



S.A.No.1472 of 2007 & M.P. No.1 of 2007

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1472 of 2007

&

M.P. No.1 of 2007

Lakshminarashiman

...Appellant

Vs.

S. Vatsalaammal

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.07.2007 passed in A.S. No.46 of 2006, on the file of the Additional District cum Additional District cum Sessions Judge, Fast Track Court No.II, Ranipet, reversing the decree and judgment dated 25.08.2005 passed in O.S. No.60 of 2002, on the file of the District Munsif Court, Ranipet.

For Appellant : M/s. B.S. Mitraneshaa
for Mrs. V. Srimathi

For Respondents : Mr. C.R. Suresh Kumar

JUDGMENT

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The appellant is the plaintiff in O.S. No.60/02 on the file of the District Munsif, Ranipet. He filed the suit for declaration of his title to the 'B' Schedule property, which is described in the plaint as 1½ feet wide wall measuring East-West 126 feet on the southern side of his house (house is described as 'A' Schedule property), and for a mandatory injunction.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

- i. The plaintiff is the absolute owner of A and B Schedule Properties. His mother Vijayalakshmi Ammal purchased both the properties through a registered sale deed dated 26.09.1957 (Ex.A1).
- ii. After the death of the mother of the plaintiff, his (the plaintiff's) sister executed a relinquishment deed dated 18.06.1985 (Ex.A3).



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- iii. The plaintiff's mother constructed a Madras Terrace house in the front portion and the back portion was kept as a tiled house.
- iv. The southern side wall of the house ('B' schedule property) is the mother wall of the house and the entire property of the plaintiff rests on the same.
- v. The defendant demolished the back portion of the said wall and constructed another wall.
- vi. Though in the sale deed dated 26.09.1957 (Ex.A1) executed in favour of plaintiff's mother there is no mention about southern side wall, yet his mother was in possession of the same.
- vii. Since the defendant had constructed a new wall after demolishing the southern side wall ('B' schedule property), it has become necessary for the plaintiff to file a suit for declaration of his title to the 'B' schedule property and for a mandatory injunction directing the defendant to construct the southern side wall and for costs.

4. The suit was resisted by the defendant on the following grounds:



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- i. The 'B' schedule property shown in the plaint does not belong to the plaintiff.
- ii. The defendant and her husband purchased their property along with 'B' schedule property through two registered sale deeds dated 23.11.1984 (Ex.B1) and 29.11.1984 (Ex.B2).
- iii. Ever since the date of purchase, the defendant and her husband have been in possession and enjoyment of their property including the suit wall.
- iv. The defendant had also demolished the entire northern side wall (suit wall) for the purpose of constructing a new house in their property but no damage was caused to the plaintiff's property.
- v. At no point of time the plaintiff's terrace/roof of the house rested on the wall of the defendant and therefore the plaintiff cannot claim any relief in his favour and hence prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. Whether the plaintiff is entitled for a declaration of his title to the



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- ii. Whether the defendant and her husband are entitled to 'B' schedule property as per their sale deeds dated 23.11.1984 and 29.11.1984?
- iii. To what relief the parties are entitled?

6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A7. The defendant examined two witnesses and marked Ex.B1 to Ex.B6. Two Advocate Commissioners were appointed in the instant case and their reports and plans were marked as Ex.C1 to Ex.C4.

7. After full contest, the learned trial court judge decreed the suit in favour of the plaintiff vide his decree and judgment dated 25.08.2005.

8. Aggrieved over the decree and judgment passed by the trial Court, the defendant filed an appeal in A.S.No.46 of 2005 before the Additional District Court (Fast Track Court No.II), Ranipet. The learned



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Additional District Judge, Ranipet, after analysing the oral and documentary evidence adduced on both sides allowed the appeal and set aside the decree and judgment passed by the trial Court, vide his decree and judgment dated 11.07.2007.

9. Now the present second appeal is filed by the plaintiff and the same is admitted on the following substantial questions of law by my predecessor on 20.12.2007.

- i. "Whether the appreciation of the documents by the lower appellate court under Ex.A1, Ex.A2 and Ex.A3 is not perverse?
- ii. Whether the courts below ought not to have held that Ex.A1 and Ex.A2 are ancient documents and as such admissible in evidence and the description of the property as narrated in the deed unless impeached by suitable evidence by the defendant is perse admissible in evidence?"

10. Heard Mr.B.S. Mitraneshaa learned counsel for the appellant and Mr. C.R. Suresh Kumar, learned counsel for the respondent.



