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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2021

PRONOUNCED ON : 15.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.352 of 2010

and

M.P.No.1 of 2010

K.Nataraj

...Appellant/Plaintiff

Vs.

1. Rachachari

2. Rani

...Respondents/Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 08.04.2009 made in A.S.No.111 of 2004 on the file of the learned Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 20.07.2004 made in O.S.No.136 of 2003 on the file of the learned District Munsif, Krishnagiri.

For Appellant : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

For Respondents : Mr.J.Hariharan
for V.Nicholas

J U D G M E N T

Challenging the concurrent findings made in A.S.No.111 of 2004 on the file of the learned Principal Subordinate Judge, Krishnagiri and O.S.No.136 of 2003, on the file of the learned District Munsif, Krishnagiri, the appellant, who is the plaintiff in the above referred suit is before this Court with the present Second Appeal.

2. The appellant K.Nataraj filed a suit as against the respondents/defendants in O.S.No.136 of 2003 on the file of the learned District Munsif, Krishnagiri, seeking the relief of declaration, declaring that the plaintiff is the owner of the suit property and for consequential permanent injunction.



3. By judgment and decree dated 20.07.2004, the learned District Munsif, Krishnagiri, after elaborate enquiry, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal before the learned Principal Subordinate Judge, Krishnagiri, in A.S.No.111 of 2004 wherein on 08.04.2009, the learned Principal Subordinate Judge, Krishnagiri, after confirming the findings arrived at by the trial Court, dismissed the appeal. Being dissatisfied with the findings arrived at by the Courts below, the appellant / plaintiff is before this Court with the present Second Appeal.

4. For the sake of convenience hereinafter the parties are referred to as per their litigative status before the trial Court.

5. The laconic averments made in the plaint, are as follows:

(i) The plaintiff had purchased a house property through two separate registered sale deeds dated 02.11.1987. After made purchase, he is in the possession and enjoyment of the same. There is a mud wall in the Eastern end of the property, which is shown as 'ABCD' in the plan, appended along with the plaint.

(ii) The defendants are the owners of the property situated on the Eastern side of the plaintiff's property. The 2nd defendant is the wife of the 1st defendant. The defendants are now renovating their property by demolishing their old house. While doing so, the defendants on 25.06.2003, attempted to demolish and damage the suit wall. The defendants have no right to do so. However, the plaintiff managed the same. The defendants have denied the plaintiff's title to the suit property and went away stating that they will come again to demolish the wall. The plaintiff is making use of the space in between the suit wall and his house as a passage and a door is fixed at the entrance from the street. If the suit wall is demolished, the entire house of the plaintiff and other annexures such as bathroom, toilet room will be exposed to public view further causing unsafe and risk to the residents of plaintiff's house. The defendants have no right to demolish the suit wall. Hence, the suit for declaration and injunction.

6. The case of the defendants, as averred in the written statement, is as follows:

(i) After purchasing the vacant site, the plaintiff constructed his house without any compound wall. The defendants neither claim any right over the house of the plaintiff or any



other part belonged to him. It is true that the mud wall is situated on the Eastern side of house of plaintiff. The defendants have also purchased two house buildings and a vacant site adjacent to the house of the plaintiff. Among the three items, the defendants demolished the two house buildings due to its old age and the defendants constructed a house on the northern side. The remaining portion is kept vacant for the purpose of constructing residential house.

(ii) The defendants purchased two house buildings from one Mangayarkarasai and T.Dhanalakshmi, as per the Sale Deed dated 30.01.1991 and 09.12.1991 respectively and purchased the vacant site adjacent to the house of plaintiff as per the sale deed dated 21.02.2000. The defendants purchased total extent on East-West 24 feet, North-South on the Western side 90 feet and on Eastern side 85 feet. The vacant site to an extent of East-West 8.5 feet and North-South 90 feet was purchased by the defendants from one Sarasammal, wife of Uthandappa Chetty. The said Sarasammal acquired the property as per the Will dated 23.06.1983 executed by one N.Madaiyan, in her favour. In the said Will, it was clearly mentioned that a mud wall was belonged to him and the same was acquired by the said Sarasammal. Based on the Will, this Court issued a succession certificate regarding the property acquired by her in S.O.P.No.2 of 1999.

(iii) Accordingly, in the sale deed which stands in the name of the 2nd defendant, the existence of mud wall was clearly mentioned. In fact, prior to the execution of the sale deed, the 2nd defendant entered into a sale agreement with the said Sarasammal on 12.12.1999.

(iv) In the said sale agreement, the plaintiff was the 2nd attester and he is well aware of the fact that the mud wall is also the subject matter of the sale agreement. The vendor of the defendants has stated that only on the request of the plaintiff, he was allowed to put up a door on the front side of the mud wall and that the plaintiff undertakes to remove the same whenever required.

(v) Now after made inspection, Krishnagiri Municipality approved the plan submitted by the defendants for constructing new house. The plaintiff never made objection for granting permission. The said mud wall was existed at the length of 90 feet and the defendants constructed the house on Northern side in which the defendants are now residing. The said house was constructed on the said mud wall at about 26 feet. The plaintiff has not objected the same at the time of construction of the house by the defendants. In the report filed by the



learned Advocate Commissioner, the existence of mud wall was clearly mentioned. After suppressing the above true facts, the plaintiff has obtained temporary injunction. There was no cause of action and hence, the suit was liable for dismissal.

