Ex.A7 notice and accordingly, come forward with the false case as if the

defendants had issued the said impugned notice at the instigation of the panchayat president, who is stated to be enemically disposed of towards them. On the other hand, as could be seen from the evidence of DW1, on inspection of the suit lands noting that the plaintiffs had been unlawfully diverting the electricity supply for the purpose of draining the water and filling up the fish farm ponds meant for commercial activities and thereby, they having misused the electricity supply and committed theft of energy, accordingly, it is seen that the defendants had chosen to issue Ex.A7 notice, calling upon the plaintiffs to deposit the sum as determined by them with reference to the illegal acts committed by the plaintiffs and only to prevent further criminal action, It is seen that the defendants had accepted the amount paid by the first plaintiff at the relevant date and issued the receipt marked as Ex.A3 in connection with the same.

9.The counsel for the plaintiffs argued that considering the physical features available in the locality, as seen by the advocate commissioner, when the pipe attached to the fish farm pond is found to be 3 feet above the ground level, there is no possibility of draining the water in the fish farm pond by the plaintiffs and accordingly, it is argued on his part that as per the commissioner's report and plan, only if a dam like obstruction is put up, water level will rise and pour into the fish farm pond and therefore, according to him, the defendants without any basis or

materials concluded that the plaintiffs had been drawing water to the fish farm pond by misusing the electricity provided to them and when the same gets belied on the basis of the commissioner's report and plan, according to him, on that score alone, the impugned notice Ex.A7 is liable to be struck off as null and void. However, as determined by the Courts below, considering the physical features available in the locality on the date of the inspection of the same by the defendants i.e. on 05.07.2010 when, as could be seen from the evidence of DW1, the water was allowed to be drawn into the fish farm pond with the use of power supply issued to the plaintiffs meant for agricultural purpose and at that point of time, the pipe line was at the ground level and on the other hand, much later, when the plaintiffs had taken the commission to inspect the property concerned and at the instance of the plaintiffs, the commission had noted about the existence of the pipe line above the ground level and accordingly, a serious doubt had been entered by the Courts below that in the interregnum, there is every possibility of the plaintiffs altering the physical features of the locality concerned by raising the pipeline and in such view of the matter, the Courts below, accordingly, did not place reliance upon the commissioner's report and plan for accepting the plaintiffs' version as to the improbability of the draining of the water in the fish farm pond through the electric service connection. Accordingly, it is noted that, as determined by the Courts below, right from the inception, it is seen that one way or the other, the plaintiffs had been making wild allegations against the defendants, as if they had demanded

and retrieved one sovereign of gold from them to suppress the illegal acts committed by them and however, unable to sustain their said case also, found to have subsequently altered the physical features and invited for the commissioner's inspection and accordingly, pointed out the alterations effected by them to suit their convenience. If the physical features obtaining in the locality on the date of inspection of the advocate commissioner was all along present, as rightly found by the first appellate Court, the same would have been averred by the plaintiffs in the plaint vividly pointing out to the same and on the other hand, a reading of the plaint go to show that on the date of inspection, the defendants and their men had noted the flow of water into the fish farm pond by obstructing the channel ways and if the pipeline had been above 3 feet level from the ground at that point of time, as rightly pointed out by the Courts below, there would have been no possibility of the water flowing into fish farm pond on the date of the inspection. It is thus found that the plaintiffs had, after making alterations in the physical features, as regards the fixation of the pipeline attached to the fish farm pond, thereafter, had taken out the commission and endeavoured to sustain their case through his report and plan and accordingly, it is seen that even the commissioner had not noted the said features in particular and had noted the same, only after the same had been specifically pointed out to him by the advocate appearing for the plaintiffs. In all, it is seen that considering the factum of the inspection of the suit lands by the defendants on 05.07.2010, and accordingly, the physical features obtaining on that date revealed that the

plaintiffs had been misusing the supply of electricity provided to them meant for agricultural purpose into commercial activities by drawing water to the fish farm pond and accordingly, it is seen that the impugned notice had come to be issued by the defendants and in such view of the matter , as such, no illegality could be attached to the same and therefore, the Courts below are wholly justified in rejecting the abovesaid reliefs prayed for by the plaintiffs.

10.The counsel for the defendants contended that in so far as the challenge made by the plaintiffs to the impugned notice marked as Ex.A7, the suit laid by the plaintiffs is not maintainable and the only remedy available to the plaintiffs is to approach the appellate authority of the electricity board as provided under the Electricity Act and on that score alone, it is his argument that the suit laid by the plaintiffs is to be thrown out. However, as determined by the Courts below, when the plaintiffs are impugning the notice marked as Ex.A7 on the footing that no theft of electricity had been committed by them as pointed out in the said notice and the said notice had come to be issued by the second defendant illegally despite the objections putforth by the plaintiffs, in such view of the matter, the Courts below had determined that the challenge made by the plaintiffs with reference to the impugned notice is maintainable in the civil forum and it is thus seen that the Courts below are justified in concluding that the civil Court has got jurisdiction to determine the said aspects of the matter and in my considered opinion, there is no reason to

interfere with the same.

