



A.S.No.270 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.11.2023
Pronounced on	27.02.2024

CORAM

**THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN
THILAKAVADI**

A.S.No.270 of 2013

and Cross Obj.No.35 of 2020

M/s.Prashant Constructions,
Rep by Mr.Asokan,

... Appellant

Versus

1. T.Suresh Kumar
2. T.Ravi Kumar
3. T.Vijaya Kumar
4. Dr.P.V.G.Patrudu
5. P.V.Ashok

... Respondents 1 to 3

Prayer : The Appeal Suit is filed under Order XI R1 r/w Section 96 of Code of Civil Procedure, against the judgment and decree dated 12.10.2012 made in O.S.No.9230 of 2010 on the file of the learned XV Additional District Court, Chennai



A.S.No.270 of 2013

For Appellant : Mr.T.S.Baskaran

For RR1 to R3 : Mr.B.K.Sreenivasan

JUDGMENT

This Appeal Suit is preferred against the judgment and decree passed in O.S.No.9230 of 2010 dated 12.10.2012 on the file of the learned XV Additional District Court, Chennai.

2. This is a suit for damages filed by the plaintiffs against the defendants.

Brief facts as per plaint, are as under:

The plaintiffs submits that the house and ground bearing Door No.21, (New No.45) South Mada Street, Mylapore, Chennai, belongs to the plaintiffs. The 1st defendant was the owner of property bearing Door No.20 New No.43, South Mada Street, Mylapore, Chennai,-4 situated on the east of the house property of the plaintiffs. The 1st defendant had sold a portion of the said property to the 2nd defendant herein. The 3rd defendant had demolished the old construction and started putting up a new construction in the property situated on the east of plaintiffs' house.



A.S.No.270 of 2013

The plaintiffs extended their co-operation to the 3rd defendant while removing the western wall by the 3rd defendant. After removal of the wall, the 3rd defendant started digging up the ground in the adjacent property for laying foundation and for putting up the basement. While doing so, the 3rd defendant used heavy earth moving equipments like bulldozers, excavators etc. The men employed by the 3rd defendant and the 3rd defendant failed to take proper care in using such machineries. The digging was done close to the eastern wall of the plaintiffs' house. The 3rd defendant did not heed to any of the warnings of the plaintiffs. Due to the negligence on the part of the 3rd defendant resulted in dragging the eastern wall away from the main building by few inches. The entire house of the plaintiffs' was in danger and uninhabitable. The roof of the plaintiffs' house was supported with casuarina posts. It is submitted that though the plaintiffs' house is old, it was in a good condition. Due to the negligence of the 3rd defendant the entire eastern wall of the plaintiffs' house has given way and one can see sunlight passing through the gaps. The plaintiffs have taken the expert opinion from reputed structural engineers. The report of the expert would indicate that the existing structure should



A.S.No.270 of 2013

be pull down and a new construction has to be put up. The 3rd defendant has already put up the basement, ground floor and the 1st floor. The partition wall and the main walls are yet to be constructed. Without obtaining any sanctioned plan from CMDA, the 3rd defendant has put up the construction. Even while the digging work was in progress the 2nd plaintiff sent a telegram to the 3rd defendant informing about the cracks that are developing in the eastern wall of the plaintiffs' house. In spite of it, the 3rd defendant proceeded with the work. Due to the failure on the part of the 3rd defendant to take adequate precautionary measures, the entire eastern wall of the plaintiffs' house has been damaged beyond redemptions, thereby leaving the entire house as inhabitable. Therefore, the plaintiffs are entitled to damage which has been quantified by qualified engineer at Rs.18,66,250/-. In spite of receipt of the legal notice sent by the plaintiffs the 3rd defendant failed to adhere to the demands made by the plaintiffs. Hence, the plaintiffs were constrained to file the above suit for the following reliefs:

a). directing the defendants to pay the plaintiffs a sum of Rs.18,66,250/- (Rupees Eighteen lakhs Sixty Six thousand Two hundred



A.S.No.270 of 2013

and Fifty only) being the damages caused to the plaintiffs' house property described in Schedule (A to the plaint).

b). granting a, permanent injunction restraining the defendants from proceeding with further construction in the schedule 'B' property without any sanctioned plan, in violation of the Rules.

c). directing the defendants to pay the costs of the suit and

d). granting such further or other reliefs as may be necessary in the circumstances of the case and thus render justice.

