

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.06.2019

Judgment Delivered on : 21.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

S.A.No.2056 of 2002

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Erode.
- 2.The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Bhavani, Bhavani Taluk.
- 3.The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Ammappettai, Bhavani Taluk.
- 4.The Junior Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Chennampatti, Bhavani Taluk. ... Appellants/Appellant/
Defendants 1 to 4

Versus

- 1.Sengoda Gounder
- 2.Palaniappan @ Palaniappa Gounder... Respondents/Respondents/
Plaintiff

This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and decree dated 20.03.2002 in A.S.No.80 of 2001 on the file of the Sub-Court, Bhavani, Erode confirming the Judgment and decree dated 12.02.2001 made in O.S.No.611 of 1997 on the file of the II-Additional District Munsif Court, Bhavani, Erode.

For Appellants : Mr.V.Viswanathan

For Respondents : Mr.S.Kaithamalaikumaran (for R1)
: Mr.D.Selvaraju (for R2)

JUDGMENT

<https://hcservices.ecourts.gov.in/hcservices/>
The defendants 1 to 4/Electricity Board are the appellants herein.

2.The 1st respondent/plaintiff filed suit in O.S.No.611 of 1997 before the II- Additional District Munsif Court, Bhavani, seeking relief of mandatory injunction for removal of Pole put up by the defendants/Electricity board (TNEB), to give service connection to the bore well in the land belonging to the 5th defendant/2nd respondent.

3.For the sake of convenience, the parties are referred to as per their rank in the original suit.

4.The plaint proceeds on the basis that during the year 1997, the 5th defendant in the suit had applied for service connection to his bore well and as it was within 70 meters from the plaintiff's service pole, his case was considered under special category and as none objected, pole was erected. On 23.11.1997, at the request of the plaintiff, the said post, which was erected in the line of 5th defendant, was removed and re-erected in another place, which was 50 feet away from the location, where it was erected. The service connection was also effected to the 5th defendant on 24.11.1997. The overhead line runs through the property of the plaintiff. The plaintiff filed O.S.No.611 of 1997 on the file of the II Additional District Munsif Court, Bhavani, initially for permanent injunction and later amended the relief to mandatory injunction. According to the plaintiff, the lines were drawn to extend the service connection to the 5th defendant through property of the plaintiff, illegally without his consent and, hence, he wanted the same to be removed.

5.The defendants 1 to 4/Electricity filed a written statement before the Trial Court contending that the 5th defendant in the suit has preferred the application on 31.12.1994 for extending the service connection to the bore well in the land in Survey No.132 in Kumaramannar Village and after inspection, it is found that the plaintiff's pole was within 70 meters from the 5th defendant's bore well and the request of the 5th defendant was considered under special category. Till 23.11.1997, the TNEB has not received any objection from the land owner namely the plaintiff. Thereafter, the service connection was extended from the plaintiff's existing pole and taken to the 5th defendant's lands and subsequently, it was aligned to 50 feet, and, by the consent of the plaintiff, the service connection was extended from the existing pole on the land of the plaintiff to that of the 5th defendant's land for bore well. However, in the cross-examination, PW.1 had deposed that he had not given any consent to the same.

6.The 5th defendant in the suit has filed a written statement alleging that the plaintiff is enjoying the service connection, in service connection No.846 and the plaintiff is none other than the elder brother of the 5th defendant. Since the 5th defendant wanted service connection to the bore well in his land, he has preferred an application for the service connection and same was considered by the TNEB and from the existing pole service connection in the plaintiff's land, cable was extended to his land. There is no dispute over the fact that

the service connection has already been extended from 24.11.1997 for his service connection No.262.

7. During the trial, the plaintiff examined himself as PW.1 and Ex.A1 was marked. On behalf of the defendants, DW.1 and DW.2 were examined and Exs.B1 & B2 were marked. On the side of the Court, Exs.C1 & C2, Commissioner's report was marked. Thereafter, the Trial Court decreed the suit against the defendants in O.S.No.611 of 1997, holding that the consent of the land owner was not taken. Aggrieved by the said judgment and decree the defendants 1 to 4/Electricity Board filed A.S.No.80 of 2001, where the same finding rendered before the Trial Court was confirmed and the appeal suit was dismissed. Hence, the Second Appeal is filed before this Court.

8. The Second appeal was admitted on 12.12.2002 by framing the following substantial questions of law:-

"1. Whether or not the Courts below committed grave irregularity and illegality in not considering the provisions of Indian Electricity Act and Electricity Supply Act?

2. Whether the judgments of the Courts below are correct in law in holding that notice was necessary before drawing of lines over one's property in the absence of any specific pleading as to the loss or inconvenience suffered by the plaintiff?

3. Whether the judgments of the Courts below are not vitiated for failure to advert to the established principles that the public interest will always prevail over the private interest?"

