

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.449 of 2007

Subramaniam

...Appellant/4th Defendant

Vs

1.T.S. Ponnusamy

2.S. Krishnamoorthy

3.The Tamil Nadu Electricity Board
rep. By its Superintending Engineer,
Erode Electricity Distribution Circle,
Erode.

4.The Assistant Divisional Engineer,,
The Tamil Nadu Electricity Board,
Erode Electricity Distribution Circle,
Erode.

5.The Junior Engineer (O&M),
The Tamil Nadu Electricity Board,
Erode Electricity Distribution Circle,
Erode.

...Respondents/Plaintiffs 1&2
& Defendants 1 to 3

PRAYER: Second Appeal is filed under Section 100 of CPC praying to prefer this Memorandum of Grounds of Second Appeal in this Hon'ble Court against the Judgment and Decree dated 31.1.2007 passed in A.S.No.110 of 2006 on the file of the I Additional Sub Court, Erode confirming the judgment and decree dated 28.07.2006 made in O.S.No.1298 of 2004 on the file of the II Additional District Munsif, Erode.

For Appellant : Mr. R. G. Narendhiran

For Respondents : Mr. C.Prakasam for R1 & 2
Mr. V. Viswanathan for
R3 to R5.

Page numbers

Judgment

The fourth-defendant is the appellant before this Court.

2. The parties are referred to in the same array as in the suit.

3. The brief facts which are necessary to dispose of this Second Appeal are as follows: The plaintiffs are brothers. They have extensive lands in Surampatti and other villages. The plaintiffs and their father Sengoda Gounder constituted a Hindu joint family. They entered into a registered partition deed on 5.6.1982 for dividing the properties among themselves. Thereafter, the plaintiffs and their father had sold a portion of the said property to the fourth-defendant. Subsequent to the said purchase, the fourth-defendant has been in possession of the property sold to him.

4. The plaintiffs state that on the North of the plaintiffs' property, there exists an East-West road from which two common roads exist one on the East and the other on the West. There is a cart-track, which is on the East of the fourth-defendant's property, which branches off from the main road and reaches upto the defendant's property. The plaintiffs would submit that already there exists a service connection to the fourth-defendant's property along with an electric post on this cart-track. The fourth-defendant is not only living in the property purchased by him but also cultivating the same. The plaintiffs' properties are situated on the west; and on the east another north-south cart track runs in between their properties. The first-plaintiff's property is situated on the west of the north-south cart track in which the first-plaintiff is residing along with his family and also running a lorry workshop on the east of the said cart-track. The second-plaintiff is running a car-workshop and also a service station and for this purpose they had obtained a service connection, which comes from the main road and therefore till date there is no electric post or any kind of obstruction in the cart track situated between the plaintiffs' properties.

5. The plaintiffs would contend that the fourth-defendant was given only the right of way in the said cart-track to take cart and other things for agricultural purposes and the same is clearly mentioned in the sale deed itself. While so, in the third week of March, 2004, the third-defendant viz. the Junior Engineer (O&M), Tamil Nadu Electricity Board, Erode Electricity Divisional Circle inspected the plaintiffs' property

Page numbers

and the cart track running in between the property. When the plaintiffs enquired the reason for such inspection, the third defendant informed them that the fourth-defendant had applied for electricity service connection to his property and therefore they had to inspect the land to earmark the spot where the electric pole could be installed. The plaintiffs immediately raised objections on the ground that already there is service connection available to the property of the fourth-defendant and informed the authorities that if the electric post is installed in the suit cart-track, it would cause hindrance to the usage of the land by the plaintiffs. Despite the above objections, as the defendants did not heed to their request. Left with no other alternative remedy, the plaintiffs had filed the suit for bare injunction. Since the plaintiffs had not obtained an order of interim injunction, the defendants went ahead with the installation of the electric pole and since the electric pole was installed, the plaintiffs had amended the suit relief with a prayer for mandatory injunction.

6. The third-defendant had filed the written-statement, which had been adopted by defendants 1 and 2, in which they had contended that pursuant to an application made by the fourth-defendant for installation of three-phase domestic service connection to his newly constructed house on 23.4.2004, the third-defendant had inspected the spot and found that a new electric pole has to be erected through the pathway. This work was done with the knowledge of the plaintiffs and thereafter the fourth-defendant had also produced the judgment in O.S. No. 422 of 1994 on the file of the Sub Court, Erode stating that he also had the right over the said cart track. Meanwhile the plaintiffs have filed the present vexatious suit and therefore they pray for the dismissal of the suit.

