

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2019

PRONOUNCED ON: 04.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.112 of 2016

M.Arul Mozhi ... Appellant/Appellant/Plaintiff

Vs.

P.Jeevarathinam Ammal ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.08.2015 made in A.S.No.82 of 2014 on the file of the IV Additional Judge, City Civil Court at Chennai confirming the judgment and decree dated 09.12.2013 made in O.S.No.1105 of 2011 on the file of the VI Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.C.P.Sivamohan

For Respondent : Mr.S.Rajesh

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 07.08.2015 passed in A.S.No.82 of 2014 on the file of the IV Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 09.12.2013 passed in O.S.No.1105 of 2011 on the file of the VI Assistant Judge, City Civil Court at Chennai.

2. The Second Appeal has been admitted on the following substantial questions of law:

a) Whether the Court can aschew the admission of the construction of the bathroom and toilet by the defendant in the property in question (Schedule B Property) while deciding the suit for Mandatory injunction and consequential permanent injunction?

b) Whether the Court can grant the relief of permanent injunction when the relief of permanent injunction restraining the defendant from letting his drainage/bathroom water into the plaintiff's well was not sought for, while deciding the case of mandatory injunction for demolition of bathroom and toilet in the property in question (Schedule - B property)?

3.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.

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

5. The suit has been laid by the plaintiff against the defendant for the reliefs of mandatory injunction and permanent injunction and the abovesaid reliefs have been sought for by the plaintiff in respect of the plaint B schedule property and the plaint B schedule property is described as the wall and bathroom constructed on the southern side of the plaint A schedule property to an extent of 1 ft x 34.9 inches.

6. Inasmuch as the property in dispute between the parties is only regarding an extent of 1 ft x 34.9 inches as described in the plaint B schedule, it is for the plaintiff, who has come forward with the suit, to establish that the plaint B schedule property forms part of the property belonging to her purchased by way of the sale deed dated 14.12.1982 and that the defendant had encroached into the plaint B schedule property and put up the unlawful construction therein as claimed in the plaint. According to the defendant, she had not made any encroachment into the plaint B schedule property as projected by the plaintiff and therefore prayed for the dismissal of the plaintiff's suit.

7. As could be seen from the materials placed on record, both the plaintiff and the defendant are found to have purchased their respective properties from the same owners and it is thus found that the title deed of the defendant had come to be first registered in document No.2023 /82 and the title deed of the plaintiff had come to be registered in document No.2024/82. The plaintiff's sale deed is marked as Ex.A1 and the defendant's sale deed is marked as Ex.B1 and both are dated 14.12.1982. Now, according to the plaintiff by way of Ex.A1 sale deed she had acquired title to an extent of 921 sq.ft within specific boundaries. Per contra, according to the defendant, she had purchased the total extent of 2353 sq.ft within the specific boundaries as described in her title deed. As rightly found and determined by the Courts below, further it

is not in dispute and also admitted by both the parties that there is a mother wall lying in between the plaintiff's property and the defendant's property from the inception and it is found that both are entitled to the abovesaid mother wall lying in between their respective properties. As held by the Courts below, when the defendant had first acquired the title of his property from the owners thereof and only thereafter the plaintiff had acquired the remaining property belonging to the said owners it is found that the original owners would be entitled to convey only the remaining property available with them, after the conveyance effected by them in favour of the defendant. Considering the linear measurements given in the plaintiff's title deed i.e., Ex.A1 sale deed, the total extent measures 928 sq.ft. However, the plaintiff's title deed shows the total extent is 921 sq.ft approximately. It is therefore found that the extent given in the plaintiff's sale deed Ex.A1 is not correct and also the extent found in the defendant's sale deed Ex.B1 is also not correct. Both the plaintiff and the defendant are found to have acquired their respective properties by giving the four boundaries to the same and accordingly it is found that they are entitled to their respective properties lying within the abovesaid four boundaries as mentioned in their sale deeds.

8. As abovenoted, there is a mother wall lying in between the plaintiff's property and the defendant's property and therefore both are equally entitled to the abovesaid mother wall. It is seen that the plaintiff has not projected any case that the defendant after purchase, had put up a new construction in her property and thereby attempted, intruded and encroached into her property. Therefore as held by the Courts below when the mother wall lying in between the properties of the respective parties has been in existence from the inception and the mother wall is found to be still intact, in such view of the matter, the claim of the plaintiff that the defendant had encroached into the mother wall or beyond the mother wall to an extent of 1 ft x 34.9 inches, as such, cannot be believed and accepted and the said case had not been clearly projected by the plaintiff in the plaint.

