



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.26 of 2022

J.Nishanthi

.. Appellant/Appellant/Plaintiff

Vs.

1.The Tamil Nadu Generation and Distribution Corporation,
Rep. by its Superintending Engineer,
(TANGEDCO), K.Pudur,
Madurai - 625 007.

2.The Assistant Divisional Engineer,
(TANGEDCO), Subramaniapuram Division,
Subramaniapuram,
Madurai - 625 012.

3.The Assistant Engineer,
(TANGEDCO), Arasamaram Circle,
Old Kuyavarpalayam Road,
Madurai - 625 009.

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 17.08.2021 passed in A.S.No.6 of 2020, on the file of the Second Additional Sub-Court, Madurai, confirming the judgment and decree, dated 31.07.2019 passed in O.S.No.311 of 2015, on the file of the Principal District Munsif Court, Madurai Town.

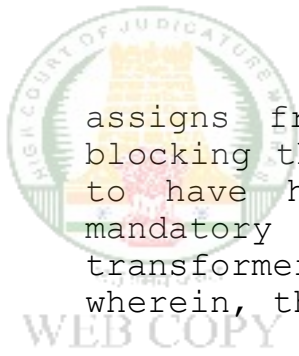
For Appellant : Mr.J.Barathan

For Respondents : Mr.B.Ramanathan

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.311 of 2015, by the Principal District Munsif Court, Madurai and in A.S.No.6 of 2020, on the file of the Second Additional Sub-Court, Madurai, are being challenged in the present Second Appeal.

2. The appellant/plaintiff has instituted a suit in O.S.No.311 of 2015, on the file of the trial Court for the relief of permanent injunction restraining the defendants, their officials, agents and



assigns from in any way installing the electricity transformer blocking the plaintiff's suit property and preventing the plaintiff to have her easy ingress and egress to her property and for mandatory injunction directing the defendants to shift the transformer installed in front of the house of the plaintiff, wherein, the present respondents have been shown as defendants.

3. The brief facts of the case of the plaintiff are as follows:-

3.1. The suit property belonged to the plaintiff, who had purchased the same by of two registered sale deeds, dated 29.10.2001 and 13.03.2002. Initially, the plaintiff purchased southern portion of the suit property from Balakrishna Mills Private Limited, through its Director A.R.Rathinam, by way of a registered sale deed in Document No.8072 of 2001, dated 29.10.2001 and later on, she has purchased the northern portion of the suit property from A.R.Raghunath, son of A.R.Rathinam, by way of a registered sale deed in Document No.1328 of 2002, dated 13.03.2002 and she has been regularly paying the house tax for the said properties. The Chairman Muthuramaier Road is situated on the western side of the suit property. The plaintiff is also having access to the said road through the door way put up on the western side of the suit property. In the suit property, the plaintiff is having old ACC roof shed house and the ACC roof has become damaged and in a dilapidated condition. Hence, the plaintiff has proposed to put up a new construction, after demolishing the ACC roof shed in the suit property. The plaintiff further submits there is no other access to reach the Chairman Muthuramaier Road, except the door way situated on the western side and the width of the said road is about 25 feet only.

3.2. The plaintiff further submits that there is an open drainage covered by cement slabs adjoining and in front of the suit property and the said drainage is to the width of 4 to 5 feet. On 03.06.2015, the plaintiff has taken steps for putting up a new construction in the suit property. At that time, the officials of the defendants/TANGEDCO inspected the front road portion of the suit property and blocked the suit property for the purpose of erecting a new transformer. Immediately, the plaintiff objected for the same and the defendants have refused to accept the objections. At that point of time, no transformer was installed. If the transformer is installed, the plaintiff's right to access to reach the main road will be highly affected and the plaintiff will not have ingress and egress to reach her house. Further, there are other vacant places for installation of transformer in the said place. Hence, the plaintiff has come forward with the present suit seeking permanent injunction against the defendants from putting up any electricity transformer blocking the plaintiff's easy access to the road from the plaintiff's house.



3.3. During the pendency of the suit, the defendants have installed the poles in front of the suit property. Hence, the plaintiff has filed an application in I.A.No.504 of 2017 seeking mandatory injunction directing the defendants to remove the said poles, after serving notice to the defendants. After receiving the said notice, the defendants, with mala fide intention, hurriedly installed the transformer in that place, though there are several vacant space and corporation park, which is idle are available. Hence, the plaintiff has also prayed for mandatory injunction directing the defendants to shift the transformer installed in front of the house of the plaintiff.

