

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2018
PRONOUNCED ON : 12.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.2073 to 2075 of 2004

1. Karumalai
2. Velmurugan
3. Muthulakshmi
4. Marayal
...Appellants/Plaintiffs
in S.A.No.2073 of 2004

1. Karumalai
2. Pushpam
3. Devaraj
4. Kittampattiar @ Ramalingam
5. Lakshmi
6. Marayal
7. Velmurugan
8. Bakkiyammal
9. Muthulakshmi
10. Kuppusamy
11. Saraswathi
...Appellants/Plaintiffs
in S.A.No.2074 of 2004

1. Kittampattiar @ Ramalingam
2. Lakshmi
3. Marayal
4. Velmurugan
5. Bakkiyammal
6. Muthulakshmi
7. Kuppusamy
8. Saraswathi
9. Karumalai
10. Pushpam
11. Devaraj
...Appellants/Plaintiffs
in S.A.No.2075 of 2004

Vs.

Jayalakshmi
... Respondent/Defendant
in all second appeals

Common Prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge's Court (Fast Track Court No.IV Erode) at Bhavani dated 27.08.2003 in A.S.Nos.78, 76 & 77 of 2003 respectively confirming the judgment and decree of the First Additional District Munsif Court at Bhavani dated 10.12.2002 in O.S. Nos.59, 56 & 65 of 2000 respectively.

In all appeals

For Appellants : Mrs. Mythili Suresh
in all SAs for M/s. Sarvabhauman associates

For Respondent : No appearance/set ex-parte
in all SAs vide order dated 28.06.2018

COMMON JUDGMENT

Second appeal No. 2073 of 2004 is directed against the judgment and decree dated 27.08.2003, passed in A.S.No.78 of 2003, on the file of the Additional District Judge, Fast Track Court No.IV, Erode, Bhavani, confirming the judgment and decree dated 10.12.2002, passed in O.S. No.59 of 2000, on the file of the First Additional District Munsif Court, Bhavani.

2. Second appeal No. 2074 of 2004 is directed against the judgment and decree dated 27.08.2003, passed in A.S.No.76 of 2003, on the file of the Additional District Judge, Fast Track Court No.IV, Erode, Bhavani, confirming the judgment and decree dated 10.12.2002, passed in O.S. No.56 of 2000, on the file of the First Additional District Munsif Court, Bhavani.

3. Second appeal No. 2075 of 2004 is directed against the judgment and decree dated 27.08.2003, passed in A.S.No.77 of 2003, on the file of the Additional District Judge, Fast Track Court No.IV, Erode, Bhavani, confirming the judgment and decree dated 10.12.2002, passed in O.S. No.65 of 2000, on the file of the First Additional District Munsif Court, Bhavani.

4. The second appeals have been admitted on the following substantial question of law:

"Is the judgment of the appellate Court vitiated in law due to it's failure to independently assess and analyse the entire legal material on record and coming to a conclusion?"

5. O.S.No.56 of 2000 and O.S.No.65 of 2000 have been preferred by the respondent against the appellants for the relief of permanent injunction. O.S.No. 59 of 2000 has been preferred by some of the appellants against the respondent for the reliefs of declaration, permanent injunction and mandatory injunction. Considering that the core issue involved in all the suits pertain to the same subject matter, it is found that all the abovesaid three suits were jointly tried and accordingly, the Courts below, on the basis of the oral and documentary evidence adduced by the respective parties and the submissions made, were pleased to accept the case of the respondent and

reject the case of the appellants and thereby, decreed the suits preferred by the respondent as prayed for and dismissed the suit laid by some of the appellants. Challenging the same, the second appeals have been preferred.

6. Considering the limited scope of the substantial question of law, on the basis of which the abovesaid second appeals have been admitted, lying in a narrow compass, it is unnecessary to discuss the facts of the case in detail.

7. The grievance of the appellants is that the first appellate Court has not dealt with the points for determination involved in the matter in detail and independently and in such view of the matter, according to them, the judgment and decree of the first appellate Court are liable to be reversed.

