

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2018

PRONOUNCED ON : 10.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2214 of 2003

1. Ramathal
2. Manian
3. Duraiswamy
4. Velmurugan
5. Sasikalarani
6. SubbulakshmiAppellants/Appellants/
Plaintiffs

Vs.

The Tamil Nadu Electricity Board,
represented by its Chairman
Mount Road, Chennai - 600 002.Respondent/Respondent/
Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.06.2003 passed in A.S.No.46 of 2003 on the file of the Principal District Court, Coimbatore, confirming the Judgment and Decree dated 23.09.2002 passed in O.S.No.258 of 1999 on the file of the III Additional District Munsif Court, Coimbatore.

For Appellants : Mr.R.Venkatasubban
for M/s.Sarvabhauman Associates
For Respondent : Mr.V.Viswanathan
for TNEB

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 12.06.2003 passed in A.S.No.46 of 2003 on the file of the Principal District Court, Coimbatore, confirming the Judgment and Decree dated 23.09.2002 passed in O.S.No.258 of 1999 on the file of the III Additional District Munsif Court, Coimbatore.

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

3. Suit for mandatory injunction and damages.

4. The case of the plaintiffs, in brief, is that they are the owners and in possession and enjoyment of survey No.282 of Vellakinar Village, Coimbatore North Taluk and one Ramathal

W/o. Kaliappan is the owner of a Spinning Mill located in the adjoining Survey No.283. About 15 days ago, the officers of the defendant board illegally erected a transformer in the land of the plaintiffs without their consent and ignoring their protest. No order had been obtained from the District Magistrate under Section 16(1) of the Telegraphic Act and the District Magistrate in exercising his discretion would have upheld the objection of the plaintiffs and the defendant, without any legal authority, erected the transformer in the suit property for the benefit of the spinning mill located in survey No.283 and the said action of the defendants board is not bona fide and the plaintiffs issued a lawyer notice dated 30.11.1998 to the office of the defendant's board complaining about the illegal erection of the transformer requesting them to remove the same from the plaintiffs' land and no response has been received from the defendant and on account of erection of the transformer, the plaintiffs are unable to cultivate their lands and put to damage, hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiffs have to establish their ownership in respect of Survey No.282 of Vellakinar Village and there is a common road of 7.8 metre breadth separating the Survey Nos.282 and 283 of Vellakinar Village and the transformer was put up by the defendant at the end of the abovesaid road and the plaintiffs have no right over the land, in which, the transformer had been erected and the work of the erection of the transformer was commenced on 23.09.1998 and after the erection of the poles, the work in full was completed on 26.10.1998 and was electrically charged on the same date and the place, where, the transformer had been erected, the plaintiffs have no claim over the land and even if the plaintiffs have any claim over the said land, the plaintiffs have not raised any objection to the erection of the transformer from 24.09.1998 to 26.10.1998 and it is false to state that the plaintiffs have made objection to the erection of the transformer and that the defendant board had ignored the same. The plaintiffs are put strict proof of the same. Only through the notice dated 30.11.1998, the plaintiffs have raised the objection for the first time and accordingly, as the abovesaid objection has no substance, the defendants had rejected the same and there is no necessity to approach the District Magistrate by invoking Section 16(1) of the Telegraph Act as put forth by the plaintiffs, the plaintiffs have no cause of action to lay the suit. It is false to state that on account of the erection of the transformer, the plaintiffs had been unable to cultivate their lands and thereby, suffered damages and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PW1 was examined and Exs.A1 to A4 were marked. On the side of the defendants,

DW1 was examined and Exs.B1 to B4 were marked. Exs.C1 to C3 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 plaintiffs. The first appellate Court has however directed that the plaintiffs are entitled to lay separate proceedings against the defendant board for compensation as per Section 16 (1) and (3) of the Indian Telegraph Act, 1885. Aggrieved over the dismissal of the plaintiffs' suit by the Courts below, the present second appeal has been laid.

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

" (i) When the very fact that the transformer had been installed in the agricultural property belonging to the appellants would indicate that they have suffered damages, whether the Courts below are correct in law in rejecting the claim for damages?

(ii) When it has been proved that the defendant has not followed the provisions contained in the Indian Telegraph Act, 1888 and has acted in breach of the same, is it open to the lower appellate Court to deny the relief of Mandatory injunction?"

9. Complaining that the defendant board has put up a transformer in their land, despite the objection put forth by them and thereby, the plaintiffs had been put to damages on account of their inability to cultivate their land due to the erection of the transformer and as the transformer had not been removed by the defendant board, despite the issuance of the legal notice, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

10. Though it is contended by the defendant board that the transformer had been erected at the edge of the road dividing survey Nos.282 & 283, materials placed on record go to disclose that the Transformer had been put up only in the land belonging to the plaintiffs. This has not been controverted. As such, now it is the case of the plaintiffs that even during the relevant point of time, when the transformer was attempted to be put up in their land, they had raised objection to the same and ignoring the protest, the defendant board had erected the transformer. However, the said case of the plaintiffs has been vehemently denied by the defendant board. It is the specific case of the defendant that when the transformer was erected, the plaintiffs have not

raised any objection whatsoever and thus, according to the defendant board, the work of the erection of the transformer was commenced on 23.09.1998 and completed on 26.10.1998 and during the above said period, no protest whatsoever has been made by the plaintiffs regarding the same and the plaintiffs had issued a legal notice dated 30.11.1998, one month after the completion of the erection of the transformer work and accordingly, as the request made by the plaintiffs in the said notice had become infructuous, it is contended by the defendant board that there is no need for invoking the jurisdiction of the District Magistrate under the Telegraph Act and hence, the plaintiffs have no cause of action to institute the suit.

