

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1214 OF 1999

JUDGMENT:

This 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 16.02.1999, rendered in A.S.No.78 of 1994 on the file of IV Additional District Judge, Tirupati, whereby and whereunder, the judgment and decree, dated 30.08.1994, rendered in O.S.No.167 of 1991 on the file of Principal District Munsif, Tirupati (for short, 'the trial court'), were set aside partly and the Original Suit was decreed partly.

2. Heard both sides. Perused the record.
3. Appellant No.1 herein is the defendant in the Original Suit. After his demise, appellant Nos.2 and 3 were brought on record as his legal representatives during pendency of the first appeal. The respondent herein is the plaintiff.
4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the Original Suit before the trial Court.
5. The averments in the plaint are that the plaintiff is the absolute owner of a building bearing D.No.1-2-120H, situated at Bandlamitta Street, Tirupati Town, consisting of a Madras terrace with stairs on the north-eastern corner facing Bandlamitta Street to a width of 10 feet on the north and adjoining the house of the defendant on the east, which

is more fully described in plaint 'B' schedule, having purchased the same from the defendant under a registered sale deed, dated 06.08.1980. The defendant has two portions and the northern portion is abutting 6 feet lane on the north and 10 feet Bandlamitta Street on the west. The defendant, in rebuilding the northern portion, had illegally encroached into the Bandlamitta Street and the same is parallel to the stair-case of the plaintiff. The plaintiff and his family members have been using their stair-case from the 10 feet width Bandlamitta Street uninterruptedly to the knowledge of the defendant. The defendant and his family members were threatening the plaintiff that they would block the entry into his stair-case by constructing a stair-case in the plaint 'A' schedule property, which is the municipal property and the defendant has no right either to encroach into the Bandlamitta Street or cause any obstruction for the plaintiff in using his own stair case. The plaintiff laid underground water pipe for drawing water from the municipal main pipeline and the defendant is threatening to destroy the pipeline of the plaintiff and thereby, stop flow of municipal tap water through the pipeline from the main line laid by the municipality in the 6 feet wide lane on the north. Apprehending that the defendant may start construction, the plaintiff filed the present Original Suit seeking permanent injunction restraining the defendant and his men from in any way raising any construction in the plaint 'A' schedule property. After institution of the present Original Suit, the defendant, by suppressing the factum of

filing the present Suit, instituted O.S.No.198 of 1991 on the file of I Additional District Munsif, Tirupati, and obtained interim injunction to construct a stair-case in the plaint 'A' schedule property and in fact, completed the stair-case. Therefore, by way of amendment to the plaint, the plaintiff sought additional relief of mandatory injunction directing the defendant to remove the said stair-case in its entirety.

6. The defendant filed written statement contending that the Original Suit is not maintainable. The defendant, though admitted that he started construction in the plaint 'A' schedule property, denied that in rebuilding the northern portion, he illegally encroached into the Bandlamitta Street and that he and his family members threatened the plaintiff. He also denied that the plaint 'A' schedule property is the municipal property. It is stated that the stair-case constructed will not obstruct the users of the stair-case of the plaintiff. The gap between the stair-case of the plaintiff and the stair-case of the defendant is sufficiently wider, which would not cause any obstruction in any manner. The plaintiff with a *mala fide* intention filed the present Original Suit against the defendant to prevent him from constructing stair-case in the plaint 'A' schedule property, for which the defendant is legally entitled to. The plaintiff is not entitled for the relief sought and therefore, prayed to dismiss the Suit.

7. Based on the above pleadings, the trial Court settled the following issues:

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. To what relief?”

8. After amendment of the plaint, the following additional issues were settled:

- “(1) Whether the plaintiff is entitled for mandatory injunction,
- (2) Whether the defendant is liable to remove the stair-case already constructed in plaint ‘A’ schedule property,
- (3) To what relief?”