11. For the reasons aforesaid, when the electric posts in question are not shown to be erected or fitted in the lands belonging to the plaintiffs and on the other hand, they are found to be erected or fitted in the road margin for the purpose of providing street light to the general public and by way of the erection of the abovesaid electric posts, the plaintiffs are not shown to be hindered or prevented from engaging in agricultural activities in their lands, in such view of the matter, there is no need on the part of the defendants to obtain any consent from the plaintiffs with reference to the same or for the matter, there is no need for the defendants to obtain any sanction from the District Magistrate as required under Section 152 of the Electricity Act. Equally, when on the materials placed on record and as above discussed, the defendants had noted the misuse of the power supply provided to the plaintiffs for agricultural purpose into commercial activities and accordingly, the defendants having noted the unlawful acts committed by the plaintiffs and thereby, had issued the impugned notice marked as Ex.A7 and the defendants' case are found to be more probable on the basis of the materials placed on record and as above discussed, when the plaintiffs are found to have created evidence by altering the physical features of the locality to suit their case and to avoid the consequences of the impugned notice Ex.A7, in such view of the matter, the Courts below are found to be wholly justified in ignoring the commissioner's report and

plan and on the other hand, found that the pipeline fixation had been altered by the plaintiffs subsequent to the institution of the suit to create evidence. In such view of the matter, it is seen that the contention of the plaintiffs that the draining of the water into the fish farm pond has been rendered physically impossible on the basis of the commissioner's report and plan cannot be accepted and rightly rejected by the Courts below. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

12.The counsel for the plaintiffs, in support of his contentions, placed reliance upon the decision of this Court ***dated 22.08.2014 in W.P.(MD) No.10194 of 2009 (Vellaichamy Vs. The State of Tamilnadu represented by The secretary to Government, Department of Electricity, Fort St.George, Chennai – 9 and two other cases)*** for the proposition that the defendants are not entitled to erect the electric posts in the lands belonging to the plaintiffs without their consent or permission or without the sanction of the District Magistrate concerned. However, as above discussed, when the defendants are not required to obtain any such sanction or permission from the plaintiffs or the District Magistrate concerned as above discussed, it is seen that the abovesaid decision would not be helpful to sustain the plaintiffs' case. In any event, the principles of law outlined in

the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

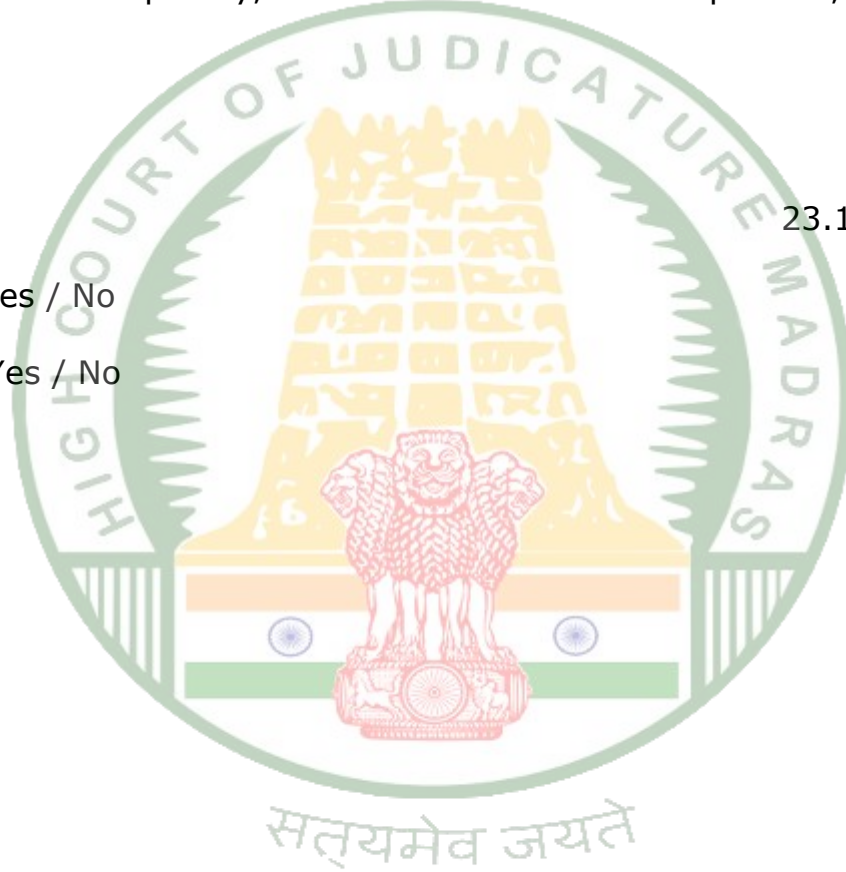
In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