3. The defendants 1 & 2 remained ex-parte.

4. The defendant No.3 in his written statement has stated that the plaintiffs' property described as 'A' Schedule property in the suit is adjacent to the property of the defendants 1 & 2 described as 'B' schedule. The defendants 1 & 2 as joint owners of 'B' schedule property have engaged the 3rd defendant to put up a residential cum commercial construction and accordingly the 3rd defendant demolished the old construction in the 'B' schedule property and started putting up a new



A.S.No.270 of 2013

construction, which is on the east of plaintiffs' property. The 3rd defendant has demolished the mother wall of the constructions put up in the property of the above defendants. However, the compound wall between the house of the plaintiff and the defendants was intact till the construction work was completed. The 3rd defendant took utmost caution and instructed his employees to use traditional equipments at the time of excavation. No earth moving equipments like bulldozer, excavators were used. The digging in the 'B' schedule property was done only in the earmarked places for fixing the columns. Since the 'A' schedule property of the plaintiff was more than 100 years and was laid with mud and brick and due to the constant seepage of water adjoining the eastern wall in the 'A' schedule property resulted in damages and cracks in the 'A' schedule property. Therefore, the 3rd defendant is not responsible for any cracks or other damages caused to the 'A' schedule property. The deviation mentioned by the plaintiff in the approved plan was also regularized by CMDA after collecting the regularization fee. The claim of the plaintiffs for a sum of Rs.18,66,250/- as per the assessment of the Engineer who had never visited the properties is unsustainable. Due to personal animosity the



plaintiffs have come forward with the present suit which is liable to be dismissed.

5. The trial Court based on the above pleadings framed the following issues:

1. 3வது எதிர்வாதி அவருடைய கட்டிடத்தை இடித்ததால் வாதிகளின் கட்டிடத்திற்கு சேதம் ஏற்பட்டது உண்மையா ?
2. 3வது எதிர்வாதி கட்டிட விதிகளை மீதி கட்டிடம் கட்டியுள்ளார்களா ?
3. வாதிகள் கோரியுள்ள நஷ்டஈடு அவர்களுக்கு கிடைக்கத்தக்கதா ?
4. வாதிகளுக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது ?

6. On the side of the plaintiffs, the 1st plaintiff was examined as P.W.1 and Exs.A.1 to A.7 were marked. One R.Ashok was examined as D.W.1 and Exs.B. 1 to B.6 were marked.

7. The trial Court upon appreciating the evidence on record, the arguments advanced on both sides passed the above impugned judgment which is extracted as hereunder:

"மேற்கூறிய எழுவினாக்களில் கண்ட தீர் முடிவுகளின் படி



A.S.No.270 of 2013

வாதிகளுக்கு, அவர்களுடைய கட்டிடத்திற்கு ஏற்பட்ட
சேதத்திற்கு ரூ.4,15,640/- மட்டுமே நஷ்டஈடாக
கிடைக்கத்தக்கது என்று இவ்வெழுவினாவிற்கு தீர்வு
காண்கிறேன்.

இறுதியில், வாதிகளுக்கு, எதிர்வாதிகள்
நஷ்டஈடாக ரூ.4,15,640/- செலுத்த தீர்ப்பும்,
தீர்ப்பாணையும் பிறப்பித்து செலவுத்தொகையுடன்
தீர்ப்பளிக்கிறேன்."

