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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.04.2019
PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.Nos.877 and 878 of 2005
and

C.M.P. Nos.12355, 12356 of 2005 & 23476 of 2018

1.N.Subramaniam
2.S.Karthiekeyan

...Appellants in both appeals/
Defendants

Vs.

1.V.Subramani
2.V.Natarajan
3.V.Vadivel
4.Vidya @ Palaniyammal
5.B.Sampooranam

...Respondents in both appeals/
LRs of Plaintiff

Prayer in SA.No.877 of 2005:

Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.Nos.247/98 and 50/1999 on the file of I Additional District Court, Erode dated 26.10.2004 as confirmed by the judgment and decree made in O.S.No.1563/93 on the file of II Additional District Munsif Court (Civil Judge, Junior Division), Erode dated 04.09.1998.

SA.No.878 of 2005:Second Appeal filed under section 100 of CPC against the Judgment and Decree made in AS.No.50/99 on the file of the I Additional District Court, Erode dated 26.10.2004 as modified by the Judgment and decree in OS.No.1563/93 dated 04/09/1998 on the file of the Additional District Munsif Court (Civil Judge Junior Division) Erode.

For Appellants	: Mr.R.Gandhi, Senior Counsel for Mr.R.G.Narendhiran in both appeals
For Respondents	: Mr.I.C.Vasudevan for R1 in both appeals Mr.N.Sivaprakasam for R4 in both appeals R2, R3 & R5 - No appearance in both appeals. Set exparte vide order dated 15.04.2019.



COMMON JUDGMENT

Second Appeal NOs.877 and 878 of 2005 are directed against the judgment and decree dated 26.10.2004 passed in A.S.NOs.247/98 and 50/1999 on the file of I Additional District Court, Erode, confirming / reversing the judgment and decree dated 04.09.1998 passed in O.S.No.1563/93 on the file of II Additional District Munsif Court (Civil Judge, Junior Division), Erode.

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

3. Suit for declaration, permanent injunction, mandatory injunction and damages.

4. The case of the plaintiff, in brief, is that the plaintiff 'A' schedule property belongs to the plaintiff purchased by him under the sale deed dated 05.05.1976 and the plaintiff 'A' schedule property is bounded on the west by a north-south compound wall and the building and the site on the west of the plaintiff 'A' schedule property belongs to the defendants. There is a compound wall separating the 'A' schedule property from the defendants' property in the west. The said compound wall is described in the plaintiff 'B' schedule and the compound wall described in the 'B' schedule property belongs to the plaintiff and the defendants in common and the plaintiff is entitled to one half share and the defendants are entitled to the other half share in the abovesaid compound wall and the said compound wall is 130 feet in length 7 feet in height and 2 feet in thickness and the electricity is supplied to the plaintiff 'A' schedule property from the Brough road in the south through wiring enclosed in alkathene pipes fixed in the compound wall throughout its length and the defendants, of late, are remodeling their building and in the course of the same, without the knowledge or consent of the plaintiff, demolished the upper portion of the compound wall described in the 'B' schedule property to a length of about 67 feet in the north and the remaining portion of 63 feet compound wall in the south is intact. As a result of the demolition, the electric line fixed in the abovesaid part of the compound wall, which had been demolished, is hanging with the alkathene pipe covering and the electricity supply is also disconnected and despite the plaintiff directing the defendants to restore the compound wall, the defendants have started setting up exclusive title to the compound wall and refusing to accede to the abovesaid demand of the plaintiff and hence according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.



