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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2019
PRONOUNCED ON : 12.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1031 of 2004 and
C.M.P.No.7596 of 2004

J.J.Bhojan ...Appellant / Plaintiff

Vs.

1. K.S.Rani

2. J.J.Viswanathan

3. Jegathala Town pancayat,
Aravankadu, represented by its
Executive Officer. ...Respondents/Defendants
(R1 to R3 set exparte vide
Order dated 25/02/2004)

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree dated 27.02.2004 in A.S.No.35 of
2003 on the file of the District Court, Ooty, confirming the
judgment and decree dated 13.03.2003 in O.S.No.155 of 1997 on
the file of the Subordinate Court, Ooty.

For Appellant : Mr.Srinath Sridevan

For Respondents : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and
decree dated 27.02.2004 passed in A.S.No.35 of 2003 on the file
of the District Court, Ooty, confirming the judgment and decree
dated 13.03.2003 passed in O.S.No.155 of 1997 on the file of the
Subordinate Court, Ooty.

2. The parties are referred to as per their rankings in the
trial court for the sake of convenience.

3. The second appeal has been admitted on the following
substantial questions of law:



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"(a) Whether the principle of res ipsa loquitur will not apply to shift the burden of proof upon the defendant to show that the septic tank does not cause a nuisance when it is adjacent to the other man's kitchen?

(b) Whether the plaintiff can be refused to relief on the ground that his kitchen was not constructed like the kitchen of other houses in the same colony, when the entire house was constructed as per the approved plan?"

5. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

6. The plaintiff has come forward with the suit seeking for the relief of declaration that the construction of latrine by the defendants 1 and 2 in the plaint 'B' schedule property is an unauthorized construction and without a valid license from the authorities concerned and accordingly, sought for the relief of mandatory injunction directing the defendants to remove the septic-tank and the plaintiff has also claimed for damages to the extent of Rs.5,000/- on account of the nuisance created by the defendants in the construction of the septic-tank near the kitchen room of the plaintiff.

7. The crux of the plaintiff's case is that the defendants without any proper authorization and license had put up the septic-tank near the kitchen in the property belonging to the plaintiff and thereby the plaintiff is unable to enjoy his property, particularly, the kitchen room and accordingly, seeking appropriate reliefs, with reference to the same, has come forward with the suit.

8. The defendants had resisted the plaintiff's suit contending that the plaintiff is having the kitchen room in the main building and the defendants have put up the latrine and septic-tank only in the rear portion of the property belonging to them as similarly put up by the other occupants of the row of houses in the vicinity and the plaintiff knowing fully well that the defendants had put up the latrine and septic-tank in the portion earmarked for the same, with a view to cause them hindrance one way or the other in enjoying their property, had put up the alleged second kitchen and has come forward with the false case and accordingly, the defendants sought for the dismissal of the plaintiff's suit.

9. The primary relief sought for by the plaintiffs is that the septic-tank/latrine put up by the defendants is without any



proper authorization and license of the concerned authorities. However, with reference to the abovesaid case of the plaintiff, absolutely, there is no material projected on the part of the plaintiff. The plaintiff has not placed any document whatsoever to evidence that the construction of septic-tank/latrine by the defendants is against any Rules of the panchayat concerned and that the defendants had put up the same in violation of the Rules of the panchayat. Therefore, it is seen that the main relief sought for by the plaintiff has been rightly declined by the Courts below.

10. In this matter, the Commissioner had been appointed to note the topography of the properties belong to the plaintiff, the defendants and others and accordingly, the Commissioner inspected the premises of the properties concerned and filed his report and plan marked as Exs.C1 and C2 respectively and from the same and the evidence adduced by the respective parties, it is seen that the plaintiff and the others are having house portions in a row running from west to east in the area and the plaintiff's house is the last house on the eastern side. It is also seen that all the house owners in the row of houses are having the kitchen room only in the main building, thus, further noted that the rear portion of the house properties is separated by drainage portion running in between the same and furthermore, it is also seen that only in the rear portion, the house owners had put up the latrine, bathroom, etc., and enjoying the same as such and accordingly, it is noted that the common drainage system is dividing the house portion of the properties where the parties are residing and in the rear portion, the toilets, bathrooms of the respective houses are located. In such view of the matter, the septic-tank/latrine of the defendants 1 and 2 are found to have been located only in the rear portion as similar to the house owners of the row of houses. Hence, the case projected by the plaintiff that, in view of the same, he is unable to utilize the kitchen put up by him in the rear portion as such cannot be readily accepted.