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11. Mr.B.S. Mitraneshaa learned counsel for the appellant would contend that when the trial court, after analysing the oral and documentary evidence adduced on the both sides, had given a finding that the suit 'B' schedule property (suit wall) exclusively belongs to the plaintiff, the first appellate court should not have interfered with the same. It is his contention that the plaintiff's mother purchased the 'A' schedule property along with 'B' schedule wall even during the year 1957 and has been using the entire southern side wall and in fact the house rests on it. According to him, the defendant purchased the property only in the year 1984 and taking advantage of non mentioning of the wall in the sale deed of the plaintiff's mother, he demolished the wall thereby causing damage to the plaintiff's property. He therefore prayed for allowing the present appeal.

12. Per contra Mr. C.R. Suresh Kumar, learned counsel for the respondent, contended that the respondent had already demolished the southern side wall and there is no damage to the house of the plaintiff.



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He also drew the attention of this Court to the evidence of P.W.1 wherein he had admitted that the suit wall has not been indicated in the sale deed dated 26.09.1957 (Ex.A1). His specific contention is that the second Advocate Commissioner (D.W.2), who was appointed as per the orders of this Court had, in his report, clearly indicated that there are two separate walls for the plaintiff and the defendant. He would further contend that the plaintiff cannot claim exclusive right over the suit wall especially when there is no mention about the same in the sale deed Ex.A1. He also relied on the decision in ***Gurnam Singh (D) by L.Rs and others vs. Lehna Singh (D) by Lrs*** reported in ***2019 (6) CTC 230*** and contended that High Court cannot substitute its own opinion for that of First Appellate Court unless findings recorded by the First Appellate Court is erroneous.

13. The plaintiff in his plaint had stated that Madras Terrace Portion of his house was constructed resting on the suit wall which is on the southern side of his house. According to him, if the said wall is



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demolished the entire madras terrace portion of his house would collapse.

On the other hand the second Advocate Commissioner appointed at the instance of this Court had clearly indicated that there are two separate walls in the front portion and that the defendant had constructed a wall only within his boundary limits. The plaintiff's mother Vijayalakshmi Ammal purchased the 'A' schedule property through a registered sale deed dated 26.09.1957 (Ex.A1). In the said sale deed, the southern side wall in the back side of her house alone is indicated. There is no mention about the southern side wall in the front portion of her house. On the other hand, a careful scrutiny of Ex.B1 and Ex.B2, which are the sale deeds executed in favour of the defendant and her husband, clearly shows that they had purchased their property along with entire suit wall. Moreover, as already observed, the plaintiff claims exclusive title to the 'B' schedule wall only on the ground that he has been enjoying the same in common with the defendant and his predecessor in title for the past 40 years.

14. The first appellate court, in fact, analysed the oral and



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documentary evidence adduced on both sides and had made the following observations:

”உயர்நீதிமன்ற உத்திரவின் படி 2வது முறை நீதிமன்ற ஆணையர் நியமிக்கப்பட்டார் என்பதும், 2வது முறை நியமிக்கப்பட்ட நீதிமன்ற ஆணையர் நீ.ம.சா.ஆ.3, 4, தாக்கல் செய்து, அவர் பி.வா.சா.2 ஆக விசாரிக்கப்பட்டார் என்பதும் ஒப்புக்கொள்ளப்பட்ட சங்கதிகள். வா.சா.2 தனது சாட்சியத்தில் தன்னால் தாவா சுவர் யாருடைய சொத்தில் இருக்கிறது என்று குறிப்பாக சொல்ல முடியாது என்று சாட்சியம் அளித்துள்ளார். நீ.ம.சா.ஆ.3, 4, மற்றும் பி.வா.சா.2ன் சாட்சியம் கவனமாக பரிசீலனை செய்து பார்க்கப்பட்ட வகையில் மேல்முறையீட்டாளருக்கு என்று தனிச் சுவரும், எதிர்முறையீட்டாளருக்கு என்று தனிச் சுவரும் இருக்கிறது என்பது தெரிகிறது. இதை வா.சா.1ம் தனது சாட்சியத்தில் ஒப்புக்கொண்டிருக்கிறார். ஆகவே வா.சா.ஆ.1ன் படி தென்னன்டை சுவற்றை எதிர்மேல்முறையீட்டாளரின் தாயார் கிரயம் பெறவில்லை. உபயவாதிகள் 40 ஆண்டுகளாக பொதுவாக அனுபவித்து வந்ததாக வா.சா.1ன் சாட்சியத்தில் ஒப்புக்கொண்டிருக்கிறார் வழக்கு போடுவதற்கு முன்பே சுவர் கட்ட ஆரம்பித்துவிட்டார்கள். அப்போது தான் தனக்கு அளவுக்குறைவாக இருப்பது தெரியவந்தது. அதற்காக தான் வழக்கு போட்டிருப்பதாகவும், வா.சா.1 தன் சாட்சியத்தில் ஒப்புக் கொண்டிருக்கிறார். எதிர்மேல்முறையீட்டாளரின் மெட்ராஸ் தார்க் வீடு மேல்முறையீட்டாளரின் / பிரதிவாதிகளின் செயலால்



