

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**SECOND APPEAL No.493 OF 2018**

**JUDGMENT:**

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 04.12.2017 passed in A.S. No.299 of 2013 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad (for short, 'first appellate court'), wherein the first appellate court, while dismissing the appeal, confirmed the judgment and decree dated 30.06.2013 passed in O.S. No.1264 of 2000 on the file of the II Additional Rent Controller-cum-XIV Junior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court'). The respondents herein filed the original suit against the appellant-defendant for perpetual injunction.

2. Heard the learned counsel for the appellant-defendant and the learned counsel for the respondent Nos.1 and 2-plaintiffs, apart from perusing the material on record.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

4. Learned counsel for the defendant-appellant would submit that the alleged Seri (lane) towards south of the plaintiffs' property is the property belonging to the defendant and the defendant got every right to enjoy the said property by making any constructions whatsoever essential and necessary for the defendant; the plaintiffs have no right to question such construction and the plaintiffs have no right to open the outlets into the property belonging to the defendant; the ventilators and erected pipe for the outlet of drain water by the plaintiffs towards the property of the defendant are illegal; both the Courts below erred in granting permanent injunction holding that the defendant had admitted the existence of a pipeline from the plaintiffs' house and the ventilators even prior

to the purchase of the property by the defendant; both the Courts below erred in placing undue reliance upon the alleged plan annexed to Ex.A.1-sale deed especially when it was executed by the husband of the 1<sup>st</sup> plaintiff in favour of the 1<sup>st</sup> plaintiff and the suit schedule property does not indicate the existence of any Seri (lane); both the Courts below failed to appreciate the oral and documentary evidence in a proper perspective; and ultimately, prayed to allow the appeal by setting side the judgments and decrees passed by both the Courts below.

5. On the other hand, learned counsel for the plaintiffs-respondents herein would contend that the 1<sup>st</sup> plaintiff was the possessor of the suit schedule property, which was purchased by her through a registered sale deed dated 20.11.1964 and all the houses were tiled roof houses; there is a Seri of 5.5 feet around the property of the 1<sup>st</sup> plaintiff for the purpose of rain water drain from the roof to flow into the Seri; when the defendant illegally interfering with the usage of the said Seri, the suit was filed for perpetual injunction; the trial Court after considering the evidence on record, rightly decreed the suit in favour of the plaintiffs; the first appellate court rightly confirmed the said judgment and decree of the trial court after appreciating the entire evidence on record; there are no circumstances to interfere with the well reasoned findings of both the Courts below; no substantial questions of law would emerge for consideration in this Second Appeal; and ultimately, prayed to dismiss the Second Appeal.

6. While admitting the Second Appeal on 27.04.2018, the following substantial questions of law are framed:

1. Whether the trial Court is right in granting a relief beyond the prayer in the plaint, that too when the prayer is the joint rights in this joint lane and not an exclusive right of non-interference with possession to restrain the other joint lane owners rights party defendant and if so, to what extent the trial Court's decree confirmed by the lower appellate Court requires interference by this Court?

2. To what result?

7. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the pleadings of the parties.

(a) The plaintiffs averred in the plaint that the 1<sup>st</sup> plaintiff is the owner and possessor of the suit schedule property bearing No.4-7-789 to 808, Esamia Bazar, Hyderabad. There is a Seri on all sides of the property. The defendant is trying to encroach upon the suit schedule Seri and construct a wall attached to the plaintiffs' property. The main purpose of leaving the Seri on all sides is to flow rain water from the roof. The 1<sup>st</sup> plaintiff is in continuous peaceful possession and enjoyment over the suit schedule property. The defendant started carrying out repairs to the adjacent property bearing No.4-7-789, on the southern side of the property bearing No.4-7-789 on the southern side of the property of the plaintiffs. The 1<sup>st</sup> plaintiff demanded the defendant to produce the title deeds, link documents and the sanctioned plan for carrying the said construction. The defendant never produced any title deeds or the sanctioned plan and threatened the 1<sup>st</sup> plaintiff. As there is immense threat from the defendant and her men, the plaintiffs are constrained to file the suit.

(b) The defendant filed counter claim denying the averments made in the plaint and contended that the house of the 1<sup>st</sup> plaintiff is an RCC roof house and had its own arrangements for outlet of rain water drain through her own property and neither her vendor nor she had any occasion to lay drainage lane through the land belonging to the vendor of the defendant. The defendant purchased the house bearing Municipal No.4-7-789 to 4-7-792 of Esamia Bazar, Hyderabad, over an extent of 235 square yards with structures standing thereon along with open land under registered sale deed dated 01.03.2000 from its previous owners. The 1<sup>st</sup> plaintiff though having separate drainage to his house

into the dead end lane and though having rain water outlets, still intentionally opened the same and also opened the ventilators towards the property of the defendant. Therefore, the defendant filed counter claim seeking the relief of mandatory injunction directing the plaintiffs to close the ventilators, rain water outlets and drainage constructions, which were illegally opened.

(c) The plaintiffs filed rejoinder stating that the defendant has no right, title or interest to raise any construction in the Seri and the open space as she is not the owner of the property. The plaintiffs have every right to file the present suit and there is no mala fide intention on their part. The plaintiffs did not open the ventilator illegally towards west of the suit schedule property. The counter claim filed by the defendant is liable to be dismissed.