9. The learned counsel for the defendants 1 to 4/Electricity board referring two Sections 2(f) and 2(l) of the Electricity Act as well as Power under Sections 12(1) and 2(2) of the said Act and submitted that the consent of the land owner for construction of poles is unnecessary. In support of the said contention be relied on the decision of this Court in the case of the Tamil Nadu Electricity Board, Madurai and others Vs. R.Pandian Pillai reported in 1987 (ii) MLJ 302.

10. Learned counsel appearing for the 1st respondent/plaintiff would contend that the plaintiff had succeeded not only in the Court below but also in the Appellate Court and the concurrent finding does not warrant interference. He further submitted that the 5th defendant in the suit is his own brother; he had lands adjacent to his land and he applied for a new electricity connection. On 23.11.1997, steps were taken to draw lines from the nearby transformer and to take the same over the mango trees and other trees of the plaintiff. It was objected to, by the plaintiff. However, live wires were drawn over the trees in the Patta lands and new service connection was given to the 5th defendant. The plaintiff proposed to put up a house in this land and as such, it will be harmful. As per Section 12(2) of the Electricity Act, 1910, when

there is a proposal to install a new electricity connection through the Patta land or building, a written permission of the landlord or owner has to be obtained, but the plaintiff has not given permission so far. He also submitted that the 5th defendant is the beneficiary of the electricity connection and he did not prefer any appeal against the judgment and decree of the Trial Court. In support of his contentions, he relied upon the decision reported in "1999 (3) MLJ 235 in the case of S.Kannappan (died) and others Vs. The Commr.Tiruvettiur Municipality, Madras and others.

11.The learned counsel for the 5th defendant/2nd respondent contended that for digging of pits, erection of poles to draw high tensions wires over patta lands by the Tamil Nadu Electricity Board, no notice is required to the owner.

12.After hearing both parties and also taking note of the fact of the Commissioner's report filed before the Trial Court, marked as Exs.C1 and C2, it is seen that the electricity pole erected on the plaintiff's land is the last electricity pole in that area before the 5th defendant's land. It is also seen that the both the 5th defendant and the plaintiff are brothers and being aggrieved by the extension of service connection to the 5th defendant on 24.11.1997, the 1st respondent/plaintiff filed the suit for permanent injunction and subsequently amended the prayer to that of mandatory injunction. From 24.11.1997, the 5th defendant is having the benefit of the electricity service connection. Initially the distance between the bore well of the 5th defendant's land is 70 meters, which was subsequently reduced to 50 meters. It could be seen that it is the defence of DW.1 that the electricity line is far above the ground level.

13.As rightly contended by the learned counsel for the Electricity Board, to the bore well in the land of the plaintiff himself, the service connection has been affected, after drawing the lines over the landed property of the other persons and the last pole was situated on the plaintiff's land.

14.The core point to be decided in the Second appeal is that whether the consent of the land owner is necessary or not for drawing electricity supply lines over his property. After referring to the said provisions of this Court decision rendered in S.A.No.1840 of 1980 in the Tamil Nadu Electricity Board, Madurai and others Vs. R.Pandian Pillai as stated supra, held that the consent of the land owner for erection of poles is unnecessary. The relevant portion of the Sections 2(f) and 2(1) of the Electricity Act, 1910, read as under:-

"2(f) 'electric supply-line' means a wire, conductor or other means used for conveying, transmitting or distributing energy (whether by overhead line or underground cable), together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy

and included any support cross-arm, stay, strut or safety device erected to set up for that purpose.

2(1) 'service-line' means any electric supply-line through which energy is, or is intended to be, supplied.

(i) to a single consumer either from a distributing main or immediately from the supplier's premises or

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main."

15. On the factual matrix elicited during the cross-examination of PW.1, coupled with the Commissioner's report Exs.C1 and C2, it is found that the above said decision stated supra is also relevant to this case is extracted hereunder:-

"On the facts of the case it is clearly established that an electric supply line as defined in Sec.2(f) of the Act had already been laid down or placed by the Electricity Board in the lands of the respondent and therefore, there was no further need to obtain either the consent of the local authority or the respondent for the purpose of erecting further supply-line with a view to distribute the energy to others.

Before a line could be a service line within the meaning of the Act, it must be an electric supply line. In other words, if a line is not an electric supply-line, it cannot be a service line within the definition contained in Sec.2(1) of the Act.

On the facts found in this case, a pole had already been erected in 1976 in the lands of the respondent and that would be in the nature of a support for distributing energy and would thus fall within the definition of electric supply-line contained in Sec.2(f) of the Act and since that electric supply-line was intended to supply energy to the respondent, namely a single consumer from a distributing main, it would also be a service line within the definition of Sec.2(1) of the Act.

On a careful consideration of the undisputed facts and definitions of 'electric supply-line' and 'service-line' under Sec.2(f) and (1) of the Act as well as the powers under Sec.12(1) and (2) of the Act, it follows that the consent of the respondent for the erection of other poles was wholly unnecessary in view of the admitted erection of a pole in the lands of the respondent even in 1976."

