

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.450 of 2018

1.Sivakumar
2.Devi @ Ranganayaki
3.R.Selvarajan

....Appellants/Respondent

Versus

Rangasamy Naidu (Died) - Deceased Plaintiff's

1.Arthanari Naidu
2.Dhanalakshmi
3.Arul @ Arulanandam
4.Subramaniam
5.Govindaraj
6.Santha @ Vasanthakumari

(Cause title accepted vide order of court dated 04.06.2018 made in M.P. 7956/2018 in S.A.SR.No. 79494/2017)

....Respondents

This Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 06.12.2010 made in A.S.No.71 of 2010 on the file of the Principal Sub Court, Erode - reversing the judgment and decree dated 15.06.2010 made in O.S.No.90 of 2005 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr.L.Mouli

J U D G M E N T

This Second Appeal arises against the reversing judgment and decree passed by the learned Principal Sub Judge, Erode in A.S.No.71 of 2010 dated 06.12.2010, in and by which the learned Principal Subordinate Judge has reversed the judgment and decree passed by the learned I Additional District Munsif, Erode in O.S.No.90 of 2005 dated 15.06.2010.

Plaintiff's case:

2.1. The defendants are the appellants before this Court. The deceased respondent/plaintiff has filed a suit in O.S.No.90

of 2005 for bare injunction in respect of a North-South compound wall situated in the western side of the property which runs between the properties of the appellants and the deceased respondent/plaintiff. The case of the respondent/plaintiff was that property had been allotted to him pursuant to a partition between himself and his brother thirty five years prior to the suit. In fact, both he and his brother had succeeded to get into the suit property based on the Gift Deed dated 30.03.1929 executed in favour of their mother Marammal. After the partition, the respondent/plaintiff had been enjoying the same as his absolute property by mortgaging the property with the Erode Cooperative Urban Bank, Erode and by putting up construction. It is his case that he leased out the property to 5 persons and rear portions of the property are very old tiled houses constructed more than seventy years ago made of mud and brick walls.

2.2. It is his further case that the defendants who had recently purchased the western side of the suit property from one Deivanayagam Pillai demanded the respondent to sell the suit property. But, the respondent had refused to do so and therefore, disgruntled by the refusal, the defendants had started giving trouble to the respondent by digging a bore well very near the north-south compound wall. The respondent had claimed a half share in the wall. It is also his case that the Kombai walls of the northern portions of his property rest on the north-south common wall and on account of this digging of the bore well, the wall had been damaged. Therefore, left with no other alternative since the appellants were persons of considerable influence, the respondent/plaintiff has come forward with the above suit for injunction.

Defendants' case:

3. The appellants would admit to the fact that the suit wall belonged to the vendor of the predecessors in title of the plaintiff which is also evident from the Sale Deed. Such a statement has been made in Paragraph No.8 of the written statement. However, later on, the appellants would contend that the suit wall belonged to them exclusively. Therefore, they sought for the dismissal of the suit.

Trial Court:

4. Pending the suit, an Advocate Commissioner had been appointed twice and their report and plan have been marked as Ex.C1 & C2 respectively. The Trial Court took a view that since the suit wall jointly belonged to the appellants and respondent appellants could not claim the decree for injunction and consequently, dismissed the suit.

Appellate Court:

5. The Appellate Court after considering the evidence in detail as also pleadings, accepted the trial Court's finding that the suit wall was a common wall. However, the Appellate Court referring to the provisions of Section 38(3) of the Specific Relief Act proceeded to grant an injunction since the provisions would clearly state that when the defendant invades or threatens to invade the plaintiff's right or enjoyment of property, the Court may grant a perpetual injunction.

6. Heard Mr.I.Mouli, learned counsel for appellants.

7. In this case, the Court has also taken note of the report of the Advocate Commissioner viz., Exs.C1 & C2 wherein the damage that has been caused to the suit property viz., suit wall on account of the activity undertaken by the plaintiff has been noted. I find that the appellant has not raised any substantial question of law warranting the interference of this Court under Section 100 of C.P.C.

8. In the result, this Second Appeal is dismissed and the order passed by the learned Principal Sub Judge, Erode in A.S.No.71 of 2010 dated 06.12.2010 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrr

To

1.The Principal Sub Court,
Erode.

2.The I Additional District Munsif Court,
Erode.

+1 CC to Mr.L.Mouli, Advocate sr 76035.

S.A.No.450 of 2018

VGII(CO)
SP(11/01/2019)