(d) Basing on the pleadings, the trial Court framed the following issued for trial:

- (1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (2) Whether the defendant is entitled for mandatory injunction as prayed for?
- (3) To what relief?

(e) The trial Court after considering the evidence of P.Ws.1 and 2 and C.W.1 and the documents Exs.A.1 to A.18 and Exs.C.1 to C.10 marked on behalf of the plaintiffs and the evidence of D.W.1 and the documents Exs.B.1 to B.3, while dismissing the counter claim filed by the defendant, decreed the suit filed by the plaintiffs granting perpetual injunction in favour of the plaintiffs restraining the defendant, her legal heirs, representatives, attorney holders, agents, workers, assignees, henchmen and all those who claim and work under the defendant from making construction of any structure in the suit schedule property and also

consequently, restraining the defendant, her legal heirs, representatives, attorney holders, agents, workers assignees, henchmen and all those who claim and work under the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property by keeping it open for air and ventilation and drainage purpose. Aggrieved by the said judgment, the defendant preferred A.S. No.299 of 2013 and the first appellate court was pleased to dismiss the appeal by confirming the judgment and decree passed by the trial Court. Questioning the said judgment and decree passed by the first appellate court, the defendant preferred the Second Appeal.

8. Now the question is, whether the finding of both the Courts below is liable to be reversed and the suit filed by the plaintiffs is to be dismissed, allowing the contentions of the defendant?

9. As per the material placed on record, the plaintiffs filed the suit for perpetual injunction contending that there is a Seri around the house bearing No.4-7-789 to 4-7-808 situated at Isamia Bazar, Hyderabad. The defendant is trying to encroach the said Seri and raise constructions therein. The 1<sup>st</sup> plaintiff purchased the said property under registered sale deed dated 20.01.1964. There is also specific mention of cause of action on 15.03.2000. To substantiate the claim, the 2<sup>nd</sup> plaintiff deposed as P.W.1 and got examined one K.Dayanand as P.W.2 and got marked Ex.A.1-certified copy of sale deed dated 20.01.1964, Ex.A.2-encumbrance certificate dated 28.03.2000, Ex.A.3-encumbrance certificate dated 28.03.2000, Ex.A.4-certified copy of sale deed along with translation, Exs.A.5 to A.17-photographs with negatives and Ex.A.18-certified copy of link document No.338/1950 in Urdu with English translation. On the other hand, the defendant deposed as D.W.1 and got marked Ex.B.1-office copy of legal notice, Ex.B.2-certified copy of sale deed bearing No.598/2000 dated 01.03.2010 and Ex.B.3-photographs of the suit Seri with C.D. An advocate-

commissioner was appointed and deposed as C.W.1, through whom, Ex.C.1-certified copy of report dated 17.07.2000, Ex.C.1-certified copy of warrant of Commissioner dated 20.06.2000, Ex.C.3-work memo dated 08.07.2000, Ex.C.4-work memo dated 08.07.2000, Ex.C.5-sketch plan, Ex.C.6-proceedings sheet dated 08.07.2000, Ex.C.7-execution of Commissioner Warrant in O.S. No.1264 of 2000 pending on the file of IX Junior Civil Judge, dated 07.07.2000, Ex.C.8-rough sketch of the suit Seri, Ex.C.9-rough sketch of the suit Seri and Ex.C.10-xerox copy of photographs (24 in number) were marked.

10. The trial Court having analysed the entire evidence on record, held that the open space Seri, i.e., the suit schedule property, is absolutely belong to the 1<sup>st</sup> plaintiff. The documents filed by the defendant do not establish any right or title of the defendant over the suit schedule Seri and the suit schedule Seri is an open place. It is also held by the trial Court that there are ventilators in the said Seri before purchase of the property by the 1<sup>st</sup> plaintiff and that the defendant cannot close ventilators. The cross objections filed by the defendant was rejected by the trial Court and ultimately granted the relief of perpetual injunction in favour of the plaintiffs restraining the defendant, her agents, etc., for causing any sort of inconvenience to the plaintiffs' peaceful possession and enjoyment over the suit schedule Seri. The 1<sup>st</sup> plaintiff succeeded by filing number of documents and established her right and title over the suit schedule property. The existence of Seri was held, prior to the purchase of the property by the 1<sup>st</sup> plaintiff. Whether the existence of the suit schedule Seri before the purchase made by the 1<sup>st</sup> plaintiff is the question of fact and that was elaborately dealt with by the trial Court and perpetual injunction was granted. The first appellate court confirmed the judgment and decree of the trial Court. The trial Court and the first appellate court did not act on inadmissible evidence. The findings of both the Courts are not perverse.

11. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is warranted in this Second Appeal. Viewing from any angle, this Court finds that the substantial questions of law raised in the Second Appeal are devoid of merits. No other substantial questions of law arise for determination. Therefore, the Second Appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 04.12.2017 passed in A.S. No.299 of 2013 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 26.07.2018  
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**Dr. SHAMEEM AKTHER, J**