

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 09.02.2018****PRONOUNCED ON : 22.02.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.1364 of 2003**

Parimelalagan

...

Appellant

Vs.

The Assistant Engineer
Sub Station,
Tamilnadu Electricity Board,
Sankarapuram.

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.02.2003 passed in A.S.No.145 of 2002 on the file of the Additional District Judge (Fast Track Court), Kallakurichi, confirming the Judgment and Decree dated 28.08.2000 passed in O.S.No.483 of 1997 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellant : Mr.S.Krishnaswamy
for Mr.Beula Rajakumari

For Respondent : Mr.V.Viswanathan
Standing Counsel for TNEB

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.02.2003 passed in A.S.No.145 of 2002 on the file of the Additional District Judge (Fast Track Court), Kallakurichi, confirming the Judgment and Decree dated 28.08.2000 passed in O.S.No.483 of 1997 on the file of the Principal District Munsif Court, Kallakurichi.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Mandatory injunction and Permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property is a poramboke land belonging to the Government and to the north of the suit property, the plaintiff owns land measuring an extent of 3 Acre 50 cents in survey No.209/6 and for having access to the said land, the plaintiff has been using the suit property as a pathway and the plaintiff has been taking Cart, Lorry, Tractor, cattle and sheep through the suit property and in the suit property situated in survey No.209 /12, on the western side, an extent of 0.02.5 ares of land in the above said survey number has been set apart for pathway for the plaintiff as well as the others to reach their respective properties and the eastern portion, comprising of an extent of 0.09.5 ares, had been given to the defendant for the formation of a sub station and the defendant is entitled to lay the sub

station only in the said extent of land allotted to them and on the other hand, the defendant, without any authority, attempted to fence the suit property also along with the allotted land and despite the protests made by the plaintiff, the defendant had fenced the suit property and thereby, prevented the plaintiff from having access to his property located on the northern side and the action of the defendant in placing the machineries and fencing in the suit property is illegal and hence, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is admitted that the suit property belongs to the Government and it is false to state that the plaintiff has been using the suit property as a pathway for having access to his lands. The suit property has never been used as a pathway at any point of time either by the plaintiff or by the others as alleged in the plaint and the defendant, for the formation of the sub station, through the Government initiated steps to acquire the property belonging to various persons and accordingly, the property belonging to various persons measuring an extent of 9.07 ares of land situated in various survey numbers had been acquired for the purpose of formation of the sub station and at that point of time, neither the plaintiff nor any one put forth any objection alleging that the suit property had been used as a pathway for having access to their respective lands and the plaintiff is

having other access to reach his property and inasmuch as the suit property is also required by the defendant for the formation of the sub station activities, accordingly, requested the Government to allot the same to them and accordingly, orders are to be issued by the Government allotting the suit property also to the defendant and the extent of 0.09.5 ares of land in survey No.209/8 had already been allotted to the defendant for the purpose of the formation of the sub station and inasmuch as the suit property had not been used as a pathway at any point of time either by the plaintiff or by the others and as the defendant had already moved the Government for allotting the suit property also for the purpose of the sub station and the matter is pending with the Government and with reference to the same, the plaintiff cannot complain that the act of the defendant annexing the suit property had affected him and the plaintiff has no cause of action to lay the suit and hence, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A3 were examined. On the side of the defendant, DW1 has been examined and Exs.B1 to 5 were examined. Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts

below were pleased to dismiss the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the lower Courts failed to consider material evidence resulting in miscarriage of justice?

(ii) Whether the lower Courts erred in law to rely upon the documentary evidence let in by the appellant?

(iii) Whether the lower Courts erred in law by accepting the documentary evidence let in by the respondent and non-suited by the appellant?

(iv) Whether the lower Courts erred in law in not granting the right of user over the suit property as a right of necessity without any alternative?"