8. However, it is found that the abovesaid contention does not merit acceptance as such. On a perusal of the judgment and decree of the first appellate Court, it is found that based on the main point formulated for determination, the first appellate Court has analysed the issues involved between the parties in depth and accordingly, noted that the trouble had erupted between the parties following the fixation of a window by the respondent on the northern side of the wall for the purpose of having easy access to air and light through the same. It is found that the appellants objected to the same contending that the fixation of the window is not proper and on that footing also raised the issue that the wall raised by the respondent does not lie within the respondent's property and on the other hand, the same has been put up by protruding into the appellants' property and accordingly, it is found that the appellants had interfered with the action of the respondent with reference to the same and the same had necessitated the respondent to lay the suit against the appellants for necessary reliefs as above noted. Similarly, it is also noted that some of the appellants had preferred O.S.No.59 of 2000 against the respondent with reference to the issues involved between the parties as regards the fixation of the window by the respondent on the northern wall of her property.

9. As rightly found by the trial Court as well as the first appellate Court, the main point that arises for consideration is whether the wall put up by the respondent on the northern side is within the property owned by her or not. Accordingly, it is found by the Courts below that when the partition deed projected by the appellants marked as Ex.B6 clearly depict one of the boundaries as north of the house of the respondent, accordingly, the Courts below had rightly come to the conclusion that the respondent's house had been in existence even prior to the partition deed and accordingly, accepted the contention of the respondent that her house had been constructed much prior to Ex.B6 partition deed i.e., in the year 1991 and that apart, it is also noted that the house put up by her in her property was

separately assessed for tax which could be evidenced from the documents projected by the respondent marked as Ex.A28 to A36. The Courts below, on an analysis of the materials placed on record, finding that the appellants had not placed any materials to show that the respondent had put up the house construction only after Ex.B6 and on the other hand, on the basis of Ex.B6 partition deed itself, negatived the case of the appellants and also noting that the case of the appellant that a panchayat had also been convened with reference to the construction of the wall raised by the respondent is unbelievable as the respondent having denied the same and when there is no acceptable material placed by the appellants to prove the same, accordingly, noting that the appellant had not put forth any objection as such, when the house construction was raised by the respondent within her property, particularly, the northern wall and in such view of the matter, it is found rightly by the Courts below that the construction put up by the respondent is well within her property and not by encroaching into the appellants' property as sought to be projected by the appellants.

10. Accordingly, considering the above factual matrix as established by the respondent and considering the measurements of the properties to which the parties are entitled to as per the documents of title projected by them and accordingly, the Courts below had held that the documents projected by the appellants show their entitlement to the area of east west 88 feet and north south 58 feet and on the other hand, the plan projected by them in their suit being otherwise and not in consonance with the measurements as available in their title deeds and when with reference to the same, no proper explanation has been projected by the appellants, accordingly, noted that the case of the appellants that the respondent had encroached into their area and put up the house construction is a false one and the same had been rightly negatived by the Courts below. Further, as determined by the Courts below, the documents projected by the appellants and the report of the Advocate Commissioner all taken together go to show that there is no encroachment as such made by the respondent into the appellants' property and on the other hand, the respondent had put up the construction within the area to which she is entitled to and accordingly, entitled to fix the window on the northern wall of her property for having access to light and air and the same cannot be objected to by the appellants and in such view of the matter, it is found that the first appellate Court, also on a deep analysis of the materials placed on record placed by the respective parties, accordingly determined the issues with reference to the same though under the main point for determination in extenso and resultantly, finding that the first appeals preferred by the appellants do not merit acceptance, rightly dismissed the same.

11. In the light of the above position, when it is found that the first appellate Court had discussed the merits of the

case in detail by independently assessing the materials placed on record, though under the main point for determination, the substantial question of law formulated in the appeal has to be answered only against the appellants and further, considering the fact that the judgment and decree of the Courts below cannot be set at naught, merely on the procedural error adopted by the Courts in the discharge of the matter, particularly, when the same had not affected the merits of the case as provided under section 99 of the Code of Civil Procedure, it is found that the second appeals preferred by the appellants do not merit acceptance.

12. In conclusion, the second appeals fail and are accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-V)

// True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No.IV,
Erode, Bhavani.
2. The First Additional District Munsif,
Bhavani.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/S.SARBHAUMAN ASSOCIATES, Advocate SR.No.45943

Pre-delivery Judgment in
S. A.Nos.2073 to 2075 of 2004

NMI (CO)
SMI/13.08.2018

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