

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2020
Date of Verdict : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.894 of 2004
and
C.M.P.No.6649 of 2004

Karur Vysya Bank Ltd.,
Rep., by its Chairman,
Jawahar Bazaar, Karur ...Appellant/Appellant/Respondent

Vs.

The Corporation Bank Ltd.,
Rep. by its Power of Attorney Agent,
N.V.Aranganathan,
Salem ..Respondent/Respondent/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.11.2003, in A.S.No.183 of 1990 on the file of the Principal District Judge, Salem, confirming the decree and judgment dated 31.01.1977 in O.S.No.110 of 1977 on the file of the District Munsif, Salem.

For Appellant : Mr.T.V.Krishnamachari,
Senior Counsel
for M/s.R.Ramya
For Respondent : Mr.S.Sethuraman

JUDGMENT

This second appeal is directed as against the judgment and decree dated 18.11.2003, in A.S.No.183 of 1990 on the file of the Principal District Judge, Salem, confirming the decree and judgment dated 31.01.1977 in O.S.No.110 of 1977 on the file of the District Munsif, Salem.

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 mandatory injunction. The plaintiff is the absolute owner of the suit 'A'

schedule property. It was purchased by the registered sale deed dated 09.11.1959. The plaintiff has rights over all the four walls on all the four sides. The defendant bank purchased the property adjoining to the suit property on its northern side in the year 1957. After purchase, the defendant proposed to construct their building in the year 1973 and obtained permission from the plaintiff and demolished reconstruction of the existing northern compound wall of the plaintiff at the cost of the defendant to a length of 65 feet. After about 15 to 20 feet from the entrance where the old upstairs portion exists and to place four windows and ventilators in the said wall at a distance of 65 feet marked as BCFG in the plan. Though the plaintiff gave permission, they refused to permit to open any window therein overlooking the suit property. The permission was granted on 16.06.1973 after undertaking given by the defendant to remove the closed ventilators, if required at a later stage by the plaintiff.

3.2 Taking undue advantage of the permission granted by the plaintiff, the defendant unauthorisedly constructed the wall over the existing northern wall to a length of 24 feet further east of the permitted portion marked in the plan as CDEF and also the north to south wall marked as DKLMNOPE in the plan annexed to the plaint. The defendant further constructed another storey over the said wall without permission, since the defendant sought for permission only to put up first floor and to put up eight windows thereon. When the plaintiff refused to give permission for construction of wall for the first floor, the defendant constructed wall for the first floor and also arranged for windows therein. Thereafter, the defendant claimed title over the northern wall of the plaintiff by their letter dated 17.02.1974 asserting the entire portion of the said wall reconstructed with the plaintiff's permission is in their plot. The defendant also encroached on the suit property on the western end of the northern wall while putting up staircase for their building. Therefore, the construction of the wall except the permitted portion is unauthorised and placing on windows therein affects the right of privacy of the plaintiff. Hence, the suit.

4. The defendant resisted the plaintiff's case by filing written statement stating that the northern side of the wall as claimed by the plaintiff, as if it belongs to the plaintiff is totally false and untenable. The wall was never in possession and enjoyment of the plaintiff and its predecessors in title. At the same time, the defendant is not concerned with the alleged ownership of the plaintiff in respect of the other three walls, namely east, south and west of its property. The defendant purchased the house on 24.05.1957 for a valid consideration by the registered sale deed. The front roof of

the said house starting from the Car Street was tiled to a length about 8 feet and the rest of it up to eastern limit was wholly terraced. The plaintiff purchased its property after two years from the purchase of the defendant. The defendant had absolute right of ownership throughout its south upto a length of 112 feet east to west. As regards the wall, east of the 112 feet, the defendant had rights of insertion. Only because of the plaintiff, the defendant could not open out windows or ventilators or opening on its own southern wall. Therefore, the defendant made a request for the permission of the plaintiff to open out windows, ventilators, etc on the southern side wall of the defendant. The permission and consent of the plaintiff to the opening of windows and ventilators upto a particular height was given only as a neighbour and as a sister banking institution. In fact, the plaintiff knows that they had absolutely no rights to any portion of the wall as owner to the length about 112 feet on the southern wall of the defendant.

4.1 While the plaintiff left a lane about five feet to the northern side of their wall and constructed building in the year 1961, in the year 1973, the defendant applied for remodeling its building, and the defendant has every right to raise it on first floor. When the engineers visited the property, they were satisfied that the defendant never exceeded its rights and did not encroach any portion of the plaintiff's property. In fact, through out the construction put up by the defendant, the plaintiff was well aware of the construction and very conscious about the staircase put up by the defendant. Further any construction is not made to rest on any portion of the plaintiff's building. Therefore, the plaintiff has absolutely no right to interdict the defendant putting up and extending its wall on its northern side. The undertaking letter dated 07.01.1994 only came into effect when the plaintiff on its part put up a wall or building close to the wall in question. Therefore, the plaintiff is not entitled to claim any damages for alleged use and occupation and prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and twenty six documents were marked as Ex.A.1 to Ex.A.26. On the side of the defendant, D.W.1 was examined and Ex.B.1 to Ex.B.9 were marked. The Commissioner's report and the plan were marked as Ex.C.1 and Ex.C.2 as Court documents. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the judgment and decree of the trial Court, the defendant preferred an appeal suit in A.S.No.183 of 1990 before the Principal District Judge, Salem. The first appellate Court on appreciating the materials placed on records,

dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the defendant has come forward with the present second appeal.

