

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2020
Date of Verdict: 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1649 of 1996

1.R.Ayyaswami Chettiar(died)

2.A.Amsaveni

3.A.Lakshmanan

4.A.Sunitha

(Appellants 2 to 4 brought on record as LR's of the deceased sole appellant viz., Ayyasamy Chettiar vide order of court dated 12.06.2019 made in CMP.No.19601 to 19603 of 2016 in SA.No.1649 of 1996) ...Appellants/Respondents/Defendants

Vs.

1.H.Vizhwanatha Chettiar(deceased)

2.Vimala

3.V.VijayakumarRespondents/Appellants/Plaintiffs
(Dismissed as against second respondent vide order of court dated 23.12.2016)
(RR2 and 3 brought on record as LR of the deceased sole respondent vide order of this Court dated 23.12.2016 made in CMP.No.2547 to 2549 of 2007 in SA.No.1649 of 1996)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.09.1996, in A.S.No.57 of 1993 on the file of the Principal District Court, N.A.A.Vellore, reversing the decree and judgment dated 22.02.1993 in O.S.No.502 of 1988 on the file of the Additional District Munsif, Vellore

For Appellants : M/s.Veena Suresh
For Mr.T.R.Rajaraman

For Respondents

R1 : Died

R2 : Dismissed vide Court order
dated 23.12.2016

For R3 : Mr.R.Elango

JUDGMENT

This second appeal is directed as judgment and decree dated 20.09.1996, in A.S.No.57 of 1993 on the file of the Principal District Court, N.A.A.Vellore, reversing the decree and judgment dated 22.02.1993 in O.S.No.502 of 1988 on the file of the Additional District Munsif, Vellore.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and injunction. The suit property originally belonged to Kuppusami Chettiar, the paternal grandfather of the plaintiff. The suit property is non residential mundy building situated at Door No.37, Mundy Street, Vellore and the same was allotted to the share of one, Margasagaya Chettiar, who is none other than the father of the plaintiff under registered partition deed dated 12.06.1940. After demise of the father of the plaintiff, there was a partition of the suit property, which was allotted to the share of the plaintiff under a registered partition deed dated 14.09.1967. The suit property is a Madras Terraced ground floor and the front side Madras Terraced upstairs portion and the rear side tiled roofing building. The northern wall of the suit property absolutely belongs to the plaintiff and his predecessors in title. They have been in continuous possession and enjoyment of the northern wall of the property even over the statutory period and thereby acquired title by prescription also. The entire northern wall is one and continuous wall, for which the entire construction of the plaintiff's building is resting. The defendants are the owners of the building situated at Door No.36, Mundy Street, Vellore. The property of the defendants is only tiled roofing building and without having any wall on the southern and northern side of their building. The defendants have pulled down their tiled roofing construction of the building and started RCC construction from the rear side of the building. While being so, the defendants claimed that the plaintiff's northern wall of the building situated in BC portion in the plan annexed to the plaint. The claimed portion by the

plaintiff is described as XY and it is about 21 feet for length and about 9 inches of breadth. Hence, the suit.

4. The defendants resisted the plaintiff's case by filing written statement stating that under a partition deed dated 24.10.1982, the defendants were allotted premises situated at Door No.36, Mundy Street, Vellore adjoining to the suit property. The plaintiff has no wall of his own beyond 52 1/2 feet from the eastern end of his property, even as per the recital in the registered partition deed dated 14.09.1967. The total length of the plaintiff premises is only 67 1/2 feet, whereas the defendants' length of the premises is 78 feet with a wall entire for the length on the southern side of the defendants premises was the two walls side by side between the plaintiff and the defendants' premises upto 52 1/2 feet from the eastern end. Out of the said 78 feet, the portion admeasuring 21 feet is situated towards front portion of the shop while the rest situated in the rear side. The plaintiff's northern wall is a total length of 52 1/2 feet only. There is a gap of 4 1/2 feet between the front portion wall of the defendants' wall and that of the plaintiff's northern wall supporting his madras terrace roof. As regards the remaining portion of the 15 feet, belonging to the plaintiff and there is no permanent construction with any wall of his own. Further, the plaintiff is not prescribed title by any adverse possession also. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and three documents were marked as Ex.A.1 to Ex.A.3. On the side of the defendants D.W.1 was examined and Ex.B.1 to Ex.B.6 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.57 of 1993 before the Principal District Court, N.A.A.Vellore. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court and decreed the suit in favour of the plaintiff. Challenging the same, the second defendant has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) When the documents produced by the plaintiff shows title in his favour only with reference to 52 1/2", is the learned Principal District Judge right in holding that the disputed wall of 25 1/2" belonged to the

plaintiff?

b) When the documents produced by the defendant clearly prove title to the entire stretch of 78" of land inclusive of hall, is the learned Principal District Judge right in negating the same?

c) Is the learned District Judge right in not following the procedure prescribed under Order 41 Rule 27 of CPC. When marking the Exhibits C1 and C2 of the appellate stage?

