

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Second Appeal No.674 of 2017

Date: 21.07.2017

Between:

Sekharamahanthi Jnanodayam and 2 others

... Appellants

and

Kanthimahanthi Satyananda Vijaya Bhaskara Lakshmi

...Respondent

Counsel for the Appellants: Mr.K.Purushotham

Counsel for the respondent: None appeared

The Court made the following:



Order:

This Second Appeal is filed against the concurrent findings rendered in favour of the respondent/plaintiff.

I have heard Mr.K.Purushotham, learned Counsel for the appellants/defendants, and perused the record.

For convenience, the parties shall be referred to as they are arrayed in the suit.

The plaintiff filed OS.No.789 of 2010 on the file of the II Additional Junior Civil Judge, Visakhapatnam, (i) for declaration that she is entitled to half share from out of the unspecified and undivided ground area of an extent of 20 square yards *i.e.*, 5 feet width from north to south and 37 feet length from east to west, situated on the southern side of the properties of both the plaintiff and the defendants as mutual lane; (ii) for a consequential relief of permanent injunction along with mandatory injunction directing the defendants to restore the constructions illegally removed in the common area; and (iii) for costs.

It is the pleaded case of the plaintiff that she has purchased a site admeasuring 78.11 square yards from defendant No.1 under Ex.A.34- registered sale deed, dated 30-05-1998; that the suit schedule site was acquired by defendant No.1 by way of registered sale deed, dated 22.06.1978; that later, he has constructed a residential house consisting of two portions in the ground floor under an approved plan; and that the approved plan included common septic tank for both the portions. The plaintiff further pleaded that from the beginning at the request of defendant No.1, her husband has invested half share for construction of the first floor with an understanding that each of them shall reside in their respective portions; that after realization of the mortgage loan, the portion belonging to the plaintiff's husband has to be registered in his name or of his nominee; that after completion of construction, defendant No.1 resided in the western portion and the eastern portion was allotted to the plaintiff; that during December, 1983, stair case, parapet wall and compound wall were constructed with equal contribution by both parties; that the appellant has reduced into writing the developments made on the suit schedule site on a non-judicial stamp paper;

and that after retirement of defendant No.1, he has got registered sale deed, dated 30-05-1998, in favour of the plaintiff with respect to eastern side portion of the building. The reason with which the plaintiff filed the suit was that in the year 2006, the defendants with the aid of their henchmen tried to disturb the railing on the staircase, which was in existence since 1983 under the guise of correcting vastu; that on the resistance put up by the plaintiff, the demolition work was stopped but the defendants have not restored the structure, which was removed by them; and that later, the defendants have disturbed the lavatory drainage system of the plaintiff on 18-05-2010 by unauthorisedly laying down a drainage pipeline connecting the septic tank outlet. It was further averred that the defendants tried to convert the joint rights into individual rights by disturbing her easementary rights by unauthorized connection of underground drainage.

The defendants filed a written statement denying the plaint averments and asserting that the plaintiff has no right over the plaint schedule items and that they exclusively belong to them.

On the respective pleadings of the parties, the trial Court has framed the following issues:

- “1. Whether the plaintiff is entitled for declaration as prayed for ?
2. Whether the Court is having pecuniary jurisdiction to try the suit ?
3. Whether the plaintiff is entitled for mandatory injunction as prayed for ?
4. Whether the plaintiff is entitled for permanent injunction as prayed for ?
5. To what relief ?”

In support of the case of the plaintiff, her husband was examined as PW.1 and Exs.A.1 to 35 were marked. On behalf of the defendants, defendant No.3 was examined as DW.1 and Exs.B.1 and B.2 were marked.

On appreciation of the oral and documentary evidence, the trial Court has decreed the suit by declaring that the plaintiff is entitled to (i) half share of the unspecified and undivided ground area of 20 square yards; (ii) consequential relief of permanent injunction restraining the defendants from interfering with the joint, common and easementary rights over the schedule mentioned mutual lane, staircase and lavatory pipeline existing thereon along with septic tank;

and (iii) mandatory injunction to restore the illegal removals made by the defendants in common area.

AS.No.79 of 2016 filed by the defendants against the said judgment was dismissed by the VII Additional District Judge (FTC), Visakhapatnam.

At the hearing, Mr.K.Purushotham, learned Counsel for the defendants, submitted that both the Courts below have failed to properly appreciate the evidence in general and the recitals in Ex.A.34 in particular under which the suit schedule site was sold by his clients to the plaintiff. He has further submitted that unless the sale deed executed in favour of the plaintiff has conferred on her the right to use common areas and also the septic tank *etc.*, she is not entitled to any relief.

A perusal of the judgment of the trial Court shows that on appreciation of the oral and documentary evidence, it has come to the conclusion that the respondent has the right to enjoy the suit schedule property jointly. In my opinion, the findings rendered by the trial Court fall in the realm of appreciation of evidence and therefore, even if the trial

Court has committed an error in that process, the same does not give rise to substantial question of law, more so, when the lower appellate Court on re-appreciation of the evidence has confirmed the said findings.

For the afore-mentioned reasons, I do not find any substantial question of law arising in this Second Appeal and the same is, accordingly, dismissed.

As a sequel to dismissal of the Second Appeal, SAMP.No.1423 of 2017, filed by the appellants for interim relief, is disposed of as infructuous.

Dt: 21st July, 2017
lur

(C.V.Nagarjuna Reddy, J)