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

"a) After having conveyed the property forming the subject matter of the suit under Ex-B2 to the defendant, would the vendor under it have any legal and subsisting right, title and interest in the same to lawfully convey the same to the plaintiff under Ex-A1?"

7. The learned Senior Counsel for the defendant vehemently contended that the defendant purchased the property adjacent to the property belongs to the plaintiff on 24.05.1957 by the registered sale deed, which was marked as Ex.B.2. After two years of their purchase, the plaintiff purchased the suit property on 09.11.1959, which was marked as Ex.A.1. The case of the plaintiff is that the suit property consisting four walls, in which the northern side of the wall encroached by the defendant by putting up construction on the compound wall upto the first floor and also without any permission they installed four windows and ventilators on the first floor. Further they permitted the defendant only to put up the ground floor with four windows alone, that too on condition whenever they put up any construction, the windows would be closed. The southern side of the wall put up by the defendant is absolutely belonged to the defendant according to their sale deed. In fact, the engineers have inspected and verified the measurement of the defendant's property.

7.1 He further submitted that already there is five feet lane between the property belong to the defendant as well as the plaintiff. There is absolutely no possibility of northern side wall owned by the plaintiff. Even according to the plaintiff, in the northern side there was a compound wall and after permission of the plaintiff, it was demolished and newly constructed the southern side wall by the defendant with windows and ventilators. If at all the said wall belongs to the plaintiff, definitely they would not have permitted the defendant to put up any construction. Only in respect of putting up of windows and ventilators, the defendant sought for permission from the plaintiff and accordingly they put up ventilators and windows on their southern side of the wall. Even their letter categorically shows that the wall belongs to the defendant and never belongs to the plaintiff. Unfortunately both the courts below held against the evidence on record and therefore, the findings of the courts below are perverse.

8. Per contra, the learned counsel appearing for the plaintiff submitted that now the entire building of the plaintiff was demolished and made new construction upto the third floor. While constructing new building, the side setback was let off up to 15 feet between the main wall of the defendant and the plaintiff. He also produced photographs to show that there is a 15 feet lane between the plaintiff building and defendant building.

9. Heard Mr.T.V.Krishnamachari, Senior Counsel appearing for the defendant and Mr.S.Sethuraman, learned counsel appearing for the plaintiff.

10. This Court considered the rival submissions made by the learned counsel on either side.

11. It is seen from the photographs produced by the learned counsel for the plaintiff that the defendant's southern side wall consisting ventilators and windows for air and sunlight, and it would not affect the right of privacy of the plaintiff. As pointed by the learned Senior Counsel, the southern side of the wall to be put up by the defendant on their plot and not on the compound wall belong to the plaintiff, since the southern side wall raised upto first floor. In fact, more than 20 feet height was raised on the southern side wall and as such it could not be possible without foundation for the southern side wall and it is not at all possible to construct more than 20 feet wall on the compound wall belong to the plaintiff. That apart, now the plaintiff demolished the old building and constructed new building upto third floor with a side setback area of 15 feet. Therefore, the southern side wall of the defendant could not affect the right of the privacy of the plaintiff building. Further on perusal of Ex.A.3 and Ex.A.8, they are permission letters sent by the defendant, in which it was categorically mentioned that the wall belongs to the defendant and only seeking permission to put up ventilators and windows, since at that point of time, the plaintiff building was very close to the southern side wall of the defendant. Therefore, the southern side wall of the building exclusively belongs to the defendant and the findings of the both the courts are perverse and against the evidence on record.

12. In view of the above, this Court has necessarily to interfere with the findings and reasonings of the courts below in view of the subsequent development in the construction of the building belongs to the plaintiff. Accordingly, the substantial questions of law formulated in this second appeal is answered in favour of the defendant and as against the plaintiff.

13. In fine, this Second Appeal is allowed and the

judgment and decree dated 18.11.2003 passed in A.S.No.183 of 1990 on the file of the Principal District Judge, Salem and also the judgment and decree dated 31.01.1977 passed in O.S.No.110 of 1977 on the file of the District Munsif, Salem are hereby set aside. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Salem.

2. The District Munsif, Salem.

Copy To

The Section Officer,
V.R. Section,
Madras High Court,
Chennai.(2 Copies)

+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No. 8362

+1cc to Mr.S.Sethuraman, Advocate, S.R.No. 8001

S.A.No.894 of 2004

PPA(CO)
GN(09/07/2021)