11. As rightly determined by the Courts below, no valid material either oral or documentary, has been placed by the plaintiffs to show that they had put forth any objection to the erection of the transformer in the land belonging to them, when the work was in progress. Materials placed on record go to disclose that the commencement of the work, for the erection of the transformer, was started on 23.09.1998 and the transformer was commissioned on 26.10.1998. Accordingly, it is found that as rightly determined by the Courts below, as no objection had been put forth by the plaintiffs at that point of time, the invocation of the jurisdiction of the District Magistrate under Section 16(1) of the Telegraph Act did not arise. Coupled with the provisions of the Electricity Act and The Indian Telegraph Act, 1885, particularly, Sections 10 & 16 of the Indian Telegraph Act, 1885, it is found that the defendant board is entitled to erect the transformer upon any immovable property as per Section 10 of the said Act and as per Section 16(1) of the said Act, if any objection is put forth with reference to the same, the matter should be referred to the District Magistrate for his determination and as per Section 16(1) of the Act, despite the resistance or obstruction, the District Magistrate may, in his discretion, order the defendant board to put up the transformer and it is further noted that after the determination of the District Magistrate giving his nod to the erection of the Transformer, if the same is again resisted or obstructed, it is noted that the obstructor would become liable for criminal action under Section 188 of IPC. It is found that the District Judge of the concerned district is empowered to determine the compensation to which the parties would be entitled to, in case, any damage has been suffered by the parties concerned in the erection of the transformer of the defendant board. Thus, on a conjoint reading of Sections 10 & 16 of the Indian Telegraph Act, 1885, coupled with the provisions of the Electricity Act, as rightly determined by the Courts below, when there is no material placed on record to hold that the plaintiffs have made any protest as such to the erection of the transformer during the relevant period as above noted, the plaintiffs' case being that they had made only oral objection and when there is no proof to sustain the same, it is found that the abovesaid case

of the plaintiffs, as such, cannot be countenanced and rightly negatived by the Courts below.

12. Secondly, after one month of the erection of the transformer, the plaintiffs have chosen to issue a legal notice dated 30.11.1998 complaining about the erection of the transformer, accordingly, when by the time objection or resistance had been offered by the plaintiffs, the erection of the transformer as such, had been completed, in their land, when it is found that the defendant board is authorised to erect the transformer in any immovable property and only if simultaneous resistance is offered, they are required to refer the matter to the District Magistrate and as no resistance or obstruction had been raised by the plaintiffs at the relevant point of time i.e. during the period of the erection of the transformer and the objection had been raised only belatedly, after the commissioning of the transformer, as rightly contended by the defendant board, the scope of invoking the jurisdiction of the District Magistrate as provided under Section 16(1) of the Indian Telegraph Act did not arise and accordingly, it is found that the defendant board as such cannot be faulted for not invoking the jurisdiction of the District Magistrate under the abovesaid section. Accordingly, it is found that the contention of the plaintiffs that the defendant board is liable to remove the transformer as claimed in the plaint cannot be countenanced and rightly found to be negatived by the Courts below.

13. Even during the course of the arguments in the second appeal, the plaintiffs' counsel did not seriously place any contention as regards the refusal of the relief of permanent injunction sought for by the Courts below. To a query posed by this Court as to whether the plaintiffs had moved the authorities concerned under the Indian Telegraph Act for seeking compensation as directed by the first appellate Court, the plaintiffs' counsel is unable to answer the same and on that point, he would submit that this Court should extend the benefit conferred on them by the first appellate Court as regards the same. However, it is noted that the first appellate Court has not fixed any time limit, within which, the plaintiffs should resort to the abovesaid direction. Be that as it may, in case, the plaintiffs had not invoked the jurisdiction of the concerned authority under the Indian Telegraph Act, 1885, for seeking the compensation as determined by the first appellate Court, the plaintiffs are given the liberty to prefer the necessary claim before the authority concerned within two months on the receipt of the copy of the judgement passed in the second appeal.

14. As rightly determined by the Courts below, particularly, the first appellate Court, the question of compensation, to which, the plaintiffs would be entitled to as regards the erection of the transformer being vested with the authorities concerned as provide under the Indian Telegraph

Act, rightly the first appellate Court has not dealt with the abovesaid issue and directed the plaintiffs to approach the authority concerned. The above said determination do not warrant any interference as such.

15. In the light of the abovesaid reasonings, the case of the plaintiffs that the defendant board has not resorted to the provisions contained in the Indian Telegraph Act, 1885 as such cannot be accepted and for the reasons aforesaid, it is found that the Courts below are justified in denying the relief of mandatory injunction sought for by the plaintiffs. As regards the question of damages, to which, the plaintiffs would be entitled to under the Indian Telegraph Act, 1885, as rightly determined by the first appellate Court, the plaintiffs should approach the concerned authority with reference to the same. The substantial questions of law formulated for consideration in this second appeal are accordingly answered against the plaintiff.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms
To

- 1.The Principal District Court, Coimbatore.
- 2.The III Additional District Munsif Court, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1cc to M/s.Sarvabhauman Associates SR.No.26365

RSK(CO)
sm:11.5.2018

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