5. The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendants are not admitting the case of the plaintiff that the plaint 'A' schedule property belongs to him by virtue of the sale deed dated 05.05.1976 and also denied the case of the plaintiff that the plaint 'B' schedule compound wall belongs to the plaintiff and the defendants in common and also disputed the case of the plaintiff that the electricity is supplied to the plaint 'A' schedule property through the Alkathene pipes fixed in the plaint 'B' schedule compound wall and also disputed the case of the plaintiff that the defendants had demolished the upper portion of the plaint 'B' schedule compound wall in the northern side without the knowledge or consent of the plaintiff. The defendants were at Chennimalai during the middle of 1992 keeping their property on the west of plaint 'B' schedule property vacant so that they could sell the same to the third parties and taking advantage of their absence and on account of enmity, it is stated that the plaintiff had fixed the Alkathene pipes in the plaint 'B' schedule compound wall and drawn the electric line through the same to his motor. Immediately, on coming to know of the same, the defendants demanded the plaintiff to remove the same and the plaintiff had agreed to do so but was postponing the same on some pretext or other. As the size of the plaint 'B' schedule wall was unduly big and occupying more than two feet, the defendants was under the necessity of dismantling the same and construct a new wall, half a foot in breadth, and while the defendants were demolishing the plaint 'B' schedule wall belonging to them exclusively, the plaintiff has come forward with the false suit claiming half share in the plaint 'B' schedule wall without any entitlement and any recitals in the sale deed conferring half right to the plaintiff in the 'B' schedule wall is not binding upon the defendant as the vendors of the plaintiff had no such right or title to convey any share in the plaint 'B' schedule wall to the plaintiff. The plaint 'B' schedule wall is the exclusive property of the defendants and belonged to their predecessors in interest and they alone had constructed the said wall as their eastern compound wall within their site and the plaintiff's property is lying on the eastern side of the 'B' schedule wall and neither the plaintiff nor his predecessors in interest ever enjoyed the 'B' schedule wall at any point of time and the southern east-west compound wall of the plaintiff's property just touches the 'B' schedule wall which was in existence for a very long time. As regards the east west lane on the north of the 'A' schedule property, a suit is pending between the parties and in that connection O.S.No.29 of 1986 is pending on the file of the District Munsif Court, Erode and inasmuch as the plaint 'B' schedule wall is the integral part of the property belonging to the defendants, the plaintiff is not entitled to seek the reliefs prayed for in the suit and prayed for the dismissal of



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the plaintiff's suit.

6. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A3 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B1 to B5 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the reliefs of declaration and permanent injunction in favour of the plaintiff as prayed for, however, declined the relief of mandatory injunction prayed for by the plaintiff and also declined the relief of damages prayed for by the plaintiff. Aggrieved over the judgment and decree of the trial court granting the reliefs of declaration and permanent injunction in favour of the plaintiff, the defendants have preferred the first appeal in A.S.No.247 of 1998. Aggrieved over the declinement of the mandatory injunction as prayed for, the plaintiff has preferred the first appeal in A.S.No.50 of 1999. The first appellate court, on a perusal of the materials placed on record and the submissions made, was pleased to dismiss the first appeal preferred by the defendants and thereby confirmed the judgment and decree of the trial court granting the reliefs of declaration and permanent injunction in favour of the plaintiff. Furthermore, the first appellate court allowed the appeal preferred by the plaintiff and thereby granted the relief of mandatory injunction also in favour of the plaintiff as prayed for. Impugning the abovesaid judgment and decree passed in the abovesaid first appeals, the defendants have come forward with the present second appeals.

8. At the time of admission of the second appeals, the following substantial question of law was formulated for consideration.

"When in Ex.A2, the parent document, the parent document, the suit property is not shown to be a common wall, whether the buyer under Ex.A2 can transfer a right not available to him under Ex.A1 in favour of the buyer from him?"

9. The suit has been laid by the plaintiff claiming the reliefs of declaration that the plaint 'B' schedule wall belong to the plaintiff and the defendants in common and that the plaintiff is entitled to the half share in the said common compound wall. From the materials placed on record, it is found that the plaintiff has acquired the property lying to the east of the plaint 'B' schedule wall by way of the sale deed 05.05.1976 marked as Ex.A1. The plaintiff's vendors had acquired the property by way of the sale deed dated 03.03.1976, which document has come to be marked as Ex.A2. It is thus found that the plaintiff claims the half share right in the plaint 'B' schedule wall based on Exs.A1 and A2 sale deeds. Now according