9. During trial, on behalf of the plaintiff, he himself got examined as PW.1 and also examined PWs.2 to 4 and marked Exs.A1 to A16. On behalf of the defendant, he himself got examined as DW.1 and also examined DW.2 and marked Exs.B1 to B3 apart from Exs.X1 to X6.

10. The trial Court, after considering the oral and documentary evidence available on record, by judgment, dated 30.08.1994, dismissed the Original Suit.

11. Aggrieved by the said judgment and decree, the plaintiff preferred A.S.No.78 of 1994 before the first appellate court.

12. The first appellate court, after hearing both sides, framed the following point for determination:

- “Whether the learned Prl. Dist. Munsif, Tirupati, erred in concluding the Defendant had constructed the

stair case in his own premises and he further erred that the said stair case constructed by the Defendant will not obstruct the free passage of the plaintiff within the Municipal Street located to the north of his building and if so, the Judgment and decree of the trial court are liable to be set aside to grant a permanent injunction as well as mandatory injunction as prayed for by the plaintiff.”

13. The first appellate Judge, having examined the oral and documentary evidence and having inspected the suit schedule property, by the judgment under challenge, while partly setting aside the judgment and decree of the trial Court, granted permanent injunction restraining the defendants from making any construction underneath the slanting stairs constructed to their building with a further direction that the defendants shall keep the space underneath the stair-case vacant so as to allow free passage to the plaintiff into Bandlamitta Street from every point of his building towards north.

14. This Court, by order, dated 30.12.1999, while admitting the Second Appeal, framed the following substantial questions of law:

“1. Whether the first Appellate Court has not exceeded in exercise of its jurisdiction by granting a permanent injunction in favour of the Plaintiff, not pleaded and sought for to restrain the defendants from making any construction underneath the stair case admittedly belonging to the defendants?

2. Whether the First Appellate Court has not gone beyond its jurisdiction and beyond the subject matter of the suit and the real matters in issue, to impose restraints on the defendants to keep the underneath space of their stair case?

3. Whether the first Appellate Court was well within its jurisdiction to grant the impugned decree by partly allowing the appeal while giving a concurrent finding that the Plaintiff is not entitled for removing the defendant's stair case constructed to his building?

4. Having given the finding by both the courts below that "the state of affairs existing at the suit building is not such that the Appellant (Plaintiff) got any obstruction as guaranteed in his title deed", Whether the first Appellate Court is within its jurisdiction in granting an altogether different relief of permanent injunction, not sought for by the Plaintiff? and whether the suit itself is maintainable?"

15. Learned counsel for the plaintiff (respondent herein) would contend that only factual aspects, which were already determined in the first appeal, are agitated. No substantial question of law, as required under Section 100 C.P.C., emerges from the appeal grounds and the submissions made on behalf of the defendants. There is no substantial question of law. The appeal is liable to be dismissed accordingly.

16. It is evident from the record that the plaintiff constructed a stair case within the area of his house adjoining 10 feet lane called Bandlamitta, situated at the northern side of his house and the defendants have constructed a similar slanting stair case quite opposite to the stair case constructed by the plaintiff. The lower appellate Judge made a spot inspection and examined in detail both the stair cases and passed an order as mentioned herein i.e., if the defendants intend to construct anything more underneath their stair case, it would definitely

block the passage to plaintiff to have access to his house through 10 feet Bandlamitta street, as the stair case completely blocks the passage towards the main road and hence, the defendants shall keep the space underneath their stair case vacant. When the plaintiff has purchased the schedule house from the defendants, he has right to have access to his house from 10 feet Bandlamitta Street. In view of that, there is nothing wrong on factual findings and the decision of the first appellate Court.

17. The contentions and submissions made on behalf of the defendants relate to only factual aspects of the case. No substantial question of law as required under Section 100 (4) C.P.C. emerges from the submissions. The power of this Court under Section 100 C.P.C. is limited to deal with only substantial questions of law.

18. Hence, the Second Appeal is dismissed.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

June 21, 2018.
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