9. It is not in dispute that the suit property is a Poramboke land belonging to the Government. It is found that the land measuring an extent of 0.09.5 ares of land situated to the east of the suit property had been allotted to the defendant by the Government for the purpose of

forming the sub station. Now, it is the case of the defendant that inasmuch as the suit property is also required for the activities of the sub station, they had already moved the Government to allot the said property also to them and the same is pending consideration with the Government. In this connection, it is found from the communication addressed by the Government to the defendant that the defendant had already requested the Government to allot the suit property also to them and the same is pending the consideration of the Government. Under Ex.B2, though there is a reference that the public had opposed the entrustment of the property to the defendant as that would affect the pathway right, there is no admission that the suit property had been ever used as a pathway by the General Public at any point of time, all that Ex.B2 would state is that to expedite further action on the part of the defendant to get the property including the suit property allotted to them for the purpose of forming the sub station.

10. Though the plaintiff would claim that he has been using the suit property as a pathway for having access to his lands, as rightly determined by the Courts below, no material whatsoever has been placed by the plaintiff to show that at any point of time, he has been using the suit property as a pathway to reach his lands. On the other hand, the document of title produced by the plaintiff marked as Ex.A1 would go to show that the plaintiff is having other access to reach his property and in

such view of the matter, the case of the plaintiff that he has been using the suit property as a pathway for taking cattle, vehicles etc., cannot be accepted in the absence of any material pointing to the same.

11. At the foremost, the plaintiff has not established as to what is the nature of right, he seeks to enforce as regards the suit pathway. If according to the plaintiff, he is having easementary right over the suit pathway, when it is found that the Government is the owner of the suit property as such, for enforcing the alleged easementary right, as rightly argued, the plaintiff should have impleaded the Government as a necessary party to the proceedings for adjudicating the said issue. However, the Government has not been made as a party in the suit and only the defendant i.e. Electricity Board has been made as a party and when according to the defendant, the suit property had not been used as a pathway at any point of time and the plaintiff, being the suitor has not placed any material to hold that the suit property at any point of time, had been used as a pathway either by the plaintiff or by the others and when the plaintiff has not examined any independent person to show that the suit property had been, at any point of time, used as a pathway and when the document of title marked as Ex.A1 by the plaintiff belies the case of the plaintiff that the suit property had been used as a pathway by the plaintiff, it is found that the case of the plaintiff that the defendant should be enjoined from fencing the suit property so as to prevent the

same from being used as a pathway as such cannot be accepted in any manner. As found by the Courts below absolutely, there is no material on the part of the plaintiff to show that the suit property had been used as a pathway at any point of time or classified as a pathway by the Government. Further, the Commissioner's report and plan marked in the proceedings also do not point out any trace of the use of the suit property as a pathway as claimed by the plaintiff. In such view of the matter, bereft of any material to hold that the suit property had been used as a pathway and particularly, when the plaintiff has not joined the owner of the suit property i.e the Government as a party to the proceedings and when the materials placed point out that the defendant had already moved the Government to allot the suit property also for the formation of the substation and the matter is pending the consideration of the Government, it is found that, as determined by the Courts below, the plaintiff has no cause of action to lay the suit against the defendant and no interference is called for in the determination of the Courts below that the plaintiff is not entitled to obtain the reliefs sought for.

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12. In the light of the above reasonings, it is found that the Courts below have rightly appreciated the materials placed on record in the proper perspective, both factual as well as legal and accordingly, rightly declined the reliefs sought for by the plaintiff, particularly, when it is found that the plaintiff has got other pathway to have access to his

property. The substantial questions of law formulated in this second appeal, are, accordingly, answered against the plaintiff and in favour of the defendant.

