

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.312 of 2008 and
M.P.No.1 of 2008

V.M.Sengottaian

.. Appellant

versus

- 1.The Assistant Engineer (O&M),
Tamilnadu Electricity Board,
Ganapathipalayam,
Erode District.
- 2.The Assistant Executive Engineer/South,
Erode Electricity Distribution Circle,
Erode - 9.
- 3.The Executive Engineer, Erode South,
Erode Electricity Distribution Circle,
Erode.
- 4.Tamilnadu Electricity Board,
Rep. by its Superintending Engineer,
Erode Electricity Distribution Circle,
Erode - 9.
- 5.Ponnusamy (deceased)
- 6.Sellammal
- 7.Shanmugam
- 8.Murugesan
- 9.Saraswathi

.. Respondents

[R-6 to R9 brought on record as
LRs of the deceased R5 vide order
of Court dated 05.02.2019 made
in C.M.P.Nos.1409 to 1411 of 2018
in S.A.No.312 of 2008]

PRAYER: Second Appeal filed under Section 100 of the Civil
Procedure Code against the judgment and decree dated 16.12.2005

made in A.S.No.25 of 2003 on the file of the Additional District Court / Fast Track Court No.1, Erode, confirming the judgment and decree dated 26.12.2002 made in O.S.No.554 of 2001 passed by the First Additional District Munsif, Erode.

For Appellant	: Mr.N.Manokaran
For Respondent Nos.1 to 4	: Mr.V.Viswanathan
For Respondent No.5	: Died [steps taken]
For Respondent Nos.6 to 9	: Not ready in notice

J U D G M E N T

This Second Appeal has been filed as against the concurrent findings of the Courts below, in dismissing the appeal filed for bare injunction restraining the defendants, particularly, the fifth defendant from laying electric line or underground cable line through the cart-track in the suit property.

2. It is the contention of the plaintiff that the suit property is the cart-track, which is about 12 feet. As per the Partition Deed, the said suit property were formed for the exclusive enjoyment of the plaintiff and his co-sharers. The revenue records also stands in the name of the plaintiff along with other co-sharers. The suit property is classified as 'Nilaviyal Vandipathai' and the re-survey number of the said field is 31/1. The fifth defendant is owning the landed property, adjoining the south of the suit property, he has also put up a house in the said land. The fifth defendant encroached the suit property and trying to get electric line through the suit property. If the electric line drawn through the suit property either to dig the pole or through cable, it will cause much hindrance to the transportation to the plaintiff. Hence, he filed the suit.

3. The second defendant has filed written statement stating that originally in the year 1980, one V.S.Vadivel and another filed a suit in O.S.No.903 of 1980 for declaration on the same property, therefore, the above suit has been dismissed and the second appeal has also dismissed. Now, for the same cart-track, the present suit has been filed.

4. It is the contention of the second defendant that for the same cart-track, the present owner V.M.Sengottian, who acquired the land connected with the above case has filed the present suit. One Ponnusamy, has applied electric service connection and estimate has been sanctioned to draw cable wires

at the side of the trees situated at the northern side of the cart-track and the lines will be laid without any hindrance to the transportation. Hence, prayed for dismissal of the suit.

5. It is the contention of the fifth defendant that the alleged suit property is not that of the plaintiff and his co-sharers. The alleged Partition Deed was entered into the plaintiff and his co-sharers. The fifth defendant is not a party to the said document. The fifth defendant is in possession of the property and the plaintiff has no title of the suit property. The land in Survey No.652 measuring about 1.32½ acres was purchased by this defendant's father from one Pottayye @ Velayee under a registered sale deed dated 17.03.1936. The suit property is a strip of land originally named as itteri. It was intended for the use of this defendant's father and after him, this defendant, since the said Velayee had left out in other land in the said survey field. The said itteri was and is a private itteri and it was intended for the use and benefit of this defendant's family. Hence, prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and exhibits A.1 to A.10 were marked, and on the side of the defendants, fifth defendant was examined as D.W.1 and exhibits B.1 to B.9 were marked and Ex.C.1 and Ex.C.2 Commissioner's reports were also marked.

7. The trial Court taking note of the fact that the suit property was purchased by the fifth defendant Ponnusamy and the plaintiff has no title of the property and the suit property is in enjoyment of the defendants, and hence, dismissed the suit and thereafter, the First Appellate Court has also confirmed the same.

8. At the admission stage itself, I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4.

9. The learned counsel appearing for the appellant would contend that the suit property is a common cart-track belongs to the co-owners and the revenue records clearly show that the property is a cart-track, the same has not been considered by the trial Court as well as by the First Appellate Court and hence submitted that, as long as the suit property is a common property, the fifth defendant has no right to draw the electric line over or under the cable line. Hence submitted that, the judgments of the Courts below is not according to law.

10. The suit has been laid mainly on the ground that the suit property is a common property and the revenue records also stands in the name of the plaintiff. The Courts below taking into consideration of the revenue records and receipts which have been filed and obtained on the same day i.e. 26.07.2001 by the plaintiff and except that, there is no document available on record held that the plaintiff was in possession of the suit property. The First Appellate Court has also considered the fact that in respect of the suit property, the suit has been filed by the plaintiff's brother for declaration, which has reached finality and the suit and the second appeal has been dismissed by this Court and thereafter, it appears that the plaintiff has filed the present suit.

11. I have perused the judgments of the Courts below. The evidence of P.W.2 clearly indicate that the suit property was purchased by the fifth defendant through one Pottayee @ Velayee and the fifth defendant is in the exclusive possession of the property. On the evidence of P.W.2 and D.W.1 categorically established the fact that, he has purchased the property and is in exclusive possession of the property and Ex.B.1 is the title deed stands in favour of the fifth defendant's father. When the title deed clearly shows that only the fifth defendant is the owner of the suit property and in the evidence of P.W.2 clearly proves that the fifth defendant is in the possession of the property and on earlier attempt by the plaintiff and other co-sharers to get the declaration in respect of the suit property has also failed.

12. Now, the plaintiff cannot seek a permanent injunction merely based on the revenue records and receipts, which were also obtained on the same day, just one month prior to the filing of the suit and no other document is available to prove that the plaintiff was in possession or he is any right in the suit property. The fifth defendant's father purchased the suit property in the year 1936, Ex.B.1 and the evidence of P.W.2 also shows that only the fifth defendant is in possession of the property and Commissioner report's also indicate that the property is in possession of the fifth defendant and the plaintiff has no title to seek any injunction, the trial Court and the First Appellate Court has considered the entire facts and analysed the documents on oral and documentary evidence, dismissed the suit and hence, there is no substantial question of law involved in this Second Appeal.

13. With these observations, this Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Court/Fast Track Court No.1,
Erode.
- 2.The First Additional District Munsif,
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- 6.The Superintending Engineer,
Tamilnadu Electricity Board,
Erode Electricity Distribution Circle,
Erode - 9.

+1 cc to Mr.V.Viswanathan, Advocate Sr.No.19018
+1 cc to M/s.I.C.Vasudevan, Advocate Sr.No.19713

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CSL/13.06.2019