8. Aggrieved by this, the 3rd defendant in the suit filed the above appeal assailing the judgment passed by the trial Court in O.S.No.9320 of 2010. The plaintiffs, aggrieved by the quantum fixed for damages by the trial Court have preferred the cross objection in Cross. Obj.No.35 of 2020 for enhancement of compensation. The learned counsel for the appellant in A.S.No.270/2013 submitted that, the trial Court erred in decreeing the suit by granting damages for a sum of Rs. 4,15,640/-. The trial Court failed to consider that there is no negligence on the part of the appellant/3rd defendant at the time of digging the 'B' Schedule property'. No damage was caused to the building in the 'A' schedule property at the



A.S.No.270 of 2013

time when the digging work was carried out in the 'B' schedule property.

No heavy earth moving equipments were used by the 3rd defendant for digging the 'B' schedule property. The 3rd defendant had not excavated the earth throughout the eastern side wall of the 'A' Schedule property. The 3rd defendant had only tunneled the earmarked portions in the 'B' Schedule property to raise the columns. The plaintiffs failed to establish that only because of the excavation work done by the 3rd defendant, the entire eastern wall of the building in the 'A' schedule property got damaged beyond redemption and thereby the entire house became inhabitable. The plaintiffs failed to let it evidence with regard to the condition of the A schedule building prior to the excavation work. The photographs marked as Ex.B.1 series would reveal that the compound wall between A and B schedule properties had remained intact and therefore the allegation of damage to the plaintiffs' house is illogical and false. The plaintiffs have also raised new construction consisting of the ground floor and 1st floor in the south east of 'A' Schedule property, resting on the compound wall between 'A' and 'B' schedule property. Therefore, no damage was caused to the said building by the excavation in the 'B' schedule. The plaintiff's



A.S.No.270 of 2013

building is aged about 100 years, built up of brick and lime water and the alleged damage was caused only because of the age of the building and not because of the construction work done in the 'B' schedule property. The same was not considered by the trial Court. The trial Court considering the report of the Advocate Commissioner which is not marked, erred in coming to a conclusion that damage is caused to the eastern wall of the 'A' Schedule property only by the 3rd defendant. The plaintiff failed to prove the negligence on the part of the 3rd defendant by way of oral or documentary evidence. Hence, prayed for setting aside the judgement and decree passed by the trial Court in O.S.No.9230 of 2010 dated 12.10.2012.

9. The plaintiff has preferred the Cross Objection in Cros. Obj.No.35 of 2022 for modifying the judgement and decree dated 12.10.2012 made by the learned XV Additional Judge, City Civil Court Chennai in O.S.No.9230 of 2010 for enhancement of the damages amount to Rs.18,66,250/-, directing the 3rd defendant to pay to the plaintiff the said amount together with interest at the rate of 12% per annum from the date of plaint till the date of realization.



A.S.No.270 of 2013

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10. The learned counsel appearing for the cross objector/plaintiff would submit that the trial Court having rendered finding that the plaintiff's building was damaged only because of the construction activities carried by the 3rd defendant, the trial Court ought to have ordered damages as claimed by the plaintiffs/cross objectors. He would submit that the evidence of P.W.2 would clearly show that the plaintiff's building was damaged beyond repairs due to the construction activities of the 3rd defendant and that it is not possible to carry out repairs and restore it back to its previous condition. PW.2 has estimated the cost of construction of a similar new building in 'A' Schedule property is Rs.18,66,250/- and the same ought to have been ordered by the trial Court. The plaintiffs were living in their house peacefully and they were driven out of their property because of the defendants indiscriminate, careless and reckless construction activity. The plaintiffs were forced to pull down their building and construct a new building. Therefore, it is highly unreasonable and unjustifiable for the trial Court to arrive at the notional cost for the alleged damages. Being money claim, the trial Court ought to



A.S.No.270 of 2013

have ordered a nominal interest at 12% per annum on the damages amount.

11. I have heard the arguments of Mr.T.S.Baskaran, learned counsel appearing for the 3rd defendant/appellant and Mr.B.K.Sreenivasan, learned counsel appearing for plaintiffs/Cross Objectors and perused the materials available on record.