7. The fourth-defendant on his part has filed a written-statement inter alia contending that it is true that the fourth-defendant's lands are situated on the northern side of the cart-track and the same is reachable through 40 feet width north-south cart tract and that the fourth-defendant had applied for a service connection. The fourth-defendant denies the allegation that electric service can be easily obtained from the existing service connection and there was no necessity to erect any fresh pole. The fourth-defendant would submit that it is not only a right of way that was granted under the sale deed executed by the plaintiffs in favour of the fourth-defendant, but also the right to use the cart track. The fourth-defendant would submit that it was totally incorrect to state that the fourth-defendant is entitled to use the pathway only to take cart and other things for agricultural purposes and not for any other purpose.

Page numbers

On the contrary, the terms of the sale deed squarely permit that the cart-track could be used both as a track and for any other purpose. The fourth-defendant had purchased the lands under the sale deeds dated 24.5.1993, 25.5.1993, 26.5.1993 and 27.5.1993. The property of the fourth-defendant is situated behind the plaintiffs' property and there is no electricity service connection to the said property. The fourth-defendant would contend that he had constructed a house by spending huge sums of money, but he is unable to electrify the same in view of the obstructions made by the plaintiffs. He would further contend that the objections of the plaintiffs are uncalled for and therefore prays for the dismissal of the suit.

8. The Trial Court has framed the following issues

(1) Whether the plaintiff is entitled to the relief of permanent

injunction as prayed for

(2). To what other relief?

The Trial Court has also framed the following additional issue:

(1) Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?

9. On behalf of the plaintiffs, P.Ws. 1 and 2 were examined and Exs. A1 to A7 were marked. On the side of the defendants, D.Ws. 1 and 2 were examined and Exs. B1 to B4 were marked. Exs. C1 and C2 were marked as Court documents.

10. Ultimately the Trial Court has decreed the suit as prayed for by observing that the plaintiffs are entitled for the relief of mandatory injunction, as the defendants have not proved that they have duly followed the procedure laid down by the Electricity Act in obtaining the consent of the plaintiffs and without such consent has obtained the approval of the District Magistrate to put up the electric pole. This judgment and decree of the Trial Court was challenged in appeal in A.S.No. 110 of 2006 on the file of the I Additional Sub Court, Erode. The Appellate Court had also committed the same error, which has led to the filing of the Second Appeal.

11. The Second Appeal had been admitted by this Court on 19.7.2007, on the following substantial questions of law:

1. Whether the Courts below erred in decreeing the suit and dismissing the appeal, against the appellant herein without considering the fact that the appellant has been given an implied right in the document to use the suit road for not only transportation but also for enjoying other basic facilities?

Page numbers

2. Whether the Courts below erred in law by dismissing the appeal filed by the appellant herein and allowing the suit filed by the respondents 1 and 2 herein when section 12 of the Electricity Act clearly says that only if there is a sole owner to a property and if he objects for drawing electricity line in his properties, the electricity board officials should get the permission from District Magistrate whereas in the present case the petitioner is a co-owner to the suit road and when there is no hindrance to other co-owners, the electricity board officials has every right to use the road, which was also admitted by the lower Court?

3. Whether the Courts below erred in law in confining the rights of the appellant to the suit pathway only for transportation purpose while the words "right to use" include the right to enjoy the same legally by putting such property into use for getting other facilities through the same and consequently would any interpretation detrimental to the interest of the appellant could not defeat the intention of the parties to Ex.B1 to B4 sale deeds?

12. The entire gamut of the case revolves on the right that had accrued to the fourth-defendant by virtue of the sale deed executed by the plaintiffs in his favour.

13. Mr. R.G. Narendhiran arguing on behalf of the appellant, would submit that the Trial Court, after holding all points in favour of the fourth-defendant, had ultimately decreed the suit on the only ground that the defendants had not obtained the prior permission from the plaintiffs to erect the pole. The finding of the Trial Court is erroneous as per the terms of the sale deed dated 24.5.1993 marked as Ex.B1. Under this deed the fourth-defendant had not only been given the right to use the pathway but also the right to the appurtenant benefits accompanied to such right like telephone connection, electricity connection, drainage, etc. The learned counsel would further argue that both the Courts below have miserably failed to consider this aspect and therefore prays to allow the Second Appeal by setting aside the judgment and decree of both the Courts below.

14. Mr. C. Prakasam appearing on behalf of respondents 1 and 2 would submit that the fourth-defendant has an alternative pathway in which there exists an electric line and there is no

Page numbers

subsisting right to the respondents to install the electric pole in the suit pathway. He would submit that no exception can be taken to the judgment under appeal.