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

Index : Yes / No
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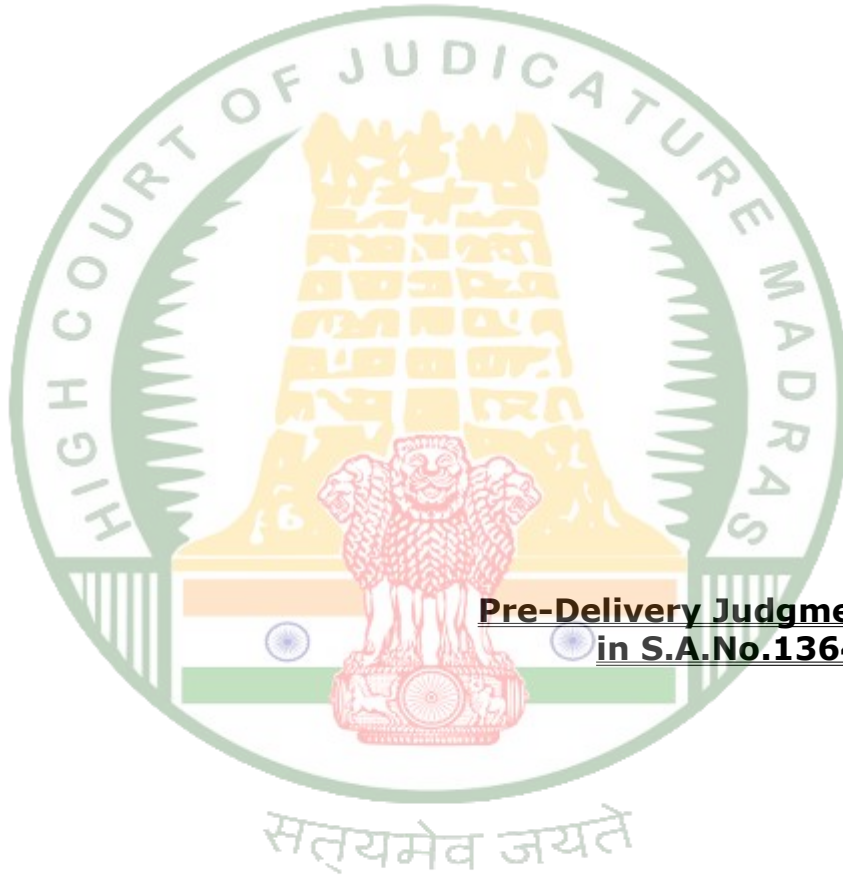
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- 2.The Principal District Munsif, Kallakurichi.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

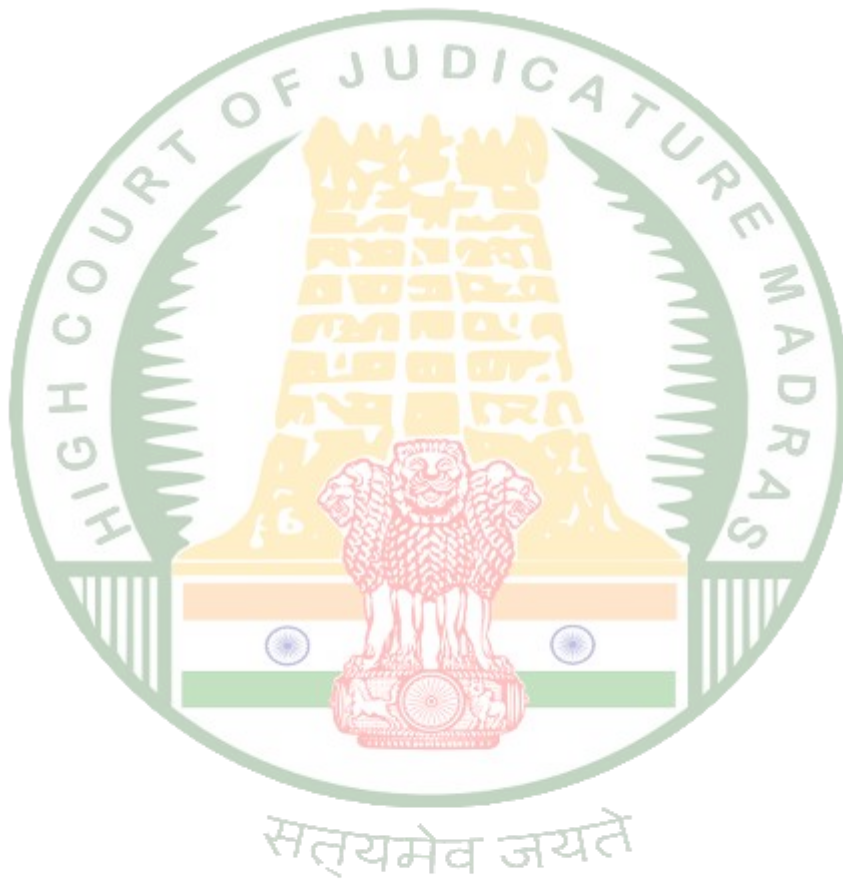
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**Pre-Delivery Judgment made
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