



S.A.No.361 of 2000

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.361 of 2000

and

C.M.P(MD)No.3027 of 2000

1.The Tamil Nadu Electric City Board,
rep. By Superintending Engineer,
Nagercoil.

2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Construction and Improvement,
Vallancumaravillai,
Nagercoil.

3.The Junior Engineer,
Tamil Nadu Electricity Board,
Construction Rural,
Nagercoil.

...Appellants/Appellants/
Defendants

-Vs-

1.M.Benny Thas(Died)
2.Vethamoni(Died)

...Respondents/Respondents/
Plaintiffs



S.A.No.361 of 2000

3.N.Ganalet

4.B.Venis Monisha

(R3 and R4 are brought on record as LRS
of the deceased 1st Respondent vide Court
order dated 30.03.2022)

5.M.Mary

6.M.Manuel Raj

7.M.Ponnammal

8.M.Sundara Bai

9.M.Vasanthakumar

(R5 to R9 are brought on record as LRS
of the deceased 2nd respondent vide Court
order dated 30.03.2022)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.11.1999 passed in A.S.No.8 of 1998 by the Principal District Judge, Nagercoil, confirming the judgment and decree dated 07.08.1997 passed in O.S.No.459 of 1996 by the Principal District Munsif, Nagercoil.

For Appellants : Mr.B.Ramanathan

For R4,R5,R9 : Mr.D.Nallathambi
for Mr.R.Murugan



S.A.No.361 of 2000

WEB COPY

J U D G M E N T

The appellants are the defendants and the first and second respondents are the plaintiffs, who filed a suit in O.S.No.459 of 1996 before the Principal District Munsif, Nagarcoil, against the appellants/defendants for declaration declaring the respondents 1 and 2/plaintiffs' right of access from their property ABCD to ABXY and also decree for mandatory injunction directing the appellants/defendants 1 to 3 to remove the electric transformer in ABXY property, if the appellants/defendants 1, 2 & 3 failed to remove the transformer, which can be removed with the help of Court Commission from ABXY property by their own expenses of the respondents/plaintiffs and collecting the expenses from the appellants/defendants.

2.After completing the pleadings and trial, the trial Court decreed the suit. Challenging the said judgment and decree, the appellants/defendants filed an appeal before the Principal District Court, Nagercoil in A.S.No.8 of 1998. The lower Appellate Court, after hearing



S.A.No.361 of 2000

the arguments and re-appreciated the evidence and also considering the judgment of the trial Court, dismissed the appeal. Against the judgment and decree of the lower Appellate Court, the appellants/defendants have filed the present second appeal before this Court raising the following substantial questions of law:

“a)Whether the Courts below failed to consider that the suit by the plaintiff is not at all maintainable in view of the fact that there is no power of attorney in favour of the 2nd plaintiff?

b)Whether the suit is maintainable in view of the provisions of the Indian Electricity Act and Electricity Supply Act?

c)Whether the Courts below is correct in not appreciating the defendants case?

d)Any other substantial questions of law as this Court may deem fit and proper in the circumstances of the case and thus render justice.

Now this Court is admitting the appeal on the following substantial question of law for the purpose of disposing the second appeal.



S.A.No.361 of 2000

*“Whether the Courts below are correct in not appreciating
the appellants/defendants case?”*

3.The case of the respondents/plaintiffs is that the first respondent purchased 5 cents of land from one Bavani by a registered sale deed, dated 18.01.1989 for valuable consideration. From the date of sale, the first respondent was in exclusive possession and enjoyment of the said 5 cents of lands in paying tax. After purchasing the said lands, the first respondent had converted the paddy field into a house site for construction of a concrete house. On the eastern side of the aforesaid 5 cents of land, there is an existence of 30 feet width public road, which is marked as ABXY. Further, it is stated that there is an existence of a fence for demarcating the first respondent's property from the road. The first respondent is the owner of the property abutting the public road. One Vasanthakumar and Manual Raj are the brothers of the first respondent. One Vasanthakumar had purchased 5 cents of land in R.S.No.411/4 of Azhagiapandipuram Village from Bavani by a registered sale deed, dated 18.01.1989. From the date of sale, the said



S.A.No.361 of 2000

Vasanthakumar is in exclusive possession and enjoyment of the property.