to the defendants, the plaint 'B' schedule wall belongs to them exclusively and the plaintiff or his vendors are not entitled to the plaint 'B' schedule wall in any manner and in such view of the matter, according to the defendants, while remodelling their house, as they felt that the thickness of the plaint 'B' schedule wall was on the higher side and accordingly, with a view to put up the compound wall of half a foot thickness, proceeded to demolish the plaint 'B' schedule wall belonging to them exclusively and with a view to prevent the same one way or the other, it is stated that the plaintiff has come forward with the present suit against the defendants falsely praying for the various reliefs. In support of their claim that they had acquired absolute right in respect of the plaint 'B' schedule wall, the defendants relied upon the partition deed dated 12.12.1953 marked as Ex.B1 as well as the sale deeds marked as Exs.B2 to B5.

10. According to the plaintiff, inasmuch as the plaint 'B' schedule wall belongs to the plaintiff in equal moieties, it is stated that the plaintiff had drawn the electric line to his property through the plaint 'B' schedule wall in alkathene pipes fitted in the said wall. Per contra, it is put forth by the defendants that taking advantage of their absence, the plaintiff has drawn the electric lines through the alkathene pipes in the plaint 'B' schedule wall to his property and further according to the defendants, they had been insisting the plaintiff to remove the same and on the other hand the plaintiff had been postponing the said demand one way or the other.

11. Be that as it may, inasmuch as the plaintiff's claim of half share in the plaint 'B' schedule wall is being disputed by the defendants in toto and per contra as the defendants have set up the exclusive title to the 'B' schedule wall, in such view of the matter, the plaintiff having come forward with the suit seeking for the reliefs of declaration with reference to the plaint 'B' schedule wall claiming the half share right in the same, it is for the plaintiff to establish the said right by placing the acceptable and reliable materials. However, as rightly contended by the defendants' counsel, it is found that the plaintiff has miserably failed to establish his claim of half share right in the plaint 'B' schedule wall. As could be seen from the lie of the properties belonging to the plaintiff and the defendants, it is seen that in between the properties belonging to the rival parties, the plaint 'B' schedule wall is located. It is also seen that as regards the case of the plaintiff that the plaint 'B' schedule wall is measuring about 130 feet length, 7 feet height and 2 feet in thickness, no serious dispute has been raised by the defendants with reference to the same. It is thus found that the plaint 'B' schedule wall with a thickness of 2 feet is lying in between the plaintiff's



and the defendants' properties. The plaintiff's property is lying on the east of the plaint 'B' schedule wall and the defendants' property is lying on the west of the plaint 'B' schedule wall. As above noted, the plaintiff claims half share right in the plaint 'B' schedule wall, whereas the defendants claim exclusive right over the plaint 'B' schedule wall.

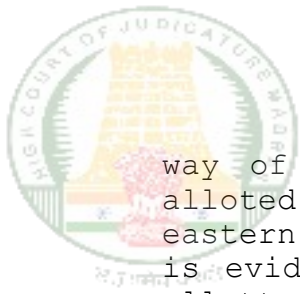
12. The plaintiff having laid the suit seeking the relief of declaration, has to place convincing materials to sustain the abovesaid claim. With reference to the said claim of right, the only document relied upon by the plaintiff is the sale deed dated 05.05.1976. No doubt, on a perusal of Ex.A1 sale deed, it is found that by way of the same, the executants of the abovesaid sale deed had conveyed the half share right in favour of the plaintiff and it is found that on that basis, the plaintiff had claimed the half share in the plaint 'B' schedule wall. However, the plaintiff examined as P.W.1, during the course of evidence, has admitted that he does not know by whom and when the plaint 'B' schedule wall was put up and also not disclosed the same in the plaint and further admitted that he does not know by whom the building was constructed prior to 1976. He has also admitted that while purchasing the property under Ex.A1, he had not seen the anterior sale deed dated 03.03.1976 marked as Ex.A2 and also admitted that in Ex.A2 sale deed, the reference is only about the compound wall and the vacant site and according to the defendants, the compound wall referred to in Ex.A2 pertains to the wall lying on the southern and northern side of the property, however, the abovesaid suggestion was denied by the plaintiff. Furthermore, the plaintiff has admitted that only on the representation of the trustees, he had come to know that they had share in the plaint 'B' schedule wall. P.W.2 is the son of the plaintiff and through him the approved plan of the Erode Municipality has been marked as Ex.A3 and according to P.W.2 in Ex.A3, the compound wall is shown as belonging to the parties in common. During the course of cross examination, P.W.2 has admitted that while purchasing the property under Ex.A1, they had acquired the said property by describing that the eastern compound wall to the same is common and further admitted that in the plan marked as Ex.A3, the eastern compound wall is not shown as common and accordingly the suggestion has been put to him that the abovesaid plan had been clandestinely obtained as if depicting that the western compound wall is common. Merely on the basis of Ex.A3 plan, not a document of title, we cannot come to the conclusion that the wall in dispute described in the plaint 'B' schedule belongs to the plaintiff and the defendants in common and when the basis on which Ex.A3 plan had been prepared has not been brought home and when the plaintiff has not endeavoured to examine the officials who had prepared the same, in such view of the matter, no safe credence could be attached to Ex.A3 plan