15. Heard both counsel.

16. A perusal of the judgment of the Trial Court would show that despite holding in favour of the defendants by observing that "the newly erected single electric pole in the suit pathway also stands at the corner of the suit road near the fourth-defendant's property at the edge of the plaintiffs' property and moreover the overhead lines are also in no way harmful to the plaintiffs because as they are running in a height which will not hinder the use of the road", the Trial Court viz. The II Additional District Munsif, Erode has decreed the suit only on the ground that prior permission of the plaintiffs had not been obtained. The learned Trial Judge has totally failed to consider the terms of the sale deed dated 24.5.1993 entered into between the plaintiffs and the fourth-defendant. In the sale deed Ex. B1 it has been clearly stated that the fourth-defendant has been given the right to use the pathway for not only transportation but also for enjoying all the appurtenant rights available to the said pathway.. Further, the question of obtaining prior permission from the plaintiffs to install eclectic lines following the procedure laid down under the Electricity Act, as observed by the learned Trial Judge, does not arise, particularly when the fourth-defendant is a co-owner of the pathway and further there is no hindrance to the other co-owners.

17. Considering the above, this Court is of the opinion that the Courts below have concurrently erred in not considering the case of the appellant/fourth defendant from the proper perspective. Accordingly, the substantial question of law No.1 is answered in favour of the fourth-defendant and against the plaintiffs. The questions of law 2 and 3 are also consequently answered in favour of the fourth-defendant.

18. In the result, the Second Appeal is allowed and the judgment and decree of both the Courts below herein are set aside. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mrn

Page numbers

To,

1.The I Additional Subordinate Judge,
Erode.

2.The II Additional District Munsif,
Erode.

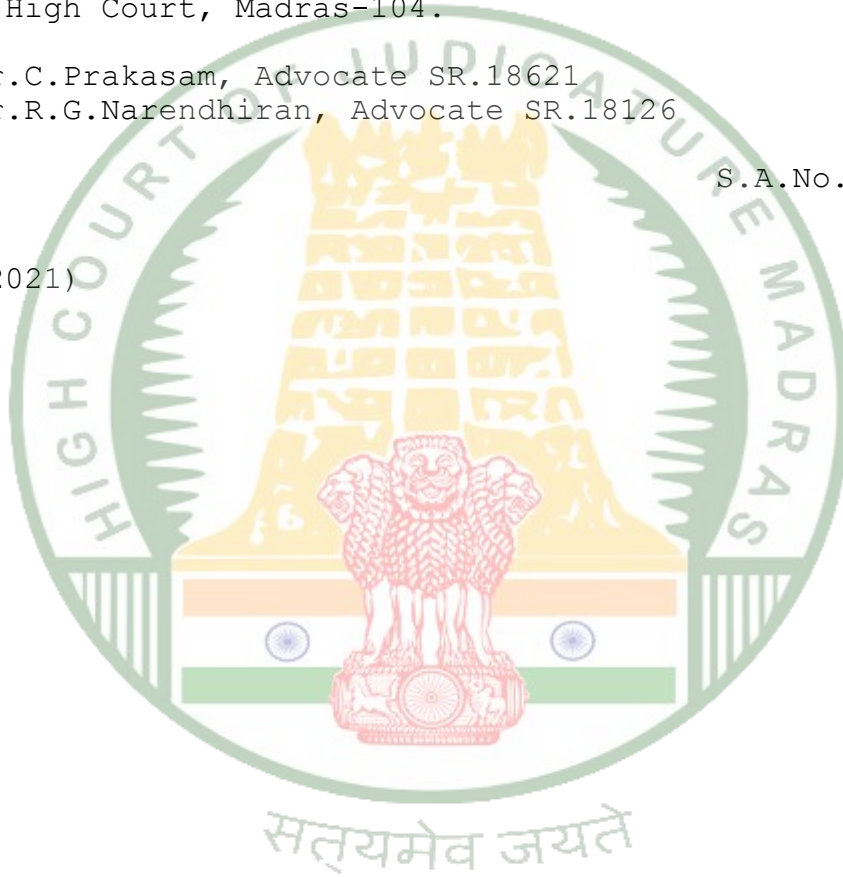
Copy to: The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.C.Prakasam, Advocate SR.18621

+1cc to Mr.R.G.Narendhiran, Advocate SR.18126

S.A.No.449 of 2007

PA(CO)
CB(05/01/2021)



WEB COPY

Page numbers