12. "No Man is an Island" is a well known saying that seems to advance the thought that all persons are connected to each other by common goals and obligations. The same can be said for real property, No lands exists in isolation". If one owns land, one must deal with all the people that surround the land and who own land that gives access to one's land. This simple fact has let to a thousand years of common law followed by statutory law as to the rights and obligations of property owners whose lands abut.

13. In general, the underlying theme is that the adjoining land owners are expected to use their properties reasonably without unduly



A.S.No.270 of 2013

interfering with the rights of the owners of contiguous land.. The land owner is relieved from liability for injuries caused to an adjoining owner if the land owner makes a "reasonable use" of his/her property. Therefore, it is the duty of the land owner to utilize his/her property in a reasonable manner avoiding injury to the adjoining property or causing unreasonable harm to others in the vicinity. Accordingly, liability may be imposed on an adjoining land owner if that individual creates a dangerous condition. The principles of the law of negligence may also pertain to the question of reasonable use. The reasonable use of land by an adjoining land owner is determined by considering the circumstances on a case by case basis. Therefore, a land owner, while constructing buildings and other structures, must make reasonable and proper use of his/her property. The land owner has a duty to use reasonable care to prevent structures from becoming dangerous to adjoining owners. However, a land owner has the right to build up a foundation for a proposed building. But the land owner is liable for damage to adjoining property caused by inherently dangerous instrumentalities employed in the work. Even if an independent contractor engaged by a land owner for work or construction is liable to adjoining



A.S.No.270 of 2013

owners for damage to their property caused by his/her negligence. In this regard, I would rely upon a judgment of the High Court of Delhi in the case of ***Nitin Walia v. Union of India & Ors.***, reported in ***AIR 2001 Delhi 140*** for the same principle which is extracted as hereunder:-

"Not able to keep the required caution and safeguards would clearly amount to negligence and such CS No. 509/2014 Sh. Rajeev Kumar V. Sh. Sonu Gupta and Ors. Page No. 12 of 14 negligence is actionable under the Law of Torts. In Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat MANU/SC/0692/1994, [1994]3SCR 866, the Supreme Court quoted the meaning of negligence as defined by Winfield in the following words "negligence as a Tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff. Therefore, negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. In Poonam Verma v. Ashwin Patel,



A.S.No.270 of 2013

MANU/SC/0530/1996: AIR 1996 SC 2111, Supreme Court enumerated following three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) Breach of the said duty and 1 (3) Consequential damage."

14. Therefore, the definition 'Negligence' involves the following constituents:

1. a legal duty to exercise due care;
2. breach of the duty; and
3. consequential damages.

15. However, Negligence has many manifestations. It may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence,, hazardous negligence, active and passive negligence, willful negligence or negligence *per se*. Not able to keep the required caution and safeguards would clearly amount to negligence and such negligence is



A.S.No.270 of 2013

actionable under the law of Torts. The instant suit for damages based upon law of torts so, plaintiffs are required to establish that :

- (i) existence of duty to take care,
- (ii) breach of the said duty by the defendant due to failure of attain standard of care prescribed in law
- (iii) casual connection between the breach and the loss caused.

16. Now, the question before this Court is that whether in the present case, the defendant No.3 was negligent or careless while he was carrying out the construction work in B schedule property or not.

17. According to the plaintiff, due to the negligence of the 3rd defendant, his property i.e., suit A schedule property has been damaged badly for which defendant No.3 is liable to pay the damages. On the side of the plaintiffs, the photographs showing A schedule property is marked as Ex.A.7. The report of the Engineer is marked as Ex.A.6.

18. The Engineer's report reads as follows:



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A.S.No.270 of 2013

" TO WHOMSOEVER IT MAY CONCERN

This is to certify that the structural stability of the existing building, located at No.21 (Old) No.45 (New) South Mada Street, Mylapore, Chennai-600 004. is in critical stage. The existing building was inspected by the under signed on 21st October 2001 at the instance of Mr. T.Sureshkumar and Mr. T.Ravikumar.