4. The third defendant has filed a written statement denying all the averments made in the plaint and submitted that the suit itself is bad for non-joinder of necessary parties and the plaintiff is not entitled to get any relief as against the defendants and the suit has to be dismissed. The various allegations contained in the plaint are all totally denied by the defendants as false, misleading, fraudulent and fictitious. The plaintiff's allegation that there is no other access to reach the Chairman Muthuramaier Road, except the door way situated on the Western side are all false and the plaintiff has suppressed the real fact that there is another access to reach the said road from the suit property. It is admitted that there is a common road stands in the name of Madurai Corporation namely, Chairman Muthuramaier Road and its width is about 25 feet and between that road and the suit property, there is an open drainage and its width is about 4 to 5 feet covered by cement slabs adjoining and in front of the suit property.

5. Further, as per the Central Government's 11th and 12th five year plans with a view to provide uninterrupted power supply and improve quality of power supply in the distribution utilities of all the States including in the State of Tamil Nadu, the Scheme, namely, Restructured-Accelerated Power Development and Reforms Programme (R-APDRP) to be implemented in 110 Towns in this State including Madurai and for the purpose of implementation of those works, the Central Government has entrusted and allotted the same to one Contractor, namely M/s.SMS Infrastructure Limited and as per the contract, the said contractor is implementing the scheme of the Central Government and the defendants are only assisting the Contractor in that work. At the time of inspection made by the Contractor along with the defendants to erect the transformer, nobody have represented and objected for the proposed erection of such transformer and nobody was presented in the suit property belonged to the plaintiff and before the implementation of such scheme, proper permission has also been obtained from the concerned authority including the Madurai Corporation. The proposed erection of new transformer in front of the suit property land is not belonging to the plaintiff and is in no way the proposed erection of transformer would disturb and block the enjoyment or right of the plaintiff's property, since the distance between the petition



mentioned property and proposed erection of transformer is more than 6 feet with having a well and good clearance as per the Electricity Corporation's Rules and Regulations and hence, the plaintiff will not at all get affected in future, as alleged in the plaint.

6. The third defendant has also filed a written statement, wherein, it has been stated that during the erection of pole, the property was a open space belonged to Madurai Corporation and after institution of the suit by the plaintiff, a car shed was made in that place by the plaintiff for the purpose of this case. There is another access to reach the Chairman Muthuramaier road from the plaintiff's property, but the plaintiff has falsely mentioned that there was no other access to reach the said road from the plaintiff's property. There is a good clearance of space about 6 feet between the transformer and the suit property, as per the Tamil Nadu Electricity Regulatory Commission (TNERC) Rules. This Court, in W.P(MD)No.2760 of 2011, had held that the Court is not expected to substitute its own opinion in the place of opinion formed by the authorities. Hence, the plaintiff is not entitled to make any objection for the same and prayed for dismissal of the suit.

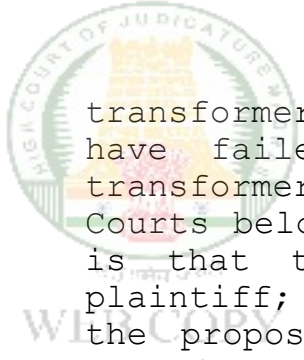
7. Before the trial Court, on the side of the plaintiff, one R.Santhanakrishnan was examined as P.W.1 and Exs.A1 to A6 were marked. On the side of the defendants, neither any witness was examined nor any document was marked.

8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

9. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in A.S.No.6 of 2020. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff, as appellant.

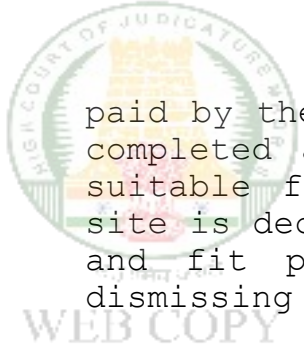
11. The learned counsel appearing for the appellant/plaintiff would submit that both the Courts below have failed to appreciate the contentions raised by the plaintiff and the legal aspect in it. The plaintiff had contended that her property exists on the northern side of Chairman Muthuramaier Road; it has a road margin of 46 feet on the South; she has a gateway opening to the Chairman Muthuramaier Road; the defendants made arrangements to erect an electric transformer in front of her property and she has right of access to the road along the entire width of 46 feet of her property and



