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S.A.No.517 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.517 of 2021
and
C.M.P.No.10439 of 2021

1.Tamil Nadu Electricity Board
rep. by its Superintending Engineer,
Tiruppur Electricity Distribution Circle,
No.19-A, Joyothi Nagar Road,
Tiruppur.

2.The Executive Engineer,
Tamil Nadu Electricity Board,
Tiruppur Electricity Distribution Circle,
Udumalai Road,
Palladam.

3.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Tiruppur Electricity Distribution Circle,
Udumalai Road,
Palladam.

... Defendants/Respondents/Appellants

Vs.

M. Muthu

...Plaintiff/Appellant/Respondent



S.A.No.517 of 2021

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 14.02.2019 in A.S.No.32 of 2018 on the file of the learned II Additional District Judge, Tiruppur, reversing the Judgment and Decree dated 24.10.2017 in O.S.No.550 of 2012 on the file of the learned Principal Subordinate Judge, Tiruppur.

For Appellants : Ms.Hemalatha Gajapathy

For Respondent : Mr.E.K.Kumaresan

JUDGMENT

The defendants/Electricity Board are the appellants before this Court challenging the Judgment and Decree passed by the learned II Additional District Judge, Tiruppur, in A.S.No.32 of 2018, in and by which the learned Judge had reversed the Judgment and Decree of the learned Principal Subordinate Judge, Tiruppur, in O.S.No.550 of 2012.

2.For ease of understanding, the parties are referred to herein in



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the same ranking as before the trial Court.

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3.The suit O.S.No.550 of 2012 is filed for the following relief:

“restraining the defendants, their men, their officers in anyway putting up any construction and fence in the “B” schedule property cutting across the two items of the “A” schedule property”.

4.The case of the plaintiff is that he is the absolute owner of the “A” schedule property by virtue of a Settlement Deed dated 27.04.2009. “B” schedule property runs across S.F.No.83 of Velampalayam Village and the same cuts across the “A” schedule property. The larger portion of the “A” schedule property measuring to an extent of 11.82 acres which is situate in S.F.No.82 cannot be enjoyed without an access from the “B” schedule property. The second portion of the “A” schedule property which is situate in



S.F.No.84B measuring an extent of 1.77 acres can be accessed from the Mangalam to Palladam road. In fact, the “B” schedule property divides the “A” schedule property. The “B” schedule property is the poromboke road leading from Mangalam to Palladam Road and travels from S.F.No.83 and provides access to many lands in Velampalayam and Naranapuram Villages. While so, the 1st defendant had purchased the “B” schedule property from the Government for setting up a sub division. The 3rd defendant is entrusted with the task of setting up the same. Once the sub division is constructed the plaintiff's access over the “B” schedule property will be totally obstructed, the plaintiff will not be in a position to enjoy his lands situate in S.F.No.82.

5.The defendants are bound to maintain the “B” schedule property as a road. However, on 17.09.2012, the defendants and their officials, through their men and servants, had attempted to put up constructions and fences in the “B” schedule property. Therefore, the



plaintiff has rushed to file the present suit.

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6.The 4th defendant had filed a Written Statement which is adopted by the other defendants. They would contend that the poromboke road in S.F.No.83 measuring an extent of 1.85 hec. has been purchased by the Board after due notification and public enquiry by the revenue officials. A sum of Rs.36,08,763/- was also remitted on 13.10.2008 as the cost of land. The plaintiff's land in S.F.No.84B which is located on the Western side of S.F.No.83 and S.F.No.82 is located on the Eastern side of the S.F.No.83. In both the lands, there is no cultivation being done for the past twenty years. That apart, S.F.No.84B is adjoining the Mangalam to Palladam road and the plaintiff has purchased the lands in S.F.No.82 only after TNEB purchased the entire lands in S.F.No.83. There is no pathway, road or approach in S.F.No.83. That apart, except for the plaintiff no other villagers had made a representation to maintain the pathway in S.F.No.83. The plaintiff had purchased the lands in S.F.No.82 only



after knowing that the defendants were setting up a sub station in

S.F.No.83. The plaintiff has an alternative pathway to reach his lands

S.F.No.82. That apart, the construction has already commenced for the sub station.

7.The learned Principal Subordinate Judge, Tiruppur, framed an issue as to *whether the plaintiff is entitled to get the relief of permanent injunction against the defendants in the suit property as prayed for?*

8.The plaintiff's husband examined himself as PW1 and Ex.A.1 to Ex.A.9 were marked. The Assistant Engineer of the defendant/Board was examined as DW1 and Ex.B.1 to Ex.B.6 were marked. In fact, Ex.B.1 was marked during the cross examination of PW1. However, the document was once again marked during the evidence of DW1 and therefore, to avoid confusion, the said document



is marked as Ex.B1(A). The Trial Court on considering the evidence on record both documentary as well as orally took note of the submissions of the defendants in their Written Statement that they had no intention to disturb the enjoyment of the pathway by the plaintiff, but however, rejected the request for the grant of permanent injunction as prayed for. Challenging the said Judgment and Decree, the plaintiff has filed A.S.No.32 of 2018 on the file of the learned II Additional District Judge, Tiruppur. The learned Judge relying upon the very same finding of the trial Court that the defendants in their Written Statement have admitted that they had no intention to fence the “B” schedule property and DW1, during his cross examination admitted that they would not cause any disturbance to the electrical wires, held that the trial Court ought not to have dismissed the suit but decreed the suit. Therefore, the Appellate Court had granted a Decree and set aside the Judgment and Decree of the trial Court. Challenging the same, the appellant is before this Court.



9. Heard the learned counsel appearing on either side and perused the papers.

10. A perusal of Ex.A.6 - Topo sketch clearly shows that this pathway runs between the two portions of the plaintiff's land and is the only access to reach the plaintiff's land in S.F.No.82. Further, under Ex.A.9, which is a response to an RTI enquiry, it has been stated that if the pathway in S.F.No.83 is blocked there is no alternative pathway to reach the lands comprised in S.F.No.82.

In the light of the same and considering the fact that the pathway in S.F.No.83 is the only access and the defendant having undertaking that they would not be putting up a fence, the Second Appeal does not call for any interference to the Judgment and Decree of the Lower Appellate Court. Further, the appellant Board has not made out any substantial question of law. Consequently, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition



is closed.

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Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order
mps

To

1.The II Additional District Judge,
Tiruppur.

2.The Principal Subordinate Judge,
Tiruppur.

P.T. ASHA, J,

mps



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