for sustaining the claim of the plaintiff to the wall in dispute.

13. According to the defendants, in specific, the vendors of the plaintiff have no entitlement to convey any right in the plaint 'B' schedule wall. In such view of the matter, the plaintiff should have endeavoured to examine their vendors to establish that they have acquired the right in the plaint 'B' schedule wall and been enjoying the same and accordingly conveyed the said right in favour of the plaintiff by way of Ex.A1 sale deed. On the other hand, other than marking the anterior sale deed dated 03.03.1976 as Ex.A2, the plaintiff has not placed any other material, both oral and documentary, to establish as to how his vendors had acquired the right in the plaint 'B' schedule wall. On a perusal of Ex.A2 sale deed, it is found that no such right had been acquired by the plaintiff's vendors by way of the same and the property acquired by the plaintiff's vendor under Ex.A2 only refers to the vacant site and compound walls and in such view of the matter, when there is no specific recital contained therein as they having been conferred any right in the plaint 'B' schedule wall as such, in such view of the matter, as rightly put forth by the defendants' counsel, it is evident that the plaintiff's vendors had not acquired any right in the plaint 'B' schedule wall under Ex.A2 sale deed and in such view of the matter, it is found that the they are not entitled or competent, as per law, to convey any such right in respect of the 'B' schedule wall in favour of the plaintiff under Ex.A1. It is found that the plaintiff is found to have acquired the alleged half share right in the plaint 'B' schedule wall from the persons who have no semblance of right to the same and in such view of the matter, by way of Ex.A1 sale deed, we cannot accept the plaintiff's claim of right, namely, the half share right in the plaint 'B' schedule wall and hence the determination of the courts below that the plaintiff has acquired the half share right in the plaint 'B' schedule wall by way of Ex.A1 sale deed cannot be countenanced in any manner.

14. From the materials placed on record, it is found that the properties belonging to the parties originally belonged to Subbaraya Mudaliar and others and they are found to have divided the same by way of the partition deed dated 12.12.1953, which document has been marked as Ex.B1. By way of Ex.B1 partition deed, it is found that the defendants' vendor had been conveyed the properties described in the D schedule to the abovesaid partition deed and on a perusal of the properties described in the D schedule under Ex.B1 partition deed, it is found that the defendants' vendor, namely, Loganathan, had been granted share in the properties describing the same inclusive of the exclusive right in the eastern north south wall and the other walls. Thus, it is found that when as above seen, the defendants' property is lying to the west of the wall in dispute and when by