transformer in between the road and her property. The Courts below have failed to note that the defendants erected an electric transformer in front of her property during pendency of the suit. The Courts below have failed to note that the defence of the defendants is that there is yet another access to the property of the plaintiff; there is 6 feet space in between the suit property and the proposed place of erection of the electric transformer; the transformer is erected as per the Rules and Regulations and that the plaintiff will not get affected in anyway. Hence, the defence of the defendants is factually and legally unsustainable one. The first Appellate Court failed to note that it is not the pleading or evidence of the defendants that there is 25 feet between the suit property and the Chairman Muthuramaier road in front of it and it is the plea of the defendants that there is a drainage with 4 to 5 feet wide covered by cement slabs between Chairman Muthuramaier Road and the property of the plaintiff. The Courts below have committed a grave error in omitting to consider the fact that the defendants have not let in any oral evidence and have not examined any witness on their side and have not marked any document, as evidence. The trial Court has failed to see that the Municipal Corporation has formed the drainage at one end of the road adjoining the plaintiff's property. So, the defendants have erected the transformer, not abetting the plaintiff's wall but 4 or 5 feet away leaving the width of the drainage channel.

12. The learned counsel appearing for the appellant/plaintiff further submitted that even the plaintiff has mentioned that there are so many vacant places and the Corporation Park is situated near to the plaintiff's property to install the transformer, but they are purposely omitted by the defendants authorities and willingly they installed the transformer in front of the suit property, which is highly disturbing the free ingress and egress to the suit schedule property and further, the plaintiff is ready to pay the cost of shifting the transformer from the present place to another, but the defendants have not given any consent for it and prayed for allowing the Second Appeal.

13. The learned counsel appearing for the respondents/defendants submitted that the plaintiff has suppressed the real facts and there is another access to reach the said road from the suit property. Further, before erecting the transformer proper permission was obtained from Madurai Corporation and the place of erection of the suit property is not belonging to the plaintiff. The plaintiff has no legal right to object the implementation of Central Government Scheme and the defendants are the proper authority to decide as to where the transformer has to be erected in the proposed site to maintain the uninterrupted power supply to the large public including plaintiff. There is no disturbance caused to the plaintiff due to the erection of the transformer, since there is a 6 feet gap between the transformer and the plaintiff's property. The cost of shifting charges could not be



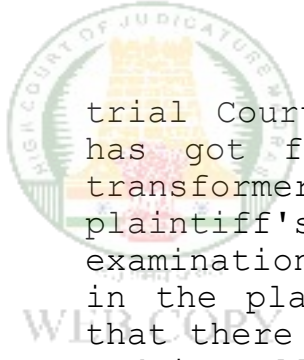
paid by the plaintiff after the erection work of the transformer is completed and the other places as stated by the plaintiff is not suitable for the erection of the transformer, since the proposed site is decided by the defendants' higher authorities is the correct and fit place for erection of the transformer and prayed for dismissing the Second Appeal.

14. Heard the learned counsel for the appellant and the learned counsel for the respondents and also perused the records carefully.

15. It is the case of the plaintiff that the defendants have installed the poles and transformer in front of the suit property of the plaintiff. As per law, the plaintiff is entitled to have easy ingress and egress to her house in the entire stretch of her house without any disturbance and hindrance. Further, there are other vacant places for installation of transformer without affecting anybody else. The installation of transformer is highly illegal and affects the right of the plaintiff to the ingress and egress of the suit property and hence, the same have to be removed.

16. It is the case of the defendants that the plaintiff has suppressed the real fact there is another access to reach the said road from the suit property. Before erecting the transformer, proper permission was obtained from Madurai Corporation. The plaintiff has no legal right to object the implementation of the Central Government Scheme and the defendants are the proper authority to decide as to where the transformer is to be erected in the proposed site to maintain uninterrupted power supply to the large public including the plaintiff. The defendants have discharged their official duty as per the Central Government Scheme and as per the Rules and Regulations of the Electricity Act.