4.Further it is stated that on the eastern side of the said Vasanthakumar's property, there is an existence of 30 feet width public road, which is marked as ABXY and there is an existence of fence for demarcating the said Vasanthakumar 5 cents property from the road. After purchasing the said property, the said Vasanthakumar had converted the paddy field into a house site for construction of a concrete house. The said Vasanthakumar requires the road frontage of his house site. One Manuel Raj, who is also one of the brothers of the first respondent, had purchased 5 cents of land in the above said survey number, which is adjacent to Vasanthakumar's property. Therefore, on the eastern side of his property also got an existence of 30 feet width public road, which is abutting the road. Since the said Vasanthakumar and Manuel Raj are employed at Abuthabi, and their properties were maintained by their mother, the second respondent herein. The respondents are having free access from their property to the public road, which is situated on the eastern side of their suit



S.A.No.361 of 2000

properties. From any angle, the respondents/plaintiffs are legally entitled to have free ingress and egress to the public road and vice-versa. While so, the appellants had installed a transformer in ABXY property, without consent and knowledge of the respondents. If the electric transformer continuously situated in front of ABCD suit property, the respondents' free access to the public road could be affected. Therefore, the deceased respondents/plaintiffs filed the suit for removal of transformer.

5.The case of the appellants/defendants is that the transformer structure installed actually at a road poramboke area near the public latrine building at Kesavanputhoor. During the execution of work, there was no objection from the public or even from the respondents either by orally or by writing. Further, it is stated that there is no cause of action to file the suit and as per the sanctioned scheme, the erection works of distribution transformer started from January 1996 and completed on 05.02.1996. The line and the transformer erected on 05.02.1996 itself. Therefore, the suit is not maintainable and the same is liable to be dismissed.



S.A.No.361 of 2000

WEB COPY

6.The learned counsel appearing for the appellants would submit that the transformer structure installed actually at a road poramboke area, which is near a public latrine. Even during the execution of the work, there was no objection from the public. Further, he would submit that in the plaint plan, the suit properties are shown as ABCD, but the entire suit properties not belong to one person. Therefore, the suit property is not a one property. Admittedly, the first respondent had purchased the southern side of five cents of land, under the sale deed, dated 18.01.1989, in his name. In the northern side of the said property, 5 cents was purchased by Manuel Raj under the sale deed, dated 18.01.1989. Further, on the northern side of Manuel Raj property, his brother Vasanthakumar had purchased 5 cents of property under the registered sale deed, on the same day. Further, the said Manuel Raj and his brother Vasanthakumar were not added as plaintiffs and they did not give any authorisation or power of attorney to the second respondent to file a suit and hence, the second respondent has no *locus standi* to file the suit. The learned counsel would further submit that abutting to the suit property, ABXY a public road is existing, which is a



S.A.No.361 of 2000

poramboke area and already a public latrine is also existing in that road and the width of the road is 30 feet and only a leaving space of 10 feet from the suit property. The transformer is erected only in the said road poramboke and there is an ingress and egress is very much available to the suit property. Even from the property of Manuel Raj, there is 10 feet access. Further, as there was no objection at the time of erection of transformer, the respondents could not be claimed any right. Both the Courts below failed to appreciate the documentary evidence and only based on the decision of this Court and granted the decree. Those judgments are not applicable to the present case on hand. Hence, the second appeal is liable to be allowed.

7.The learned counsel appearing for the respondents 4, 5 and 9 would submit that in the plaint the suit properties are shown as ABCD, belonged to the first respondent and his brothers and they are jointly enjoying the properties and all the properties are treated as their own property. The brothers of the first respondent are working in Abuthabi and therefore, the mother of the first respondent was looking after the properties



S.A.No.361 of 2000

of all the sons. They have purchased the properties on 08.01.1996 and from the date of purchasing, they are enjoying the properties as their own properties. All of sudden, the appellants/defendants erected a transformer in ABXY property, which is abutting the suit properties and if the transformer is continuously existing in that property, the respondents cannot enjoy the property. The respondents/plaintiffs got every right to get access from every angle of ABXY property to access the ABCD suit property. Further, he would submit that Manuel Raj and his brother Vasanthakumr had purchased both sides of the property and now they are enjoying the properties as their own. Initially the suit property was an agricultural land and after purchasing, they had converted the properties into a house site properties and therefore, if the transformer is existing, they could not be in possession and enjoying the properties, as the owners of the properties and they are entitled to enjoy the properties from all the angle with the rights of ingress and egress. Therefore, both the Courts below rightly appreciated the documentary evidence and also followed the decision of this Court and decreed the suit. Hence, the second appeal is liable to be dismissed.



S.A.No.361 of 2000

WEB COPY

8.The learned counsel appearing for the respondents has also placed reliance on the following judgments of this Court:

(i)In the case of ***BHARATHAMATHA DESIYA SANGAM, MADHAVARAM AND ANOTHER-VS-ROJA SUNDARAM AND OTHERS***, reported in ***AIR 1987 MADRAS 183***.

