



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2019
PRONOUNCED ON: 11.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.656 of 2019
and
C.M.P. No.11905 of 2019

Dr.A.Krishnamoorthy

... Appellant/Plaintiff

Vs

1. Shingaraj
2. Mahaveer Jain
3. Kanagaraj
4. Selvaraj
5. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

6. The Secretary,
Chennai Metropolitan Development Authority,
No.9, Gandhi Irwin Road,
Chennai - 600 008.

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 26.09.2018 made in A.S.No.218/2016 confirming the decreetal order of the City Civil Court in O.S. No.4277 of 2010 dated 03.02.2016.

For Appellant : K.Rajasekaran

J U D G M E N T

The second appeal is directed against the judgment and decree dated 26.09.2018 passed in A.S.No.218/2016, on the file of the III Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 03.02.2016, passed in O.S. No.4277 of 2010, on the file of the XIV Assistant Judge, City Civil Court, Chennai.

2. The plaintiff is found to have laid the suit against the defendants, seeking the relief of mandatory injunction directing the defendants 5 and 6 namely, The Commissioner, Corporation of



Chennai and the Secretary, Chennai Metropolitan Development Authority to demolish the illegal construction put up by the defendants 1 to 4 on the eastern side of the plaintiff's compound wall of the plaint B schedule property without leaving any set back and without the approval of the defendants 5 & 6.

3. The abovesaid suit laid by the plaintiff has been stoutly resisted by the defendants 1 to 4 contending that they have put up the construction in their property only in accordance with the building permission and plan sanctioned by the appropriate authorities and they had not committed any default in the plan as put forth in the plaint and accordingly, inter alia, prayed for the dismissal of the plaintiff's suit.

4. The defendants 5 and 6 against whom the relief has been sought for by the plaintiff had remained ex-parte. They had not chosen to contest the plaintiff's case or dispute the case of the defendants 1 to 4.

5. On a reading of the plaint averments as well as the averments contained in the written statement as well as the evidence adduced in the matter, as rightly determined by the Courts below, it is found that as regards the purchase of the property by the plaintiff and the defendants 1 to 4 as such, there is no dispute between them. The grievance of the plaintiff is that without leaving any set back of 5 feet on the eastern side of the property, the defendants had constructed the building without obtaining the plan which is illegal and accordingly, prayed for the relief of mandatory injunction against the defendants 5 and 6 to demolish the legal construction said to have been put up by the defendants 1 to 4.

6. In this connection, the plaintiff mainly relies upon the order passed in W.P.No.32337 of 2007. On a perusal of the said order, it is found that this Court had only directed the plaintiff to seek the appropriate remedies towards the easementary right such as, fresh air light, etc., if the same are found to be infringed by way of the construction put up by the defendants 1 to 4 in their property. Accordingly, as a corollary to the abovesaid direction as determined by the Courts below, the plaintiff should have sought the enforcement of his easementary right, if any, qua the alleged construction put up by the defendants in their property. On the other hand, the plaintiff had not levied the suit against the defendants 1 to 4, in particular, for sustaining the claim of easementary right qua the construction said to have been put up by the defendants 1 to 4 in their property. On the other hand, as found by the Courts below, when it is found that the plaintiff's construction is lying 20 feet away from the compound wall and when it is further seen that much prior to the acquisition of the property by the



plaintiff, the defendants 1 to 4 had already acquired their property and enjoying the same and in such view of the matter, as determined by the Courts below, there is no question of any blockage of air and light to the plaintiff's property in the light of the alleged construction put up by the defendants and accordingly, it is found that conveniently, the plaintiff had not instituted the suit for enforcing his alleged claim of easementary right and on the other hand, had levied the suit for seeking only mandatory injunction against the alleged illegal construction said to have been put up by the defendants 1 to 4 in their property. On the abovesaid grounds alone, it is found that the plaintiff's suit, as such, is misconceived and cannot be maintained.

7. The plaintiff has levied the suit against the defendants seeking the reliefs as against the defendants 5 and 6 for enforcing their statutory duties. When as determined by the Courts below, in the absence of any material pointing to the alleged illegal construction said to have been made by the defendants 1 to 4 in their property and furthermore, when the statutory authorities, namely, the defendants 5 and 6 are well within their limits to initiate appropriate action against any illegal and unauthorized construction made by the defendants 1 to 4, in such view of the matter, as rightly determined by the Courts below, sans any material on the part of the plaintiff evidencing that the construction put up by the defendants 1 to 4 is against any deviation to the approved plan as such, in such view of the matter, the plaintiff has no locus standi to question the same and if at all there is any deviation, qua the construction put up by the defendants 1 to 4 in their property, it is only the appropriate authorities who are to take up the issue as per law and initiate the appropriate action against the defendants 1 to 4.

8. In the light of the abovesaid position, inasmuch as the issues involved in the matter are purely questions on the factual matrix and not involving any question of law as such, in such view of the matter, in the absence of any substantial question of law being involved in this second appeal, I am not inclined to accept the second appeal preferred by the plaintiff.

9. In conclusion, the second appeal fails and is accordingly dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar



To

1. The III Additional Judge,
City Civil Court,
Chennai.

2. The XIV Assistant Judge,
City Civil Court,
Chennai.

Copy to
The Section Officer,
VR Section,
High Court, Madras. (2 copies)

+1 CC to Mr.K. Rajasekaran, Advocate sr 48462.

S.A. No.656 of 2019
and
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BR(CO)
SP(24/09/2019)