

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.01.2017  
Judgment pronounced on : 24.01.2017  
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.879 of 1999

Rameeza Beevi ... Appellant/Plaintiff

Vs.

Abdul Razack by his  
Power Agent & Wife  
Subaida Beevi ... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 02.03.1999 in A.S.No.148 of 1998 on the file of the Court of Principal District Judge, Nagapattinam, confirming the judgment and decree dated 13.02.1998 in O.S.No.93 of 1997 on the file of the Court of District Munsif, Tiruvarur.

For Appellant : Mr. A.Muthukumar

For Respondent : No Appearance

JUDGMENT

The plaintiff is the appellant herein. The suit for recovery of liquidated damages of Rs.24,360/- was dismissed by the Trial Court and the same was confirmed by the First Appellate Court. Hence, the Second Appeal is preferred against the concurrent findings of the courts below.

2. The case of the plaintiff is that the defendant, who is the neighboring house owner has encroached upon the passage between their houses and when he was questioned about the encroachment, the defendant damaged the tiles and roof of his house. Before the plaintiff could take any legal action, the defendant filed a civil suit for injunction before the District Munsif Court, Tiruvarur, in O.S.No.117 of 1991. The plaintiff has incurred a loss of Rs.24,360/- to repair the damaged roof and therefore suit to compensate the loss of Rs.24,360/- has been filed.

3. The defendant contested the suit on the ground that the lane between the respective houses is not a public lane but owned by him and he has left out that portion to carry out maintenance of his wall and to drain the rain water. The allegation that the plaintiff's house was damaged is false and the plaintiff has not incurred any loss much less Rs.24,360/-. Since the defendant was prevented from carrying out maintenance of the wall using the lane, he was constrained to file a suit in O.S.No.117 of 1991 for injunction and succeeded. To counter the same, the plaintiff has filed the present suit claiming compensation based on imaginary damage.

3. The Trial Court after considering the evidence let in by the parties has held that there is no evidence to substantiate the claim of the plaintiff that he had incurred a loss of Rs.24,360/- for carrying out the repair. Further held that in the previous proceedings O.S.No.117 of 1991 and A.S.No.83 of 1992, the Courts have held that the defendant is entitled to use the lane to carry on maintenance work of his house and drain the water, and the suit lane is not a common lane but the property of the defendant. Hence, the plaintiff has no ground to claim compensation for the alleged damages.

4. The First Appellate Court after re-appreciating the evidence has held that there is no proof to show that the defendant has caused damage to the property of the plaintiff and value of the damages is to the extent of Rs.24,360/-. In the absence of the evidence, claim for compensation is not sustainable. Accordingly, the First Appellate Court dismissed the appeal confirming the judgment of the Trial Court.

5. At the time of admission, this Court has formulated the following substantial question of law:

"When damages to the plaintiff's wall is established, would the plaintiff be within his legal rights to file a suit only for damages or should he necessarily claim the relief for mandatory injunction against the defendant to reconstruct the wall and only in the event of his failure to do so claim damages?"

6. From the evidence let in by the parties, it is evident that the roof of the plaintiff which alleged to have been damaged by the defendant was projecting over the defendant's lane. Both the courts below have held that the plaintiff has failed to prove that the defendant caused damage to the plaintiff's roof and property. Further, it is also held that the compensation claimed by the plaintiff is not supported

by any acceptable documentary evidence.

7. In the case of this nature, the plaintiff should not only prove damages, but also prove that the damage was caused due to the commission or omission of the defendant. In this case, the appellant/plaintiff has miserably failed to prove neither of the above facts. Therefore, the Courts below have rightly dismissed the claim and there is no substantial questions of law involved in this case for interference.

8. For the aforesaid reasons, the second appeal stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,  
Nagapattinam.
2. The District Munsif,  
Tiruvarur.

RJ(CO)  
RS(27/02/2017)

Judgment made in  
Second Appeal No.879 of 1999

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