

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.543 of 2018

K.Ramakrishnan

...Appellant/Plaintiff

Versus

1.Mrs.Devaki Chidambaram

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

3.The Executive Engineer,
Corporation of Chennai,
Richards Park, 370, Anna Salai,
Chennai - 600 016.

...Respondents/Defendants 1 to 3

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree passed by the Hon'ble XVIII Additional City Civil Court, Chennai dated 14.10.2017, passed in A.S.No.252 of 2016 confirming the judgment and decree of the VI Assistant Judge, City Civil Court, Chennai dated 07.09.2015 passed in O.S.No.14648 of 2010.

For Appellant : Mr.V.Srinivasan

J U D G M E N T

This Second Appeal is filed challenging the judgment and decree passed in O.S.No.14648 of 2010 by the learned VI Assistant Judge, City Civil Court, Chennai dismissing the suit filed by the plaintiff/appellant herein for a declaration that the construction put up by the first defendant in the suit property is illegal and unauthorized, for a mandatory injunction to demolish the unauthorized and illegal construction and for a permanent injunction restraining the first defendant, her men, agents etc., from trespassing into the plaintiff's property by throwing rubbish, waste, putting up any construction, laying cables, water and sewerage lines into the

plaintiff's property. This judgment and decree has been confirmed by the learned XVIII Additional Judge, City Civil Court, Chennai in A.S.No.252 of 2016 dated 14.10.2017.

Plaintiff's case:

2.1. The parties are referred to in the same array as in the suit. The plaintiff is the appellant before this Court. The plaintiff/appellant had filed the suit O.S.No.14648 of 2010 for the reliefs stated supra stating that he had purchased Door No.5/3, West Kodambakkam Road, Chennai from one T.V.Kittappa under a Sale Deed dated 10.09.1970 and has been in possession and enjoyment of the same since the date of his purchase. While so, the first defendant/first respondent who had purchased the property bearing Door No.7, West Kodambakkam Road, Chennai situated on the eastern side of the plaintiff's property which at the time of purchase was a vacant site started interfering in the possession of the plaintiff. The plaintiff would contend that the measuring point was the western wall of one Sambanda Gramani's property and on measurement it was found that the first defendant's property was situated beyond 36 feet width of the plaintiff's land when measured from the east. The first defendant had entrusted the development of her property to a builder viz., M/s.Vijay Anand Builders and on 09.07.2010, the workers had mid-landed a slab and projected staircase into the plaintiff's property. This was objected too by the plaintiff who sent a Registered Letter to the first defendant on 10.07.2010. Though the said Letter was received by the first defendant, she failed to either send a reply or removed the objected projections.

2.2. On the contrary, the first defendant had proceeded to put two more projections into eastern side of the plaintiff's property. The first defendant had therefore encroached into the plaintiff's property and put up an unauthorized construction. The plaintiff had issued a legal notice and since he is left with no other option, he had come forward with the suit.

Defendant's case:

3.1. The first defendant resisted the suit by inter alia contending that the land measuring 2,364 sq.ft situated in Plot No.E/2 comprised in Survey No.192/2, T.S.No.14/4 Part, Block No.90, facing Jaffer Khanpet Road, New Kodambakkam Road West Mettupalayam, Chennai originally belonged to one Mr.K.V.Venkatasubramanian who had purchased the same under a Sale Deed dated 27.10.1969 from one Mr.T.V.Vasudevan. After his purchase, the said Venkatasubramanian had put up a building in the year 1983 after obtaining necessary approval from the Corporation of Chennai. The said Venkatasubramanian sold the western side vacant land measuring 5 feet x 81 feet i.e., 405 sq.ft to one Mr.T.S.Varadarajan retaining to himself an extent of 1,959 sq.ft together with land and building. Thereafter, the

said Venkatasubramanian had put up a compound wall on the southern side and eastern side boundaries of the remaining property.

3.2. After the death of Venkatasubramanian, the first defendant had purchased the land and old building from his legal heirs under a Sale Deed dated 03.09.2009. Since the said building was in a very old and dilapidated condition the first defendant had decided to demolish the same and put up a new construction on his site. With this intent, the first defendant had obtained necessary sanction from the defendants 2 & 3, dated 24.03.2010 and had started his construction work after demolishing the existing building through M/s.Vijay Anand Builders. The construction has also been completed and the property assessed to Corporation Tax. The plaintiff who is the adjacent owner has demanded a strip of land measuring 1 foot wide and 82 feet in length on the first defendant's eastern side so as to annex the same to his property or in the alternative to pay a sum of Rs.5,00,000/-. Thereafter, the plaintiff had started to disturb the construction and had also filed a suit for bare injunction against the defendants 2 & 3 for permanent injunction. The first defendant contended that her building was put up without approval is totally false and there was no trespass by her.

Trial Court:

4. The parties had gone to trial and during the trial, the plaintiff/appellant had examined himself as P.W.1 and Exs.A1 to A15 were marked on her side. On the side of the defendants, the Power of Attorney of the first defendant had examined himself as D.W.1 and Exs.B1 to B12 were marked. The learned trial Judge had held that on a perusal of the report filed by the Advocate Commissioner who had taken the assistance of the surveyor and measured the property would show that the first defendant was only in possession and enjoyment of 1,912 sq.ft as against 1,959 sq.ft to which she was entitled to. Similarly, the plaintiff/appellant is owning only 2,824 sq.ft as against the 1 gr. 560 sq.ft which belong to her. Therefore, the Court below came to the conclusion that there was no encroachment on the part of the first defendant. Challenging this judgment and decree, the plaintiff/appellant had filed A.S.No.252 of 2016 before the learned XVIII Additional Judge, City Civil Court, Chennai.

Appellate Court:

5. The learned XVIII Additional Judge, City Civil Court, Chennai had confirmed the judgment and decree passed by the learned VI Assistant Judge, City Civil Court, Chennai in O.S.No.14648 of 2010. Challenging this concurrent judgment, the plaintiff/appellant is before this Court with the present Second Appeal.

6. Heard Mr.V.Srinivasan, learned counsel for plaintiff/appellant.

7. On a perusal of the documents, particularly, judgments of both the Courts below, it is amply evident that the first defendant is in possession and enjoyment of the suit property much less than what was purchased by her and therefore, no stretch of imagination can it be stated that the first defendant had encroached upon the plaintiff's property. The Advocate Commissioner's report has also stated that the plaintiff is in enjoyment of the said extent. The plaintiff has not let in any evidence whatsoever to show that the first defendant had encroached into his property and put up construction which was a fulcrum of his case. Both the Courts below have correctly appreciated the facts of the case and evidence available on record and passed the aforesaid judgment and decree. Therefore, no exception can be taken to the same. I do not find any substantial question of law meriting the interference by this Court.

8. In the result, this Second Appeal shall stand dismissed and the judgment and decree passed by the learned XVIII Additional Judge, City Civil Court, Chennai in A.S.No.252 of 2016 dated 14.10.2017 is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The XVIII Additional Judge,
City Civil Court,
Chennai.

2.The VI Assistant Judge,
City Civil Court,
Chennai.

S.A.No.543 of 2018

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nr 07/02/2019