The Neighbour land builder had recently taken foundation for the adjoining new building under construction. Care has not been taken during the time of excavation by the builder. The soil below the existing foundation was slided, due to this the outer wall of the entire building settled very much and cracks to the extent of one inch to one and half inch wide developed in the roof, wall, floor. The house owners have given casurina heavy poll supports on the entire length of the building to avoid any full (or) collapse of the building structure.

The existing condition of the building is very bad to live anyone inside. The entire building should be demolished and reconstructions shall be done. For this the following may be estimated cost for construction.

*Existing area of construction with pucca roof =
1965 Sq.ft*

Existing area of Construction with roof =



A.S.No.270 of 2013

1,240 Sq.ft

Cost of construction per square feet for RCC framed structure with teak wood doors, windows, white mosaic flooring, other normal specifications for sanitary water supply and electrical will be Rs.575/- per Square feet.

Cost of Construction per Square feet for tiled roof construction for the above said specifications will be Rs.400/- per Square feet.

*Estimate for New construction = 1965×575.00
+ $1240 \times 400/-$ = 16,25,875.00*

*Cost for Clearing the existing building = 3205×75.00
= 2,40,375.00*

(Rs. 75.00 Per Square feet includes the dismantling, clearing and local authority sanctions)

*Total estimated cost to reconstruct = Rs.
 $16,25,875.00 + 2,40,375.00$ = Rs.18,66,250.00
(Rupees Eighteen Lakhs sixty six thousand two hundred and fifty only)*

for BOURNA CONSULTANTS ENGINEERS

(S.P.S.INBARAJAN) Chief Consultant."

19. From Ex.A.6 report of the qualified engineer, three things are clear.

Firstly, that the Engineer has inspected the suit property on



A.S.No.270 of 2013

21.10.2001 and the suit is filed on 12.12.2001.

Secondly, the Engineer has not inspected the B schedule property i.e., adjacent property.

Thirdly, the report is only with regard to the damages in 'A' schedule property, for cost of estimation for constructing a new building.

20. According to the Engineer's report (Ex.A6) the 'A'schedule building is very bad to live and it has to be demolished and reconstructed. The cost of estimation to reconstruct is estimated to the tune of Rs.18,66,250/-. Admittedly, the plaintiffs were residing in the suit 'A' schedule property till the year 2002 even after the construction work in 'B' schedule property was completed. Therefore, the contention made by the learned counsel appearing for the plaintiff that due to the excavation work done in the 'B' schedule property made the building in 'A' schedule property as inhabitable one cannot be accepted. It is not in dispute that the 3rd defendant was carrying out construction in the 'B' schedule property which is adjacent to the suit property. It is pertinent to mention that plaintiff has not disclosed either in his plaint or in his evidence that when



A.S.No.270 of 2013

the 3rd defendant started his construction in the 'B' schedule property or when the plaintiffs noticed the damages in their property. Further, it is also pertinent to note that the plaintiff has not disclosed either in his plaint or affidavit that when the photographs marked as Ex.A6 were taken. Further, plaintiff failed to establish that how the 3rd defendant was negligent while he was carrying out construction in 'B' schedule property or what care has to be taken by the 3rd defendant while constructing 'B' schedule property.

21. Even the Engineer's report Ex.A.6, is bereft of details with regard to the allegations made by the plaintiffs. He has visited the property few months prior to institution of the suit. He has not visited the 'B' schedule property belonging to the defendants 1 & 2. He has not explained in his report that because of the construction work done by 3rd defendant, cracks and damages were caused to the plaintiff's property. The Engineer has not visited the property at the time of excavation work was carried on in the 'B' schedule property. He has also not explained the cause of damage to the suit property. The plaintiffs also failed to establish



A.S.No.270 of 2013

that, for the purpose of digging the 3rd defendant used heavy earth moving equipments like bulldozers, JCB, excavators, etc. Though it was very vociferously argued by the learned counsel for the plaintiffs that the 3rd defendant had used heavy machines for carrying out the excavation work, which caused damaged to the suit property, this argument is not tenable in the teeth of the host of photographs placed on record by the plaintiff. None of the photographs show any machine being used for excavation work.