23.11.2018

Index : Yes / No

Internet : Yes / No

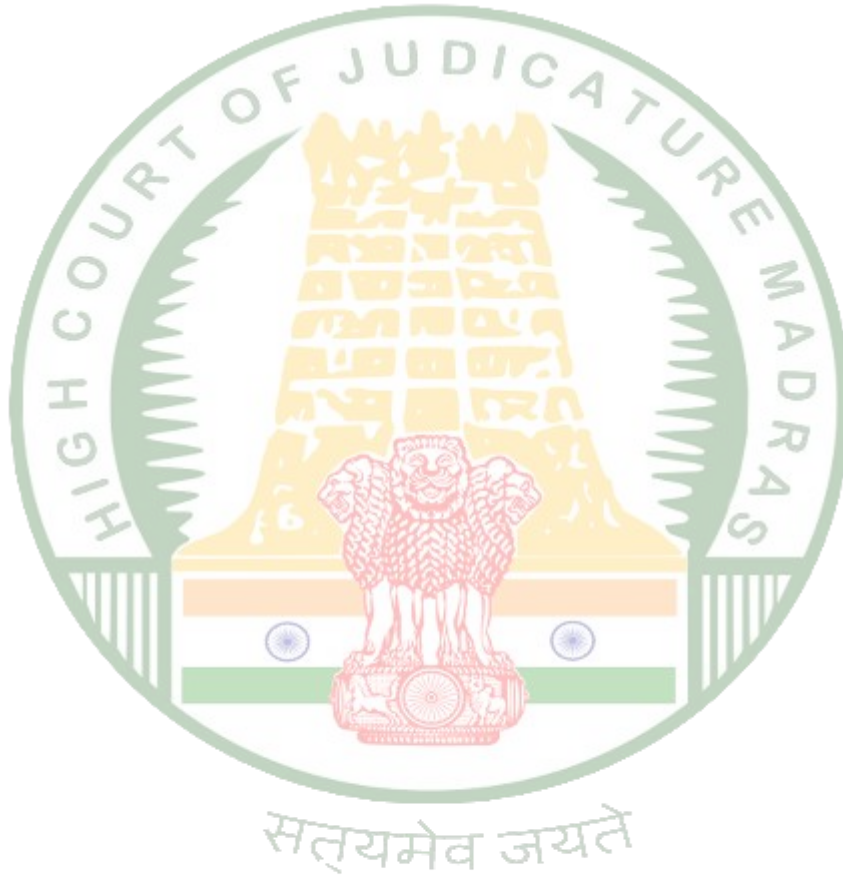
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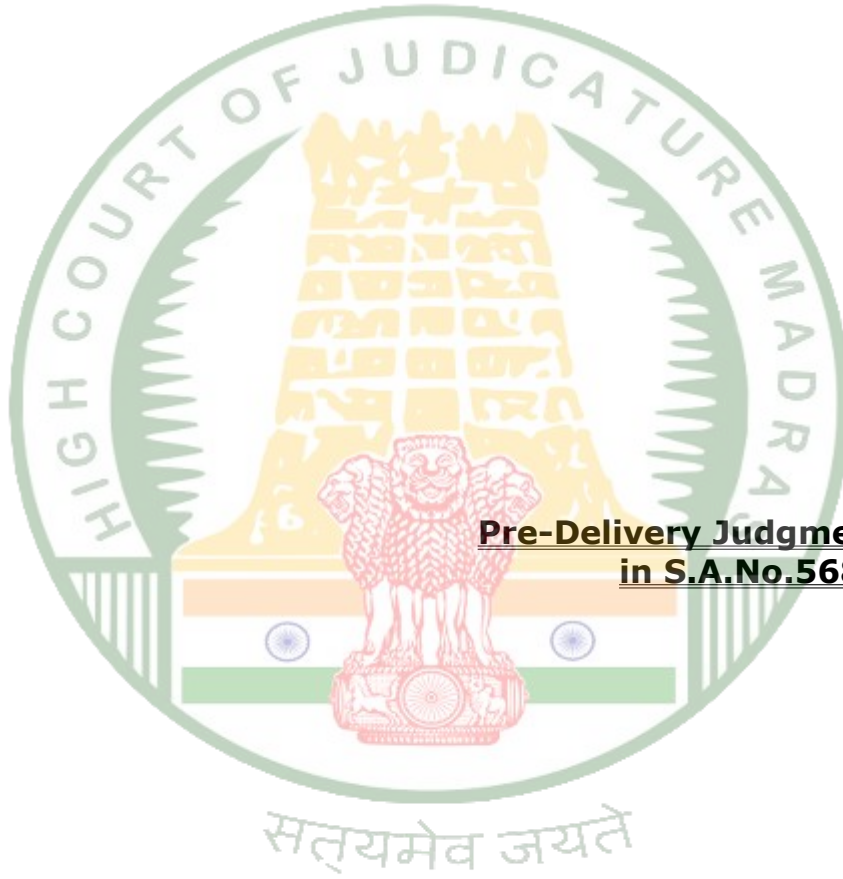
- 1.The Principal Sub-Court, Mayiladuthurai.
- 2.The Additional District Munsif, Mayiladuturai.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.568 of 2015**

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