way of Ex.B1 partition deed, the defendants' vendor had been allotted the property inclusive of the exclusive right in the eastern wall running north-south as well as the other walls, it is evident that it is only the defendants' vendor who had been allotted the exclusive right in the wall in dispute and in such view of the matter, the claim of the plaintiff that they had half share right in the plaintiff 'B' schedule wall, cannot, at all, be countenanced. Furthermore, to sustain that their vendor had been allotted the property inclusive of the exclusive right in the plaintiff 'B' schedule wall, the defendants have examined the vendor Loganathan as D.W.2. D.W.2 has tendered evidence with reference to the same. Though the courts below had also determined that under Ex.B1 partition deed the plaintiff 'B' schedule wall described as the eastern wall therein had been allotted exclusively to the defendants' vendor Loganathan, however, proceeded further to discuss as if the issue is whether the said wall referred to in Ex.B1 partition is the plaintiff 'B' schedule wall. When it is not in dispute that the parties are vying with each other only as regards the wall lying in between their respective properties and when the materials available on record go to show that it is only the defendants' vendor who had been allotted the property inclusive of the exclusive right in the plaintiff 'B' schedule wall describing the same as the eastern wall to the property allotted to the defendants' vendor and when the plaintiff 'B' schedule wall is admittedly lying to the east of the defendants property, in such view of the matter, the endeavour of the courts below to doubt the recitals contained in Ex.B1 partition deed as if the wall referred to therein does not denote the plaintiff 'B' schedule wall, in my considered opinion, is found to be totally suffering from perversity and the abovesaid approach of the courts below would go to show their non application of mind with reference to the contentions put forth by the respective parties as to how they had derived their claim of title to the wall in dispute.

15. The courts below had also proceeded as if both the parties had not adduced evidence as to when the wall in dispute had been put up or constructed and on that ground further proceeded to hold that the predecessors in interest of both the parties being related to each other, on that reasoning, determined that they would have put up the wall in dispute between the properties at one point of time and on that basis further proceeded to hold that the plaintiff's vendor would have acquired the half share in the plaintiff 'B' schedule wall. However, the abovesaid reasonings of the courts below are found to be totally unacceptable. It is not the case of either the plaintiff or the defendants that the wall in dispute had been put up in common by the predecessors in interest of the parties at one point of time. No doubt, both the plaintiff and the defendants are unable to place evidence as to when the wall in



dispute was put up or constructed. The plaintiff having come forward with the suit seeking the half share right in the same, having failed to establish the claim of half share right in the wall in dispute, on that score alone, the courts below should have declined the relief sought for by the plaintiff. On the other hand, the courts below despite the position that the plaintiff has failed to establish as to when the wall in dispute had been put up, as to how his vendors had arrived the right in the said wall and when other than Ex.A1 sale deed, he has not produced any other material evidencing his vendors' entitlement to the wall in dispute, in such view of the matter, as rightly contended by the defendants' counsel, the courts below on assumptions and presumptions, without any basis, proceeded to determine as if the plaintiff's vendors would have acquired the half share right in the wall in dispute and the abovesaid approach of the courts below is found to be totally illogical and irrational as with reference to the same, particularly, the plaintiff has neither made any pleas nor also adduced any evidence.

16. As could be seen from the commissioner's report and plan, it is found that only the wall of the defendant is jointly and integrally constructed with the plaint 'B' schedule wall, whereas, the wall of the plaintiff's property is just touching the plaint 'B' schedule wall and the above features would also go to show that inasmuch as the plaint 'B' schedule wall forms part and parcel of the property belonging to the defendants and their vendors, accordingly, while constructing their compound wall, they had jointly constructed the same with the plaint 'B' schedule wall intact and the abovesaid facts have been failed to be considered by the courts below.

17. The courts below had also proceeded on the reasonings that inasmuch as the plaintiff had right in the plaint 'B' schedule wall, he had been drawing the electric lines through the same in Alkathene pipes. As above noted, the defendants have been contending that taking advantage of their absence, the plaintiff had drawn the electric lines in Alkathene pipes fitted in the plaint 'B' schedule wall and on coming to know of the same, demanded the plaintiff to remove the same. However, the plaintiff has been postponing the same for one reason or the other. There is no material on the part of the plaintiff that they had drawn the electric lines through the plaint 'B' schedule wall to the knowledge and with the consent of the defendants. Merely because they had drawn the electric lines through the wall in dispute, that by itself, would not confer any right in their favour in respect of the said wall. Therefore, the abovesaid feature, in isolation, by itself, would not lend colour of title to the plaintiff in respect of the plaint 'B' schedule wall.