22. The plaintiffs failed to prove that the damage was caused to the eastern wall of 'A' schedule property because of the 3rd defendant and his men who were careless and reckless. According the defendants, there existed a compound wall between the 1st defendant's house and that of the plaintiff. The said compound wall was intact till he completed the construction work and it exists even today and that he had completed the construction without demolishing the compound wall. His further contention is that the plaintiff had rested his roof over the bathroom in a portion of the said compound wall, while the mother wall of the plaintiff in the front portion was separate. The plaintiffs have built their wall



A.S.No.270 of 2013

adjacent to the 1st defendants compound wall at the south east portion of his property where he had raised additional construction. No part of the plaintiff's building rested on the compound wall except the asbestos roof over the bathroom put up in his property towards the middle. After completion of the construction in the 1st defendants' property the gap between the existing compound wall and the new construction raised by the 3rd defendant was neatly packed with concrete mixture and no damage was done to the existing compound wall. Further contention of the 3rd defendant's is that the digging work was done only in the earmarked places for fixing the columns and not on the entire stretch on the immediate eastern side of the compound wall. There was sufficient distance between the columns raised and the compound wall. Since the plaintiffs building was more than 100 years old with poor maintenance the said damages were caused. The alleged damages were not caused by the 3rd defendants due to his construction activities. There was no negligence on the part of the 3rd defendant as alleged by the plaintiffs. Moreover, Ex.B.3 family arrangement deed dated 12.12.2001 would reveal that the 'A' schedule property is more than 100 years. These facts



A.S.No.270 of 2013

were not rebutted by the plaintiffs. Admittedly, the plaintiff had earlier filed a suit claiming a right to easement of air and light and sought to restrain the defendants from proceeding with the construction in O.S.No.6228 of 91 and the same was dismissed against which no appeal is preferred by the plaintiffs. The copy of judgement and decree in O.S.No.6228 of 91 is marked as Ex.B.5 & B.6. Hence, from the above factual matrix it would establish that the present claim of the plaintiffs for damages is with ulterior motive. Even in the earlier suit there was no allegation about damage to the suit property. The photographs and the documents marked on the side of the defendants would clearly established that the 'A' schedule building of the plaintiffs is a very old structure, built out of mud and brick and was not properly maintained and it is for this reason of the nature of plaintiff's property that cracks would have appeared and it was not because of any negligence or lack of performance of due obligation by the 3rd defendant.

23. In the absence of evidence on record that the 3rd defendant was negligent in construction of 'B' schedule property or he has not taken due care in construction of the said property which resulted to the damage



A.S.No.270 of 2013

to the property of the plaintiff, the plaintiff is not entitled for the alleged damages. Unless the plaintiffs proved the negligence on the part of the 3rd defendant while constructing the 'B' schedule property, the plaintiffs are not entitled for damages.

24. Under these circumstances, it cannot be said that the damage to the A schedule property is direct result of the construction carried out by the defendant No.3 in 'B' Schedule property.

25. In view of aforesaid discussion, I am of considered opinion that there is no evidence on record that defendant No.3 was negligent in construction of B schedule property i.e., adjacent property or he has not taken due care in construction of B schedule property which resulted to the damage to the property of plaintiff. Thus, plaintiffs failed to prove negligence on the part of the defendant No.3 in construction of 'B' schedule property. Since it is found that the plaintiffs are not entitled for any claim of damages, the question of enhancement of damages does not arise.



A.S.No.270 of 2013

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26. In the result, the appeal suit is allowed. The judgment and decree passed by the learned XV Additional District Judge, Chennai is set aside and the cross objection is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

27.02.2024

vsn

Index: Yes/No

Speaking Order : Yes/No

To

The XV Additional District Court, Chennai

K.GOVINDARAJAN THILAKAVADI,J.

vsn



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A.S.No.270 of 2013

PRE- DELIVERY JUDGEMENT MADE IN

A.S.No.270 of 2013
and Cross Obj.No.35 of 2012

27.02.2024