



S.A.No.422 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.422 of 2013

M.P.No.1 of 2013

P.A.Senthilsundar

....Appellant

Vs.

1. The Superintending Engineer,
Tamilnadu Electricity Board,
Erode South,
Erode.

2. The Executive Engineer,
Tamilnadu Electricity Board,
Erode South,
Erode District.

3. The Assistant Executive Engineer (O & M),
Tamilnadu Electricity Board,
Kodumudi,
Erode District.

4. The Assistant Engineer,
Tamilnadu Electricity Board,
Kodumudi,
Erode District.

... Respondents



S.A.No.422 of 2013

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 30.08.2011 made in A.S.No.11 of 2011 on the file of the Principal Sub Court, Erode reversal of the Judgment and decree dated 18.09.2009 made in O.S.No.79 of 2007 on the file of the District Munsif Cum Judicial Magistrate, Kodumudi.

For Appellant : Mr.N.Manokaran

For Respondents : M/s.J.Hemalatha Gajapathy

JUDGMENT

The appellant herein is the plaintiff in the suit in O.S.No.79 of 2007 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudif, which was filed for the relief of mandatory injunction and other consequential reliefs. On hearing both sides, the trial Court had granted relief in favour of the plaintiff as prayed for. Aggrieved over the said findings, the defendants had preferred an Appeal in A.S.No.11 of 2011 on the file of the Principal Sub Court, Erode, wherein, the Appellate Judge had allowed the appeal and set aside the findings of the trial Court. Challenging the said findings of the Appellate Court, the plaintiff has preferred this Second Appeal.



S.A.No.422 of 2013

2. The brief case of the plaintiff is as follows:-

WEB COPY

(i) The plaintiff has filed the suit in O.S.No.79 of 2007 on the file of the District Munsif-Cum -Judicial Magistrate, Kodumudi, for the relief of mandatory injunction against the defendants/Electricity board to remove the newly erected electric posts over the existing electric posts, which was erected by the respondents in the scheduled property belongs to him and the defendants/Electricity board has violated the decree granted in favour of the plaintiff in O.S.No.134 of 97.

(ii) The defendants/Electricity board has filed a written statement contending that they have not violated the decree passed in O.S.No.134 of 97 granted in favour of the plaintiff. Further, no new poles were erected in order to draw alternate supply to the water works, heighten the existing pole by 2 metres using a channel and lines were drawn on it without any disturbance to the existing ground clearance infrastructure. Accordingly, they contended that the existing infrastructure was not altered and only a channel was erected on the top of existing pole and lines were drawn. Therefore, the defendants/Electricity board prayed for dismissal of the suit.



S.A.No.422 of 2013

3. The trial Court had framed the necessary issues and on hearing both sides, the trial Court had concluded that as per Section 14 of the Indian Electricity Act 1910 only with the consent of the land owner, the defendants/Electricity board has to erect the electric pole across the patta land. If the land owner raised any objection, the defendants/Electricity board has to file application before the District Magistrate and after due enquiry, the permission may be granted to the defendants/Electricity board to erect the electric pole across the patta land. But in this case, the defendants/Electricity board has violated the said procedure and by violating the norms, the defendants have heightened the electric pole by 2 metre in order to draw the electric wire and also violated the order passed in O.S.No.134 of 97 in which the plaintiff obtained the relief of permanent injunction with regard to put up the electric pole in the suit land. Hence, the suit was decreed by granting the permanent injunction as prayed for.

4. Challenging the said findings, the defendants/Electric board has preferred an appeal in A.S.No.11 of 2011 on the file of the Principal Sub Court, Erode, wherein, the Appellate Judge had concluded that already two electric poles were erected in the suit property and it has already been



S.A.No.422 of 2013

decided by the defendants/Electricity board to carry the high tension cables over the existing poles and they have not fixed any new electric pole in the suit property. Accordingly, the Appellate Judge concluded that the plaintiff has failed to establish that the electric poles were erected in the suit property in violating of the decree. Accordingly, the Appellate Judge allowed the appeal. Against which, the plaintiff has preferred this Second Appeal and the same was admitted on the following substantial questions of law:

" 1. Whether the First Appellate Court is erred in law in dismissing the suit for mandatory injunction to remove the HT lines erected over the existing electric posts particularly when the defendants have been restrained from erecting electrical poles or taking electricity lines across the property of the appellant in the Judgment and decree dated 27.10.1999 made in O.S.No.134 of 1997 (Ex.A1 and Ex.A2) ?

