

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1283 of 2004

- 1.Tamil Nadu Electricity Board
Rep. by Superintending Engineering
Coimbatore Electricity Distribution Circle
South Tattabad
Coimbatore.
 - 2.The Executive Engineer
Tamil Nadu Electricity Board
Tiruppur.
 - 3.The Assistant Executive Engineer
Tamil Nadu Electricity Board
Construction North
Tiruppur.
 - 4.The Assistant Executive Engineer
Tamil Nadu Electricity Board
City North
Tiruppur. Appellants / Respondents / Defendants
- Vs
- P.Maheswari Respondent / Appellant / Plaintiff

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 31.10.2003 made in A.S.No.6 of 2003 in the Court of Subordinate Judge, Tiruppur, confirming the judgment and decree dated 31.01.2002 made in O.S.No.422 of 1997 in the Court of District Munsif, Tiruppur.

For Appellants : Mr.V.Viswanathan
for Mr.N.Muthuswamy

For Respondent : Mr.P.M.Duraiswamy

JUDGMENT

The defendants-Board felt aggrieved by the decree of the first appellate Court modifying the trial Court's decree in a suit for mandatory injunction, are before this Court in this second appeal. Parties would be referred to by their rank before the trial Court.

2. The short facts are: The plaintiff/respondent is the owner of a multi-storeyed building, and it is partly occupied by her, and other portions have been let out for residential purposes. While so, the appellants/defendants have put up an electric pole, very proximate to the said building so much so the electrical lines, in case of an accident, throws a potential possibility of harming the building and the occupants thereof. Though the plaintiff had objected to the fixing of the said pole, yet the first defendant, the then Tamil Nadu Electricity Board(as it existed then) went about its job of fixing the pole and utilised it for running the electric lines at the very place it intended. Therefore, the plaintiff instituted the present suit for mandatory injunction for decree directing the appellants to remove the pole, some 5 ft. away from its present location.

3. Given the proximity of electric post and electric line to the plaintiff building, and given the fact that objection was raised even before fixing the electric post and given the potential danger it throws to the inhabitants of the plaintiff's building, the trial Court granted a decree for mandatory injunction to fix the electric pole some 5 ft. away from the plaintiff's building, but at the cost of the plaintiff.

4. The appellants herein (defendants in the present suit) did not challenge the said decree. The plaintiff, however appealed to the first appellate Court against the condition imposed on her to bear the cost of shifting the said pole. The first appellate Court appreciated it and has confirmed the mandatory injunction without any need to pay the cost of shifting. This is appealed against in the present second appeal by the defendants/appellants.

5. The second appeal is admitted on the following substantial questions of law :

"1. Whether in the light of evidence on record both oral and documentary and as per the provisions of Electricity Supply Act, appellant Board is not entitled to lay the poles?

2. Whether the consent of the owner is required for erecting electricity poles under Section 51 of the Indian Electricity Act, 1910?

3. Whether the suit is maintainable for mandatory injunction against the appellant Board in view of Section 42 of Electricity Supply Act, 1948?"

6. Heard both sides. One fact that emerged was, it is not the case of the plaintiff putting up a structure proximate to place where there was in existence an electric line, but it is one of TNEB choosing to fix it very close to the plaintiff property. The photograph shows that if the electric pole were to be shifted some 5 ft. away from the plaintiff's building, that may well be on a street abutting the plaintiff's property. It necessarily means that the defendants ought to find an apt place to fix the electric post. After all, the present situation is defendants' own making, since it chose to erect the electric line absolutely proximate to the plaintiff's building, that even a strong wind can create a great danger to the occupants of the building.

7. While the learned counsel for the respondent made a very strong statement about how insensitive the appellants have been, this Court tried to persuade the counsels to arrive at an amicable solution to the problem.

8. The counsel for the appellants/defendants made a fair statement that inasmuch as no appeal was preferred against the decree of the trial Court, the appellants were under an obligation to shift the pole. However, they did not appeal against the decree of the trial Court merely because it has directed payment of cost at the expense of the plaintiff. He also touched upon the relevant legal provision to support his contention about the authority that the statute grants to the Electricity Board to fix the pole at the place of its convenience alongside with Section 49 of the Indian Telegraphic Act and Section 10 of the Indian Telegraphic Act, 1885.

9. However, both sides showed some degree of fairness to the suggestions made by this Court and accordingly, it is decided that the plaintiff need to pay 55% of the cost involved in shifting the electric pole, and the rest has to be borne out by the defendants/appellants.

10. Accordingly, this appeal is partially allowed and the the plaintiff is directed to pay 55% of the cost in shifting the electric pole. This Court expects fairness in the matter of determining the cost of shifting the electric pole and close the dispute permanently. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ds
To:

1.The Subordinate Judge
Tiruppur.

2.The District Munsif
Tiruppur.

3.The Section Officer
VR Section, High Court, Madras.

+1 cc to Mr.P.M.Duraisamy Advocate sr68334

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