11. From the materials placed on record, it is seen that the plaintiff is already having a pucca kitchen room in the main house portion and knowing fully well that the defendants had put up the latrine/septic-tank in the rear portion beyond the drainage system as done by the other house owners, it is noted that deliberately the plaintiff is found to have put up an additional kitchen room in the rear portion with a view to prevent the defendants from enjoying the latrine/septic-tank put up by them one way or the other. That apart as could be seen from the evidence adduced in the matter, it is found that the plaintiff has no cause of action at all to institute the suit against the defendants.



12. As above noted, primarily the plaintiff has not established that the latrine/septic-tank put up by the defendants is not authorized and without proper license from the concerned authorities or in deviation of the rules of the panchayat concerned. Furthermore, the plaintiff examined as PW1, during the course of the cross-examination, has clearly admitted that no health hazard or problem has been created by the construction of the septic-tank by the defendants 1 and 2 and also admitted that for all the thirteen houses in the row, the kitchen room is only located in the main house portion and not in the rear portion and also admitted that the rear portions of the row of houses is located beyond the drainage system running in between the house portion and the rear portion measuring about a width of 3 feet and also admitted that only in the rear portion, the latrine, bathroom, etc., of the various house are located. Accordingly, when the plaintiff is already having kitchen room in the main house portion and when according to the plaintiff, the construction of septic-tank by the defendants has not caused any health problem or hazard and also admitted that only in the rear portion, the septic-tank of the defendants has been constructed, as done by the other house owners and for the said purpose only it is found that the drainage system having a width of about 3 feet is separating the house portion from the rear portion for the convenient enjoyment of the owners of the house properties in the area, in the light of the above said evidence adduced by the plaintiff, his case that the septic-tank put up by the defendants had caused nuisance and endangering his life one way or the other and caused him inconvenience in the enjoyment of his second kitchen room as such cannot be accepted in any manner and rightly rejected by the Courts below. That apart, the plaintiff, during the course of evidence has also admitted that the defendants, while putting the septic-tank, have also put up the compound wall around the same and therefore, when the defendants had taken adequate safeguards to prevent the leakage of any water from the septic-tank, the case projected by the plaintiff that the construction of septic-tank has caused health problems to the plaintiff and others as such does not merit acceptance.

13. As above noted, the plaintiff has admitted the separation of the house portion and the rear portion by a drainage gap of a width of 3 feet. It is also admitted by the plaintiff that he is having the kitchen in the main portion. Accordingly, for the reasons best known to the plaintiff, he is found to have put up the new kitchen room in the rear portion where the latrine, bathroom of the other houses are located in a row and therefore, to the knowledge of the plaintiff, he is found to have put up the additional kitchen in the rear portion and in such view of the matter, the plaintiff has to bear



certain inconvenience in the enjoyment of the said kitchen room put up by him in the rear portion, particularly, when the plaintiff has failed to establish that the construction of latrine in the rear portion is against any panchayat Rules and not established that the same had caused any nuisance or health hazard to him and others and furthermore, when he has accepted that the defendants had made adequate safeguards by putting up compound wall preventing the leakage of water from the drainage. As determined by the Courts below, the plaintiff should not have endeavoured to put up the additional kitchen room in the rear portion and therefore, his case that the construction of the septic tank in the rear portion is causing him hindrance or nuisance one way or the other, however, even that plea of the plaintiff, having not been established by placing acceptable and reliable materials, in my considered view, the Courts below are found to have assessed the materials placed on record by the respective parties in the proper manner and rightly held that the plaintiff, without any cause of action, had laid the suit falsely against the defendants. The sole aim of the plaintiff is to prevent the defendants from enjoying their rear portion by putting up latrine/septic-tank for their convenient occupation. When the defendants had not been shown to have put up the latrine/septic-tank against the rules and they have put up the same only in the area earmarked for the same, as done by the other house owners in the area, the plaintiff appears to have laid the suit intentionally to cause harm and loss to the defendants one way or the other and the same had been rightly declined by the Courts below.

14. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nsd



To

1. The District Court,
Ooty.

2. The Subordinate Court,
Ooty.

Copy to

The Section Officer, V.R.Section,
High Court, Madras

S.A.No.1031 of 2004

CNR(CO)
SSM(04/09/2019)