9. In this matter, the Commissioner had been appointed to inspect the properties belonging to the parties and the report and plan of the Advocate Commissioner have come to be marked as Exs.C1 and C2. Two plans have been filed by the Advocate Commissioner one depicting the lie of the properties as per the possession and enjoyment of the respective parties and the another depicting the lie of the properties belonging to the parties as per their documents and the Advocate Commissioner had also noted the existence of the mother wall between the

properties of the parties and the same has been shown as red in colour by the Advocate Commissioner. Accordingly it is found that to the north of the mother wall, plaintiff's well is lying and to the south of the same, the defendant has putup the bathroom and latrine. Accordingly, it is further seen that the defendant had not putup the bathroom and latrine by encroaching beyond the mother wall and putup the same in the plaintiff's property. Therefore, when it is found that the defendant's construction of the bathroom and latrine is lying within her property, in such view of the matter, the claim of the plaintiff that the defendant had encroached into her property and putup the construction to the extent of 1 ft x 34.9 inches cannot be believed and accepted.

10. In this connection, even as per the plaintiff's averments, the plaintiff would state that at the time of purchasing the property, they had measured their respective shares and further it is stated that at that point of time, the plaintiff had noted the encroachment made by the defendant into her property of nearly 1 ft and according to her, the defendant had accepted the said encroachment and agreed to correct the measurement at the time of reconstruction and based on the abovesaid assurance, it is the case of the plaintiff that she had not taken any immediate action for recovering the alleged encroached portion committed by the defendant. Now according to the plaintiff, the defendant had encroached into the property to an extent of 1 ft x 34.9 inches. Therefore, from the abovesaid case projected by the plaintiff, it is clear that both the plaintiff and the defendant had not measured the properties purchased by them at the time of purchase and accordingly they had chosen to purchase their respective properties on the strength of the boundaries given in their respective sale deeds. If really, the defendant had encroached into the plaintiff's property by about 1 ft even at the time of the purchase and the plaintiff has any lawful claim to the same, the plaintiff would not have been a silent spectator and would have endeavoured to institute necessary action against the defendant with reference to the alleged encroachment and on the other hand, complaining of the encroachment, the plaintiff is found to have laid the present suit only on 01.02.2011. As abovestated, both the parties had purchased their respective properties by way of a sale deed dated 14.12.1988 and further as abovenoted, when the mother wall lying in between the properties of the parties is intact and the defendant had not encroached any portion beyond the mother wall i.e., north of the mother wall and had putup the bathroom and latrine construction only within her property, in such view of the matter, the case projected by the plaintiff that the defendant had encroached into her property cannot be believed and rightly declined by the Courts below.

11. The plaintiff would also complain that the water from the latrine and bathroom constructed by the defendant would drain into her well and therefore the same would create nuisance and accordingly the same should be prevented. In this connection, relied upon the report and plan marked as Exs.C1 and C2. On a perusal of the Commissioner's report and plan, nothing has been mentioned therein about any sewage water from the defendant's bathroom and latrine draining or seeping into the plaintiff's well. In such view of the matter, the apprehension of the plaintiff that the water may seep from the bathroom and latrine into the well cannot be accepted and in such view of the matter, it is found that as determined by the Courts below, the plaintiff having miserably failed to establish the alleged encroachment committed by the defendant qua the plaint B schedule property and thereby and also hindered her possession and enjoyment of the plaint A schedule property as such or the plaint B schedule property in any manner, in such view of the matter, the Courts below are found to be wholly justified in declining the reliefs prayed for by the plaintiff.

12. The reasonings and conclusions of the Courts below for non-suiting the plaintiff being based on the proper appreciation of the materials available on record and also not suffering from any perversity or irrationality in any manner, in my considered opinion, they do not warrant any interference. Accordingly, it is found that 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 defendant.

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

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

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

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

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.C.P.Sivamohan, Advocate SR.No.76606

S.A.No.112 of 2016

RSV(CO)
GMY(21/05/2020)



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