` 2. Whether the First Appellate Court is right in not considering the safeguards provided under Sections 12 to 19 of the Electricity Act, 1910, especially when the electricity Board is debarred from invoking under Section 10 of the Indian Telegraphic Act, 1910 for want of sanctioned Scheme under Section 28(3) of the Electricity (Supply) Act, 1948 and consequential publication or Notification in the official Gazette under Section 29(2) of the Electricity (Supply) Act,



S.A.No.422 of 2013

1948?.

3. Whether the Judgment of the First Appellate Court is vitiated for non-compliance of the mandatory provisions under Order 41 Rule 31 CPC in the light of the decision reported in 2012(1) MLJ 701 and 2011 (4) SCC 240?'

5. Heard Mr.N.Manokaran, learned counsel for the appellant and M/s.J.Hemalatha Gajapathy, learned counsel for the respondent/ Electricity board.

6. With regard to Issue No.1. the learned counsel for the appellant submitted that already the defendants/Electricity Board were restrained from erecting the electric posts or taking electricity lines across the property of the plaintiff by the Judgment in earlier suit in O.S.No.134 of 97 and the same was ignored. Further, the defendants/Electricity Board officials erected the additional post for high tension electric wire for alternate supply of water work. It is clear that the defendants had violated the order passed in O.S.No.134 of 97 and even though the plaintiff proved the same and the same was appreciated by the trial Court but the Lower Appellate Judge without appreciating the law and facts, erroneously dismissing the suit is



S.A.No.422 of 2013

clear misconception of law. Hence, he preferred this second appeal seeking to set aside the finding of the Appellate Judge.

7. The learned counsel for the respondent/Electricity board submitted that the earlier Acts 1910 and 1948 were repealed by the Electricity Act 2003. Further submitted that as per the Electricity Act 2003 Section 163 the provisions are envisaged to which electricity is or has been, supplied by him, of any premises or land under, over, along across in or upon which the electric supply lines or other works have been lawfully placed by him. Accordingly, they have not erected any new pole and in order to draw alternative supply to the water work, heighten the existing pole by 2 metres using a channel and lines drawn on it without any disturbance to the existing ground clearance.

8. Hence facts, reveals that the Electricity Board has not erected any new electric pole, in order to draw alternative supply to the water work, heighten the existing pole by 2 metres using the channel and draw lines without any disturbance to the existing pole on ground. This fact is rightly appreciated by the Appellate Judge, which needs no interference. Thus, the



S.A.No.422 of 2013

defendants/Electricity Board has not violated the order passed in O.S.No.134 of 97. On the other hand, as per the new Act by following the norms, the board erected 2 metres height post over the existing electric posts in the property. Hence, Issue No.1 is answered.

9. The defendants/board has not committed any violation of the order passed in O.S.No.134 of 97, as required under the new Act of 2013. Therefore, the Issue No.2 and 3 are unwarranted.

10. Accordingly, this second appeal is dismissed as having no merits. The Judgement and decree passed by the Appellate Court in A.S.No.11 of 2011 dated 30.08.2011 is confirmed and Judgement and decree passed by the trial Court in O.S.No.79 of 2007 dated 18.09.2009 is set aside. Consequently, connected miscellaneous petition is closed.

01.09.2022

Index :Yes/No

msrm



S.A.No.422 of 2013

To

WEB COPY

1. The Principal Sub Court, Erode.
2. The District Munsif-cum-Judicial Magistrate, Kodumudi.
3. The Superintending Engineer,
Tamilnadu Electricity Board,
Erode South,
Erode.
4. The Executive Engineer,
Tamilnadu Electricity Board,
Erode South,
Erode District.
5. The Assistant Executive Engineer (O & M),
Tamilnadu Electricity Board,
Kodumudi,
Erode District.
6. The Assistant Engineer,
Tamilnadu Electricity Board,
Kodumudi,
Erode District.
7. The Section Officer,
VR Section.



WEB COPY



S.A.No.422 of 2013

T.V.THAMILSELVI, J.

msrm

S.A.No.422 of 2013
M.P.No.1 of 2013

01.09.2022