16. On the above factual position, this Court finds that the service connection to the bore well in the land of the plaintiff himself, has effected, after drawing the electrical lines over the landed property of the other persons and on such connection of lines, the last pole service connection entered, is situated on the plaintiff's land. The pole had already been erected in the lands of the plaintiff and from that pole viz., last pole in the service, electricity lines are already drawn for giving service connection to the lands of the 1st defendant. This Court is of the considered view that the above cited decision relied on the Tamil Nadu Electricity Board, Madurai and others Vs. R. Pandian Pillai as stated supra, is squarely applicable to the facts and circumstances of the case.

17. Hence, on the above factual matrix coupled with the above cited decision rendered by this Court in S.A.No.1840 of 1980, I am of the considered view that the Judgment rendered by both the Courts below, is not in consonance with the settled legal proposition of law, on application of the provisions of the Sections 2(f) and 2(1) of the Electricity Supply Act.

18. This Court holds that when service connection was given to the bore well of the plaintiff taking lines through the fields and posts erected on the other persons land, subsequently, the pole on the land of the plaintiff has become the last pole, then, providing service connection to other land owners from the nearest electricity cannot be objected to by the plaintiff. That being the case, the suit by the owner of the land that, the defendants trespassed or caused damage or seeking mandatory injunction for removal of poles cannot be entertained and the same is to be negatived.

19. Accordingly, the relief sought for by the plaintiff for mandatory injunction cannot be granted. In this view of the matter, the judgment and decree by the both the Courts below are liable to be set aside, accordingly the same is hereby set aside.

20. In view of the same, for further extending and providing low tension service connection to the next persons' nearest from the existing pole, does not require the consent of the parties. Accordingly the substantial questions of law No.1 & 2 is answered in affirmative in favour of the appellants and the substantial questions of law No.3 does not arise for consideration based on the factual grounds.

21.In fine, the Second appeal is allowed by setting aside the judgment and decree granted in As.No.80 of 2001 passed by the Sub-Court, Bhavani, wherein confirming the Judgment and decree granted in O.S.No.611 of 1987 are set aside. Consequently, O.S.No.611 of 1997 passed by the II-Additional District Munsif Court, Bhavani, Erode shall stand dismissed. No costs.

Sd/-
Asst.Registrar (CS)

/true copy/

To Sub Asst. Registrar

1.The Sub-Court, Bhavani, Erode.

2.The II Additional District Munsif Court,
Bhavani, Erode.

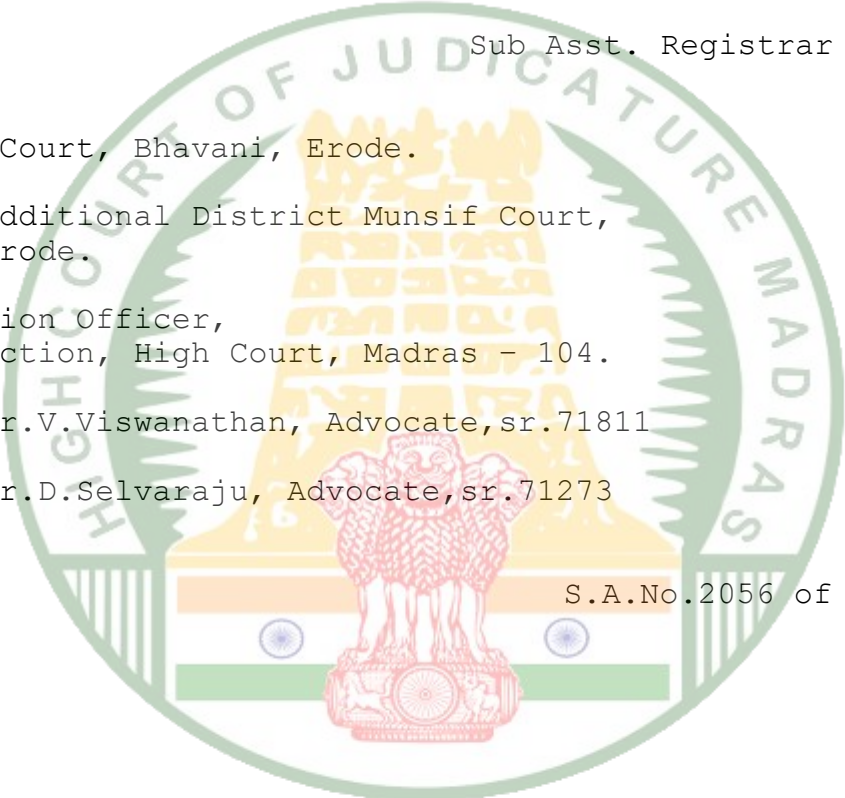
3.The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.V.Viswanathan, Advocate,sr.71811

+1 cc to Mr.D.Selvaraju, Advocate,sr.71273

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