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பாதிக்கப்படவில்லை என்பதையும் வா.சா.1 தனது சாட்சியத்தில் ஒப்புக்கொண்டிருக்கிறார். அளவிடுகளைப் பொறுத்தும் வா.சா.1 தனக்கு தெரியாது என்கிறார். தன் அனுபவத்தில் வடக்கு தெற்கு 22 அடி தற்போது தன் அனுபவத்தில் 19 அடி தான் உள்ளது என்கிறார் இந்நிலையில் நீ.மா.சா.ஆ.3, 4, வா.சா.1ன் சாட்சிய ஒப்புதல், வழக்குரை பத்தி 5ல் கண்ட விவரங்கள் இவற்றை கருத்தில் கொண்டு நாம் பரிசீலனை செய்யும் போது தாவா பி ஷெட்யூல் சொத்து எதிர்மேல்முறையீட்டாளர் / வாதிக்கு மட்டுமே பாத்தியப்பட்டதல்ல என்பது தெளிவாகிறது. மேல்முறையீட்டாளர் தரப்பில் தாக்கல் செய்யப்பட்ட சான்றாவணங்களைக் கவனமாக பரிசீலனை செய்து பார்க்கப்பட்டன. மேல்முறையீட்டாளர்கள் அவர்களது சொத்தின் வடபுற சுவர் அவர்களால் கிரயம் பெறப்பட்டிருக்கிறது. என்பதை அவர்களது கிரயப்பத்திரமான பி.வா.சா.ஆ.1, 2, இவைகளின் படி அறிய முடிகிறது. ஆகவே தாவா “எ” ஷெட்யூல் சொத்தின் தென்புற சுவற்றை எதிர்மேல்முறையீட்டாளரோ, எதிர்மேல்முறையீட்டாளரின் முன் பாத்தியஸ்தர்களோ, எந்த காலத்திலும் கிரயம் பெறவில்லை. பி.வா.சா.ஆ.1, 2, ன் படி மேல்முறையீட்டாளர் அவர்களுக்கு சொத்தில் வடபுற சுவற்றை கிரயம் பெற்றிருக்கிறார்கள். நீ.மா.சா.ஆ.3, 4 இன் அடிப்படையில் பி.வா.சா.2ன் சாட்சியத்தின் அடிப்படையிலும், எதிர்மேல்முறையீட்டாளரின் வீடு மேல்முறையீட்டாளரின் புதிய சுவர் வைத்ததின் காரணமாக யாதொரு பாதிப்புக்கும் உள்ளாகவில்லை. வா.சா.ஆ.1ன் படி தாவா “எ” ஷெட்யூல் சொத்தின் முன் பகுதி தென்புற சுவற்றை எதிர்மேல்முறையீட்டாளர் கிரயம் பெறாத நிலையில் விளம்புகை



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பரிகாரமும், நிரந்தர உறுத்துக்கட்ட பரிகாரமும்
எதிர்மேல்முறையிட்டாளர் தரப்பில் கோரப்படுவது சட்டப்படி
ஏற்கத்தக்கதாக இல்லை.”

The above observations of the first appellate court cannot be said to be perverse and on the other hand, the trial court had decreed the suit mainly on the ground that the sale deed Ex.A1 was much prior to the date of the sale deed in favour of the defendant and that the plaintiff has been using the suit wall. This observation of the trial court is wrong because the second Advocate Commissioner who had inspected the suit property had clearly stated that the defendant after demolishing his wall has constructed a new wall within his property and that no damage is caused to the property of the plaintiff. This aspect has not at all been considered by the trial court. Therefore, the first appellate court was right in reversing the decree and judgment passed by the trial court. Thus, the substantial questions of law are answered accordingly.

15. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.



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- ii. The decree and judgment dated 11.07.2007 passed in A.S. No.46 of 2006, on the file of the Additional District cum Sessions Judge, Fast Track Court No.II, Ranipet, is upheld.
- iii. The decree and judgment dated 25.08.2005 passed in O.S. No.60 of 2002, on the file of the District Munsif, Ranipet, is set aside.

11.04.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Additional District cum Sessions Judge, Fast Track Court No.II, Ranipet,
2. The District Munsif, Ranipet.
3. The Section Officer, VR Section, High Court, Madras.

R. HEMALATHA, J.

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