(ii)In the case of ***O.N.NATARAJAN AND ANOTHER-VS-THE MUNICIPL COUNCIL, TURAIYUR REP. BY ITS EXECUTIVE AUTHORITY AND COMMISSIONER***, reported in ***1994-1-L.W.470***.

(iii)In the case of ***K.V.K.JANARDHANAN-VS-THE STATE OF TAMIL NADU REP. BY THE COLLECTOR OF SALEM, ETC AND 3 OTHERS***, reported in ***1995-1-L.W.451***.

9.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent Nos.4,5 and 9 and perused the materials available on record.



S.A.No.361 of 2000

WEB COPY

10. According to the respondents their properties are shown as ABCD in the plaint plan which is annexed to the decree, which is form part of the decree and the said ABCD property, adjacent to ABXY, which is a public road. After purchasing the properties, the respondents are enjoying the properties as house site and planned to construct concrete house in the property. Without any intimation and without receiving objection, the appellants/defendants erected and installed the transformer in ABXY property, which is abutting the ABCD properties. If the transformer is continuously existing, the respondents cannot use free access to their properties. On a perusal of the records clearly shows that ABCD property is not a one property and there are three portions, each five cents purchased under three separate sale deeds in the name of three individuals and every five cents shown as individual property and ABXY is a road poramboke and there was a toilet, which was old one, in a dilapidated condition. Further, the evidence of the appellants/defendants also clearly shows that the ABCD properties are an agricultural lands, wherein there are coconut trees and other trees are available and further, the transformer is not obstructing the



S.A.No.361 of 2000

entire properties. Further the width of ABXY, the road poramboke is 30 feet and leaving 10 feet space from ABCD property. Therefore, there are 10 feet are still available to access the ABCD property. In the northern side of 5 cents, there is no obstruction and the southern side of 5 cents, there is also no obstruction and even in the middle portion of 5 cents, which is in the name of Manuel Raj, there is 10 feet space between ABCD land and the transformer. Therefore, The aforesaid citations referred to by the learned counsel appearing for the respondents are not applicable to the present case on hand.

11.No doubt, a person, who is having a property abutting a public road, has got right of ingress and egress to enjoy the property and right to reach the property from the public road. Whereas, in this case, there is no such obstruction, even there is a 10 feet space is available from the middle portion of ABCD land. The respondents/plaintiffs did not file any application to appoint an Advocate Commissioner to note down the physical features and to prove that there was no ingress and egress to access the suit



S.A.No.361 of 2000

properties, due to the erection of transformer. The transformer was installed only for distribution of electricity to the public and no doubt, the owners of the properties have got every right to access their property from the public road. However, in this case, the respondents/plaintiffs did not prove that the right of ingress and egress affected due to erection of the transformer. Therefore, this Court finds tht both the Courts below failed to appreciate the pleadings, oral and documentary evidence and granted decree. Further, the property is not a single property and three brothers have purchased under three separate sale deeds and even in the plaint plan, they have shown only as separate property and they have not shown ABCD as one property and the transformer was erected only in the middle of the road, which clearly shows that there are 10 feet space are available. The respondents have not proved that the rights of ingress and egress to reach the suit properties have been affected.

12.Under these circumstances, this Court finds that the trial Court and the lower appellate Court failed to consider the pleadings, oral and



S.A.No.361 of 2000

documentary evidence and simply followed the decisions of this Court referred to and granted decree. There is no quarrel with the principles laid down by this Court on various decisions referred to supra held that a person, who has got a property abutting to the public road, has got every right to reach his property from public road and no obstruction can be made. In this case, there is no such situation has arisen. As already stated that there is no obstruction in the southern and northern side of 5 cents. Even in the middle portion also, there is no obstruction and there is 10 feet space available to reach the suit properties from the public road. Therefore, the respondents/plaintiffs have not come to the Court with clean hands and they have also suppressed the material facts and has also failed to take steps to appoint an Advocate Commissioner to establish the factum of obstruction.

13.At the time of admission, no substantial question of law was framed by this Court. However, perusal of the judgments of this Court referred to by the Courts below in their judgments reveal that the Courts below have not appreciated the evidence both oral and documentary in a



S.A.No.361 of 2000

proper manner. In such view of the matter, this Court is of the view that there is merit in the second appeal and substantial question of law arose for consideration in the second appeal is answered in favour of the appellants. Accordingly, the Second Appeal is allowed and judgments and decrees passed by both the Courts below are set aside and the suit is dismissed. No costs. Consequently, connected C.M.P is closed.

21.04.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

Ns

To

- 1.The Principal District Munsif,
Nagercoil,
- 2.The Principal District Judge,
Nagercoil.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.361 of 2000

P.VELMURUGAN,J.

Ns

S.A.No.361 of 2000
and
C.M.P.No.3027 of 2000

21.04.2023