17. From the materials available on record, it is seen that the plaintiff has stated that she and her family members are having their access to the road through the door way put on the western side and has no other way to access the Chairman Muthuramier Road. If the transformer is installed, plaintiff's right to access to reach the main road will be highly affected. To resist the claim made by the plaintiff, the defendants have stated that the plaintiff has suppressed the real fact that there is yet another access to reach the said road from the suit property. In such circumstances, the plaintiff's father deposed in his chief-examination that there is only one access to the Chairman Muthuramaier Road. But at the time of cross-examination, the plaintiff's father has admitted that towards the western side, there is a lane and the lane will be around 8 feet breadth and there is also a gate available in the said site and admitted that there is a grill gate. From the evidence of P.W.1, it is established that there is yet another way in the western side of the suit property to access the said road. The plaintiff has suppressed the material facts which are necessary to

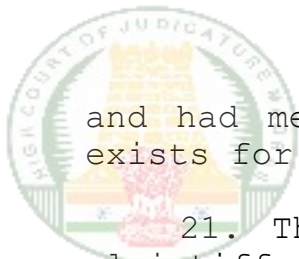


trial Court and the trial Court has also found that the plaintiff has got free access to the main road and the installation of transformer in front of the plaintiff's property did not block the plaintiff's right of ingress and egress and no satisfactory examination of plaintiff herself as a witness to prove the version in the plaint. P.W.1 stated in his cross-examination and admitted that there was 5 feet free space available between the suit property and installed transformer and it was found that the suit property at North-South facing, Chairman Muthuramaier Road is 46 feet breadth. But the transformer is situated to the extent 12 feet and the balance 34 feet space is freely available for plaintiff to access the said road. Therefore, factually, the access to the said road is not absolutely blocked is the finding given by the trial Court.

18. Further, the plaintiff has got no right to object the implementation of Central Government Scheme and the defendants, who are the technically qualified persons, are the proper authority to decide as to where the transformer has to be erected and it is essential to erect the new transformer in the proposed site to maintain uninterrupted power supply to the large public including the plaintiff. The defendants have discharged only their official duty and they are answerable to the Central Government and only as per the Rules and Regulations of Electricity Act, they have installed the said transformer in that area. The plaintiff has failed to show as to whether there was violation of any statutory provisions in erecting the said transformer. The plaintiff has also not pointed out any violation of any Rules and norms by the defendants or that the transformer cannot be installed at the present location under any Rules and Regulations or enactment. Hence, the prayer for shifting of the transformer cannot be allowed, as there is no violation of any statutory provisions.

19. The first Appellate Court held that the suit schedule property belongs to the plaintiff and the plaintiff paid the property tax for the suit schedule property and it is admitted 25 feet distance is left between the suit property and the Chairman Muthuramaier Road and there is a drainage exists between the suit schedule property and the Chairman Muthuramaier Road and the said drainage is situated in between the suit schedule property and transformer and there is a space exists to the extent of 4 to 5 feet between the suit schedule property and transformer and there is a lane situated on the western side of the suit schedule property having an extent of 8 feet and there is an access towards the lane from the suit property.

20. It is clearly established that the transformer is erected at a distance 4 to 5 feet from the suit property property. The plaintiff has not stated that what are all the troubles faced during the ingress and egress of the suit schedule property from the road and further, the plaintiff has not in particular mentioned the



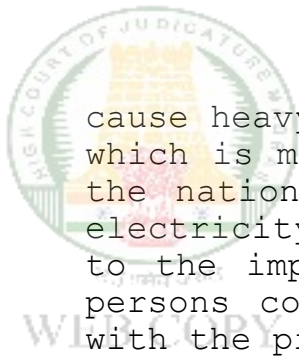
and had merely stated that there are so many vacant places there exists for erection of transformer.

21. There is no specific and clear cut points raised by the plaintiff that there is a disturbance caused by the erection of the said pole. The defendants, in the written statement, stated that the plaintiff is having yet another access on the western side of the suit property, but it was not denied by P.W.1, at the same time, in the appeal, the appellant had stated that the said lane belonged to a private person and he could use the same and in what way the plaintiff could meet the difficulties and inconveniences while she used to access the road through lane, is not properly explained, but it could be better to understand the same by appointment of an Advocate Commissioner, which was omitted to be done by the plaintiff during the process of trial. From Ex.A.6, it is observed that there is a platform on the drainage having a width of 4 to 5 feet and the transformer is situated with a distance of 4 to 5 feet from the suit schedule property and admittedly, the erection of transformer is for the public purpose and the plaintiff has not pointed out that the defendants authorities have erected the transformer or violating the rules and laws framed by the Electricity Act or any statutory norms. Even the defendants have insisted the plaintiff for appointment of an Advocate Commissioner, but the plaintiff has not taken any steps for the same to prove that the plaintiff is having a very inconvenient ingress and egress to the schedule property, but no steps have been taken by the plaintiff to prove that the installation of the transformer has completely violated the right of enjoying the access to the suit schedule property, is the finding of the first Appellate Court.

