

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.27 of 2018

S.Vishwanathan ... Appellant/Defendant

..vs..

A.Jagannathan ... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 16.10.2015 passed in A.S.No.320 of 2014 on the file of the learned XVII Additional Judge, City Civil Court at Chennai confirming the judgment and decree dated 25.06.2014 passed in O.S.No.7008 of 2012 on the file of the learned VIII Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.J.R.K.Bhavanantham

J U D G M E N T

The defendant, aggrieved by the concurrent findings of the Courts below, has preferred the above Second Appeal.

2. The suit is filed by the plaintiff seeking mandatory injunction directing the defendant to close the door way made by the defendant in his house No.17/1 (Old No.6), Subbarayan 3rd Street, Nammalwarpet, Chennai 600 012 in the middle of the passage facing the passage, identical openings made by him over and over the ground floor, in the first floor, as well as in the second floor and also for removal of brick steps raised on the common passage and for other reliefs.

3. The appellant / defendant is the nephew of the plaintiff. There was a partition as per Ex.A-1-Partition deed entered between both the parties. In the said partition deed with regard to the usage of the common passage of the suit property, it has been stated that " The party of the second part confirm that he shall not construct opening or windows jetting in the common passage on the southern side of his property and that he has a right to have windows opening into his side for the purpose of enjoying air and light". The learned counsel for

the appellant argued that the above said Clause has not been properly construed in its right perspective. The defendant seems to have marked Ex.B-2-Photographs. The first appellate Court has come to a clear finding that from the photographs, it is clear that there is a opening in the building of the defendant's southern wall facing common passage with small steps by encroaching upon the suit property to the extent of 3.5 feet East to West and 6 inch South to North. The admission made by the defendant has also been considered by the lower appellate Court, wherein, the appellant / defendant has specifically admitted that besides window, there is a door opening into the common passage. It is also further admitted by the appellant that he had not obtained the building permission for the first and second floor. Though it may be open to the defendant to have window, without the doors of the same opening into the common passage, he cannot have any opening much less a door into the common passage. Any such opening, facing the common passage constructed by the defendant is violative of the terms of partition deed-Ex-A-1. The trial Court, having considered the factors, decreed the suit in so far as the mandatory injunction directing the defendant to close the opening in his building facing the southern common passage within a period of two months. The lower appellate Court also confirmed the said findings of the trial Court.

4. In absence of any substantial question of law, there is no infirmity otherwise in the findings of the Courts below to interfere with the same in the second appeal.

5. In the light of the above, the Second Appeal is dismissed and the judgment and decree of the Courts below is confirmed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

srn

To

1. The XVII Additional Judge, City Civil Court, Chennai
2. The VIII Assistant Judge, City Civil Court at Chennai.

+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.3769

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