

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.754 of 2017

1. D.Mangilal
2. D.Tejraj
3. D.Maveerchand

...Appellants/Respondent/Defendants

...vs...

J.Javarilal Parekh

... Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 28.12.2005 passed by the Subordinate Judge, Court of Nilgiris at Udhagamandalam in A.S.No.71 of 2004 as confirmed in O.S.No.342 of 1995 on the file of the District Munsif Court, Coonoor dated 28.10.2004

For Appellants: Mr.T.T.Ravichandran

For Respondent: Mr.Samir S.Shah

for M/s.Shah and Shah

J U D G M E N T

The appellants herein, who are the defendants in a suit filed for permanent injunction, have preferred the above Second Appeal.

2. The suit was filed by the plaintiff in the year 1995 for permanent injunction restraining the defendants from causing in any manner of obstruction whatsoever to the windows in the Southern wall of the building belonging to the plaintiff in the suit schedule property.

3. Originally, the trial Court had dismissed the suit and on appeal by the plaintiff, the appellate Court, after considering the oral and documentary evidence, including the documents filed by him under Exs.C1 to C9, and also the report of the Commissioner, held that the disputed Southern side wall of the plaintiff is situated in Survey No.1417, which belonged to the defendants. It is also stated that there was an oral agreement between the plaintiff's predecessor-in-title and the defendants' father and that the plaintiff had put up a disputed Wall. It is categorically found by the lower appellate Court

that the plaintiff's predecessor-in-title had encroached some portion over the plaintiff's property situated in Survey No.1417 during the year 1965. When the said Wall was being constructed, there was no objection by the defendants. Having acquiesced to the act of the plaintiff, the defendants cannot now turn around to say that it is only a common wall. The lower appellate Court had also given a finding that the physical features of the defendants' house clearly shows that it is unconnected with the disputed East-West wall. The defendants have also not put up any construction after purchasing the property under Ex.B-1 in the year 1945 and they had also not objected the construction of the common wall in the year 1965 by the plaintiff. Therefore, the question of common wall does not arise.

4. The Wall in question is forming the northern side of the defendants' building. The defendants had put up a parallel construction in the disputed Wall without touching upon the plaintiff's wall. However, it is found that any such construction would obstruct the free flow of air and light of the first floor of the plaintiff's building. As already held by the Courts below, it is not a common Wall and it has been exclusively used by the plaintiff and his predecessor-in-title, and hence, the defendants cannot have any right over the same. At the same time, the plaintiff also cannot stop the defendants from putting up the Wall within their lands, though it might obstruct the free flow of air and light through their windows. The first appellate Court, while dismissing the appeal filed by the plaintiff, observed that the defendants cannot have any claim in the suit Wall as a common Wall, but it is open to the defendants to make the construction touching upon the said Wall, though such construction might obstruct the existing windows on the disputed Wall of the plaintiff. The appellants, being the defendants, have virtually been given a decree in the suit filed by the plaintiff. Therefore, they cannot have any grievance, as their rights are not at all affected, since the plaintiff suit is dismissed.

5. In the light of the above discussion, the Second Appeal is dismissed and the judgment and decree of the lower appellate Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Nilgiris, Udhagamandalam

2. The District Munsif Coonoor

S.A.No.754 of 2017

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