18. During the course of arguments, the contention has been put forth by the plaintiff's counsel that the defendants' vendor is found to have alienated more extent of the property than what had been allotted to him under Ex.B1 partition deed. Insofar as this case is concerned, we are only concerned with the wall described in the plaint 'B' schedule wall. We are not concerned with the extent of the property acquired by the defendants from their vendor D.W.2. It is not the case of the plaintiff himself that the defendants have acquired more extent of land from their vendor and thereby claiming exclusive right to the plaint 'B' schedule wall. On the other hand, as regards the extent of the properties in the enjoyment of the respective parties concerned, no rival claim has been projected with reference to the same. This suit is only with reference to the plaint 'B' schedule wall and when the anterior documents, namely, Ex.B1 partition deed under which the respective parties claim right to their properties and when in the said partition deed, the exclusive right in the plaint 'B' schedule wall has been granted only in favour of the defendant's vendor and not to the plaintiff's predecessors in interest and when the plaintiff has miserably failed to establish that his vendors had any right in respect of the plaint 'B' schedule wall, it is evident that as contended by the defendant's counsel, the courts below had erred in granting the reliefs as prayed for by the plaintiff as if he had acquired the half share right in the same on the basis of Ex.A1 sale deed without considering the fact that the plaintiff has miserably failed to establish that his vendors had acquired any right in the wall in dispute by way of Ex.A2 sale deed and in such view of the matter, it is found that when in Ex.A2 there is no reference at all about the plaint 'B' schedule wall, the plaintiff's vendors are not competent in law to convey any right in the plaint 'B' schedule wall in favour of the plaintiff under Ex.A1 sale deed and on the other hand, when in the earlier partition deed between the predecessors in interest to the parties, the wall in dispute had been allotted to the share of the defendants' vendor in entirety, in all, it is found that the courts below had failed to appreciate the abovesaid materials placed, both oral and documentary, in the right perspective and on the other hand, proceeded to have based their reasonings and conclusions on assumptions and presumptions, sans any pleas and proof pointing to the same, and in such view of the matter, it is seen that the reasonings and the conclusions of the courts below upholding the plaintiff's case are suffering from total perversity and also found to be completely illogical and irrational and in such view of the matter, the judgment and decree of the courts below granting the reliefs in favour of the plaintiff are liable to be set aside. The substantial question of law formulated in the second appeals is accordingly answered in favour of the defendants and against the plaintiff.



19. The counsel for the plaintiff in support of his contentions placed reliance upon the decision reported in MANU/SC/0369/2019 (Gurnam Singh (D) by Lrs., and Ors Vs. Lehna Singh (D) by Lrs.). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

20. For the reasons aforesated, the judgment and decree dated 26.10.2004 passed in A.S.NOs.247/98 and 50/1999 on the file of I Additional District Court, Erode, and the judgment and decree dated 04.09.1998 passed in O.S.No.1563/93 on the file of II Additional District Munsif Court (Civil Judge, Junior Division), Erode, granting the reliefs in favour of the plaintiff are set aside and resultantly, the suit in O.S. No.1563/93 is dismissed with costs, and accordingly, the second appeals are allowed with costs. Resultantly, C.M.P. No.23476 of 2018 is dismissed and other connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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Copy to

1. I Additional District Court, Erode
2. II Additional District Munsif Court
(Civil Judge, Junior Division),
Erode.
3. The Section Officer,
V.R.Section, High Court, Madras.

+2 ccs to M/s.R.G.Narendran Advocate sr44536

+2 cc to Mr.S.Natana Rajan Advocate sr44512

S.A.Nos.877 and 878 of 2005

sj(co)

aa31/10/2019