7. The learned counsel appearing for the second defendant and the plaintiff are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard M/s.Veena Suresh, learned counsel appearing for the second defendant and Mr.R.Elango, learned counsel appearing for the plaintiff.

9. According to the plaintiff, he is the absolute owner of the premises situated at Door No.37, Mundy Street, Vellore and the defendant is the adjacent owner of the premises situated at Door No.36, Mundy Street, Vellore. The dispute with regards to the northern wall of the plaintiff's building marked as XY, measures east to west 21 feet with breadth of 9 inches. The defendants contended that the plaintiff has no wall in the eastern side of the property beyond 52 1/2 feet in the total length of premises 67 1/2 feet. The defendants' premises is with the length of 78 feet with wall for the entire length of southern side of the premises. In the plan annexed with the plaint, the premises of the plaintiff are shown as three portions, in which 'A' portion is at the length of 52 1/2 feet and other BC portions are terrace east to west measured as 52 1/2 feet. The suit wall is shown as XY and the dispute B portion is zinc sheet portion and the C portion is the pandal roof. The B and C measures 21 feet east to west and the northern wall in the portion which measures 21 feet. The plaintiff marked Ex.A.2 partition deed between his father and his paternal uncle and the other partition deed with his mother marked as Ex.A.3. The second defendant's paternal uncle purchased their property in Door No.36 which was marked as Ex.B1 to an extent of 78 feet east to west including eastern wall and an extent of 15 feet north to south including northern wall.

10. Further, the defendants also marked Ex.B.3 partition deed between the first defendant and his father Ex.B.3, in which also north to south including eastern wall measured as 78 feet and 15 feet north to south including the northern wall. Therefore, the suit wall is the southern wall of the defendants'

house and the northern wall of the plaintiff's house. Accordingly, the defendants obtained planning permission and approved plan to construct house which were marked as Ex.B.4 and Ex.B.6. On perusal of Ex.A.2 and Ex.A.3, the A portion marked in the plaint, the northern side wall measuring 54 ½ feet and the western side of A portion 15 feet south to north vacant land belongs to the plaintiff. Nowhere mentioned about the Zinc sheet top or pandal in the B and C portion. The total length of B and C portion 21 feet with XY northern side wall is nowhere mentioned in Ex.A.2 and Ex.A.3. Therefore XY wall is not belonged to the plaintiff. For the A portion, the northern side, there is a wall and likewise on southern side of the defendant's property, there is a wall upto B portion. Therefore, both the walls on the side of the northern side for the plaintiff and the southern side of the defendants, and there are walls adjoining together.

11. On perusal of Ex.B.4 the plan categorically proved southern side of the wall is measured as 72 feet from east to west. Therefore, except the document Ex.A.4, the wall on the A portion, and the other wall marked as XY is not belonged to the plaintiff and it belongs to the defendants. The Advocate Commissioner was appointed and inspected the suit property and filed his report before the trial court, but the trial court unfortunately omitted to mark the same. Therefore, the first appellate court marked the same as Ex.C.1 and Ex.C.2. The Advocate Commissioner's report also revealed that the construction of the defendants on the southern side of the property does not rest on the suit wall. They have put up separate wall adjacent to the wall belongs to the plaintiff. The plaintiff put up a wall upto 52 ½ feet on the northern side of the property and the remaining wall is put up by the defendants in accordance with Ex.B.4 and Ex.B.6 planning permission and approved plan.

12. Further, the Advocate Commissioner's report revealed that the plaintiff's house is very old building, in respect of A portion property terrace building and the portion marked as XY rested with wooden pillars. Therefore, the trial court rightly dismissed the suit filed by the plaintiff. The first appellate court reversed the finding on the ground that the entire building belongs to the plaintiff rested on the northern side wall of the plaintiff and as such they are entitled for the suit relief in respect of the property marked as XY. As such, the entire findings of the first appellate court are perverse and against the evidence on record and they are liable to be interfered with. Accordingly, all the substantial questions of law formulated in this appeal are answered in favour of the defendants and as against the plaintiff.

13. In view of the above discussion, this Second Appeal is allowed and the judgment and decree dated 20.09.1996 passed in A.S.No.57 of 1993 on the file of the Principal District Court, N.A.A.Vellore, are hereby set aside and resultantly, the judgment and decree dated 22.02.1993 passed in O.S.No.502 of 1988 on the file of the Additional District Munsif, Vellore, is restored. No order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
N.A.A.Vellore.
2. The Additional District Munsif,
Vellore.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 CC to Mr.P. Veenasuresh, Advocate sr 12935.
+1 CC to Mr.R.Elango, Advocate sr 13159.

S.A.No.1649 of 1996

NMI (CO)
SP(05/08/2020)

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