

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.359 of 2015

JUDGMENT:

This appeal under Order XLI Rule 1 of the Code of Civil Procedure by the unsuccessful plaintiff is directed against the order dated 16.05.2015 of the learned Vacation Civil Judge-cum-Special Sessions Judge, Anantapuram, passed in I.A.No.33 of 2015 in O.S.No.3 of 2015.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff and the learned counsel for the respondents/defendants. I have perused the material on record.

3. The facts that led to filing of the appeal may be stated, in brief, as follows:

The plaintiff had brought the suit against the defendants for perpetual injunction to restrain the defendants, their men, agents etcetera from demolishing AB joint wall and from interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule property of an extent of Ac.7.78 cents paiki, Flat No.7 Full and Flat No.6 Half portion, total extent of Ac. 0.07½ cents, more fully described in the schedule annexed to the plaint. The defendants are resisting the suit. In the said suit, the plaintiff had filed the present I.A. 33 of 2015 under Order XXXIX Rules 1 and 2 of the Code to grant a temporary injunction restraining the defendants and their men, agents, servants and relatives from demolishing the AB joint wall and interfering with the peaceful possession of the petition schedule property. That application was resisted by the defendants.

4. At the time of enquiry before the trial Court, exhibits A1 to A6 were marked on behalf of the plaintiff and exhibits B1 to B8 were

marked on behalf of the defendants. On merits, the trial Court had dismissed the application of the plaintiff. Therefore, the plaintiff had filed this appeal.

5. The learned counsel for the plaintiff would submit that the plaintiff has no objection for implementing the award of the Lok Adalat passed in O.S.No.95 of 2014 on the file of the Senior Civil Judge, Dharmavaram, which was passed in a suit between the husband of the plaintiff and the defendants in regard to demolition of the AB joint wall by using concrete cutting equipments but, the only submission on behalf of the plaintiff is that the said cutting operation shall be done by using sophisticated and advanced equipment only and not by use of any other equipments, which cause vibrations and damage the plaintiff's portion of the building which is admittedly abutting the multi storied structure. Therefore, the only grievance of the plaintiff is that while executing the terms of the award, if vibrations are caused due to the cutting operations, the plaintiff's building is likely to be damaged and that the damage that may be caused due to vibrations that occur during cutting operations cannot be compensated in terms of money. Therefore, a request is made to dispose of the appeal with necessary directions to protect the interests of both the parties.

6. *Per contra*, the learned counsel for the defendants would submit that the plaintiff's case is that she has got the plaint schedule property under exhibit A2 gift deed executed by her husband, but the said document on a perusal would show that no structure is in existence, but, contrary to the recitals in the document, a claim of ownership is being made in regard to the multi storied building named as K.K.Mansion and that the disputed wall between the multi storied building of the plaintiff and the defendant is a joint wall and that the plaintiff has not come to the Court with clean hands and that she has suppressed the facts in regard to the earlier award of the Lok Adalat in the former suit

between the husband of the plaintiff and the defendants which ended in compromise and which is binding on both the parties, and that the complaint now being sought to be made that damage was caused or is likely to be caused to the building is incorrect and that plaintiff is not entitled to the equitable relief of injunction.

7. In this appeal, the defendants had also filed report of the Industrial Consultancy Services, JNTU College of Engineering, Anantapur, wherein it was opined by the expert therein as follows:

“The slab can be opened by using the concrete cutting equipments. Open to sky should be made only after providing the frame (beam column with rigid edge conditions at each joint and with specified dimension & reinforcement). Proper care should be taken for cutting of the frame (i.e., 28 days curing). The adjacent structure will not be affected by doing this work as it is structurally sound enough.” (Reproduced verbatim)

Having filed the report of the expert, it is sought to be contended that, in any view of the matter, the defendants are proceeding to open the slab by using only the sophisticated concrete cutting equipment and that the defendants are prepared to follow the procedure stated in the report of the expert.

7. Now the points for determination are- ‘whether the plaintiff had made out a valid and sufficient grounds and had satisfied the cardinal principles for granting temporary injunction as prayed for?’ And ‘whether the appellant had made out valid and sufficient grounds for allowing the appeal and setting aside the order, which is impugned in this appeal?’

8. The facts, contentions, which are relevant for consideration, are already stated, in detail, supra. I have perused the order, which is

impugned. The husband of the plaintiff and the 1st defendant herein had originally purchased the sites which are adjacent to each other and they had obtained approval/permission from Dharmavaram Municipality for making construction of a multi storied structures in their respective sites and had constructed multi storied structures abutting to each other; but, while making the said constructions, they had constructed their buildings in such a way that they are connected to one another by AB joint wall. Both the parties have also constructed pent houses over their respective structures. While so, when disputes had arisen between the husband of the plaintiff and the 1st defendant, the former suit O.S.No.95 of 2014 was brought by the husband of the plaintiff against the defendants for the relief of injunction in regard to AB joint wall. Admittedly, that suit had ended in a compromise after arriving at an amicable settlement before Lok Adalat and the Lok Adalat Bench of the Mandal Legal Services Authority had passed an award in the said suit on 06.12.2014 where by the defendants herein have agreed to raise separate wall in their open space to the South of the AB joint wall from ground floor to the pent house, without damaging the AB joint wall, in the presence of Retainer lawyer by name M.Hussain Basha. There are also other terms in the said award. While so, by claiming that her husband had gifted the property to her, the plaintiff had brought the present suit and also an application for grant of temporary injunction. Now as per the submissions made before this Court, the plaintiff is prepared to abide by the terms of the award and allow the defendants to proceed ahead as per the terms of the award and make constructions as stated therein for cutting the slab with concrete cutting equipments. However, in the changed circumstances, the only request of the plaintiff is that the defendants are to be directed to use sophisticated and advanced concrete cutting equipments, which may not cause vibrations and damage to the building. Be that as it may, the defendants had obtained the report from Industrial Consultancy Services, JNTU College of Engineering,

Anantapur, which is referred to supra, to proceed in a scientific manner while implementing the terms of the award. And, according to the submissions of the learned counsel for the defendants, the course suggested in the report of the said Industrial Consultancy Service if followed, it would inure to the benefit of both the parties. The learned counsel for the plaintiff did not dispute the report of the expert on any grounds. Having perused the report which is placed on record along with the material papers filed by the defendants herein, this Court is satisfied that the defendants' approach in the matter is fair and merits consideration and that the defendants can be permitted to proceed with the implementation of the terms of the award as per the guidelines given by the expert viz., Industrial Consultancy Services. The ends of justice would be met, if it is observed that while implementing the terms of the award, the defendants shall follow the guidelines given in the report furnished by the Industrial Consultancy Services, JNTU College of Engineering, Anantapur signed by the Principal viz., the report given in response to letter ref. Nil, dated 02.07.2015, which is enclosed to the letter in RC. AN/CEA/ICS/S.M. LAB/T-413 15, dated 15.07.2015. Thus, this Court finds that the plaintiff had not made out valid and sufficient grounds and had not satisfied the cardinal principles for grant of an equitable relief and that there are no grounds to interfere with the order impugned. However, the appeal can be disposed of by giving necessary directions, as desired by both the sides as such a course sub serves the ends of justice.

9. Accordingly, the CMA is disposed of with the following direction: The defendants while proceeding to implement terms of the award of the Lok Adalat shall follow the guidelines in the report of the Industrial Consultancy Services, JNTU College of Engineering, Anantapur, which is referred supra. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in this appeal shall stand

closed.

21-09-2015
Hsd

M. SEETHARAMA MURTI, J