22. The learned counsel appearing for the appellant/plaintiff now canvassed before this Court that the transformer can be shifted to some other place and he is willing to bear the costs of shifting the transformer to the opposite side.

23. When straight lines have already been drawn and transformer is fixed, there cannot be any change of place by shifting it to the opposite side, where a park is situate.

24. The learned counsel appearing for the respondents/defendants would submit that the decision to shift the same would affect the national interest and it has also caused disturbance in the supply of electricity and it is not a smaller scheme and it is the implementation of the Central Government Scheme and the concerned person has clearly stated that this is the right place to fix the transformer. The erection of the transformer is for the public purpose and shifting it to another place would cause monetary expense to Electricity Department. Further, the decision to erect the transformer had been taken after proper planning by the experts in engineering and after analysing all the relevant aspects. If the relief sought for by the plaintiff, is granted, it would

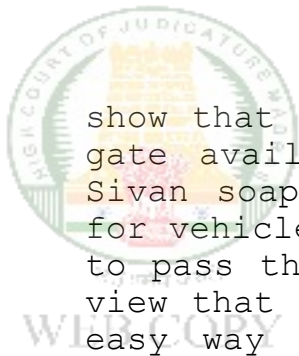


cause heavy loss and serious damage to the scheme of the defendants, which is meant for a public purpose. It would also adversely affect the national interest with regard to the production and supply of electricity. Further, if some inconvenience or loss is caused, due to the implementation of such schemes and projects, the concerned persons could be compensated for the losses caused, in accordance with the procedures established by law.

25. When the matter came up for hearing on 21 02.02.2022, this Court directed the Tamil Nadu Electricity Board to file a status report as well as photocopies of the suit property.

26. On going through the status report, it is seen that whether the transformer can be shifted as per the prayer of the plaintiff, it is seen that the transformer has been erected in the road side margin and this will not any way disturb or block the enjoyment or right of the plaintiff's property. The plaintiff cannot object for the erection of transformer which is situated in the Corporation road under the Central Government Scheme. The erected transformer is a load point centre and it is essential to maintain uninterrupted power supply and to create public satisfaction by offering reduce in voltage fluctuation and day by day load growth increase in that area. The plaintiff's submission that there is no other access to reach the Chairman Muthuramaier road except the door way situate on the western side are all false and there is yet another access to reach the said road from the suit property. Further, the common road stand in the name of Madurai Corporation, namely Chairman Muthuramaier road, which is 25 feet road and between the road and the suit property, there is a open drainage which is 5 feet covered by cement slab adjoining and infront of the suit property. Further, the claim made by the plaintiff that there is a vacant space in the Corporation Park opposite to her suit property, but around the park, there are five transformers and two sectionalizer structure and double pole structure are already in service and they cannot put another in the said area.

27. On going through the photographs, it could be seen that the property is having access from two roads. On the one side there is a building and there is a grill gate available to pass through and next to the grill gate, there is a compound wall and after that there is a iron gate available. There is a car shed has been put up by the plaintiff and many cars being parked and before one grill gate the transformer is erected. Next to the pillar of the said gate, there is another grill gate available which is open and the compound wall continues to an extent of 10 feet and after L shaped compound wall, there is another grill gate available for access to the other road. It is not an 8 feet road and it seems to be a broader road and they can have access through that road also and this erection of transformer does not have any disturbance to the plaintiff's property, as there are vacant space available from the



show that ingress and egress is totally blocked. Further, the grill gate available where they can open into the other road which is Sivan soap street gate. Two big iron gates are available which is for vehicle to pass through and another small ticket gate for people to pass through. On perusing the above facts, this Court is of the view that there is no obstruction to anyone and the appellants have easy way to approach. Hence, the averments of the plaintiff is false.

28. For all the aforesaid reasonings, this Court comes to a conclusion that the well considered Judgments of the trial Court as well as the first Appellate Court need not be interfered with and this Court concludes that the Second Appeal lacks merit acceptance and further, this Court is of the considered view that no substantial questions of law has been made out by the appellant to interfere with the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

Note :

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To

1.The Second Additional Subordinate Judge, Madurai.

2.The Principal District Munsif, Madurai Town.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-3569[F] dated 02/02/2022)

+1 CC to M/s.B.RAMANATHAN, Advocate (SR-4104[F] dated 03/02/2022)

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