

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.619 of 2018
and
CMP.No.18913 of 2018

P.Nagarajan ... Appellant/Plaintiff

Versus

G.Durairaj ... Respondent/Defendant

Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 29.06.2018 passed in A.S.No.1 of 2015 on the file of the Additional District Judge, Tiruvannamalai reversing the Judgment and Decree dated 09.07.2014 passed in O.S.No.112 of 2012 on the file of the Principal Sub Court, Tiruvannamalai.

For Appellant : Mr.K.Venkatasubban

For Respondent : Mr.Jayashree Narasimhan

J U D G M E N T

This Second Appeal has been filed to set aside the Judgment and Decree dated 29.06.2018 passed in A.S.No.1 of 2015 on the file of the Additional District Judge, Tiruvannamalai reversing the Judgment and Decree dated 09.07.2014 passed in O.S.No.112 of 2012 on the file of the Principal Sub Court, Tiruvannamalai.

2.The only challenge in the present appeal is with regard to who has to bear the cost for a sum of Rs.35,770/-, for shifting the High Tension Electric Wire, to the Tamil Nadu Electricity Board. The trial court finding was that only the vendor has to bear the expenses for shifting the High Tension Electric Wire. However, the said finding was reversed by the appellate court. Aggrieved by the said order, the appellant herein filed the present second appeal.

3.The suit was filed for specific performance. The suit was decreed by the trial court by directing the vendor to bear the cost for shifting the High Tension Electric Wire. However, the

first appellate court decreed the suit for specific performance holding that there is no need for the vendor to bear the cost for shifting the High Tension Electric Wire, as there is no clause in the sale agreement.

4. When the matter is came up for hearing today, the learned counsel appearing for the appellant submitted that his client is ready and willing to bear the sum of Rs.35,770/- to be paid to the Tamil Nadu Electricity Board, for shifting the High Tension Electric Wire.

5. The learned counsel appearing for the respondent submitted that in such case, this Court may pass an appropriate order by recording the statement of the appellant. The learned counsel appearing for the respondent also submitted that his client is ready and willing to execute the sale deed without any obligation for the payment for shifting the High Tension Electric Wire to the Tamil Nadu Electricity Board.

6. The learned counsel appearing for the appellant submitted that the appellant has agreed to pay the above said sum of Rs.35,770/- or such higher amount if any fixed by the Tamil Nadu Electricity Board and he further submitted that the entire sale consideration of Rs.3,90,000/- has been deposited before the trial Court and no arrears have to be paid.

7. The learned counsel appearing for the respondent submitted that the respondent herein has no objection to pass order on the above term. In such case, they are ready and willing to execute the sale deed in three months time.

8. In view of the submission made by the learned counsel on either side, this Court without going into the merits of this case passing the following order:

"a) The appellant is directed to bear the sum of Rs.35,770/- towards the cost to be paid to the Tamil Nadu Electricity Board, for shifting the High Tension Electric Wire, in terms of Ex.A4 letter dated 23.06.2011. In case if any higher amount is to be paid, the appellant shall bear the same, since the above said letter has been issued in the year 2011.

b) The respondent herein is directed to approach the trial court, in such case, the trial court is directed to permit the respondent to withdraw the sum of Rs.3,90,000/- along with the interest lying in the credit of the trial court, within a period of 15 days, from the date

of receipt of a copy of this order.

c) The respondent is directed to execute the sale deed, within a period of two months, from the date of receipt of a copy of this order."

9. With the above directions, the Second Appeal is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Tiruvannamalai.

2. The Principal Sub Court,
Tiruvannamalai.

Copy to :

The Section Officer,
VR Section, High Court Madras.

+1 cc to M/s. Sarvabhauman, Advocate Sr.No. 11042

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LN (CO)
RMP (05/03/2021)

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