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7. The Defendants have also filed an additional written statement, wherein they have stated as follows:

(i) As per the Will dated 23.06.1983, the vendor of the defendants viz. Sarasammal is entitled to the suit wall and the same was purchased by the defendants as per the sale deed dated 21.02.2000 and thereby, the defendants alone are absolutely entitled to the suit property. Even in the sale deed, stands in favour of the plaintiff, the Eastern boundary clearly mentions as 'Madaiya Chetty's house'. The plaintiff is neither the legal heir of Madiyan nor no way connected with the said Madaiyan and that he has no right to deny the Will executed by the said Madaiyan in favour of Sarasammal.

(ii) The common wall shown in the sale deeds dated 30.01.1991 and 09.12.1991 are no way connected with the suit wall and the common wall shown in the sale deeds are demolished by the defendants for constructing a new building. The plaintiff must prove his claim only in his own case. Hence, the suit filed by the plaintiff is liable for dismissal.

8. From the above averments, the learned District Munsif, Krishnagiri, framed the necessary issues and tried the suit. On the side of the plaintiff, five witnesses have been examined as PW1 to PW5 and twelve documents were marked as Ex.A1 to Ex.A12. Similarly, on the side of the defendants, the 2nd defendant examined herself as DW1 and marked five documents as Ex.B1 to Ex.B5. Apart from those documents, the report and plan filed by the learned Advocate Commissioner is marked as Ex.C1 and Ex.C2.

9. Having considered the materials placed before her, the learned District Munsif, Krishnagiri, came to the conclusion that the plaintiff has not made out his case and ultimately, she dismissed the suit. In the appeal, the lower appellate Court confirmed the findings arrived at by the trial Court.

10. Feeling aggrieved over the same, the plaintiff is before this Court with the present Second Appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether the Courts below are correct in dismissing the suit while they rendered observations that the suit property is a common wall?



2. Whether the attestation of the appellant would indicate that he knew the contents of the document Ex.B2 and Ex.B3?"

11. Heard Mr.R.Krishna Prasad, the learned counsel appearing on behalf of the appellant/plaintiff and Mr.J.Hariharan, the learned counsel appearing on behalf of the respondents/defendants and perused the materials available on record.

12. It is the trite law, since the suit is filed for the relief of declaration, declaring the title, it is for the plaintiff to prove his case. Initially, on going through the physical features of the property now under dispute, in the report filed by the learned Advocate Commissioner, he has stated about the mud wall as the same was now in dilapidated condition. Further, some damaged country tiles are found in the top of the said Wall. The said features probabalise the fact that previously by using the said wall some houses are constructed.

13. Secondly, it is the case of the plaintiff that he purchased his property vide sale deed dated 02.11.1987. Further he has produced those sale deeds as Ex.A1 and Ex.A2. Now on going through the description of the property found in those documents, in Ex.A1, there was no recital in respect to the presence of the suit mud wall. In Ex.A2 also, there is no mention about the disputed mud wall. In fact, through the said two documents, the plaintiff has purchased only the vacant site and therefore, the said documents are not enough to prove the title as claimed by the plaintiff.

14. On the other hand, the defendants, who are the owners of the property which is situated on the Eastern side of the plaintiff's property, have purchased their property under two registered sale deeds dated 21.02.2000 and 09.12.1991. In order to substantiate their case, the defendants have produced those documents as Ex.B3 to B5. Now, on going through Ex.B3, on 21.02.2000, one Sarasammal sold out the property pertain to S.No.35/1 to the 2nd defendant. In respect to the said survey number the plaintiff has not made any claim.



15. In this occasion, it is the case of the defendants that before executing the sale deed dated 21.02.2000 [Ex.B3], in respect to the said property, both the 2nd defendant and her vendor has executed an unregistered sale agreement on 12.12.1999 and the same was marked as Ex.B2 in which the existence of mud wall was clearly narrated.

16. It is the further case of the defendants that in the said unregistered sale agreement, the plaintiff himself has signed as a witness and after signing as a witness, now he is estopped from denying the contents of those documents.

17. In the said occasion, on going through Ex.B2, it is true that in the said document, the plaintiff Nataraj has signed as a 2nd witness. His signature alone was marked as Ex.B1. In the said sale agreement, the relevant recital touching the suit wall runs as follows:

“...கூறை வீடும், மேற்படி வீட்டின் மேற்குபுற சுவர் பூரா

பாத்தியம் கொண்டது, கிழக்குபுறம் சுவர் பொது பாத்தியம் கொண்டது..”

Accordingly, the said recitals found in the sale agreement is in support of the case of the defendants as the vendor Sarasammal sold her property to the 2nd defendant viz. Rani, along with the said mud wall.

18. Though, it was contended on the side of the plaintiff that the said recitals are self serving, in his cross examination, he has clearly admitted that he has not purchased the said mud wall through the two sale deeds, which stand in his name. Further, he gave evidence as after purchasing the vacant site, after leaving two feet width in the Eastern side, he constructed his house. Also, he admitted that the suit mud wall is situated on the further East of 2 feet which was left out by the plaintiff at the time of constructing his house.

19. In his cross examination, the plaintiff has further admitted that the vendor of the defendants Madaiyan has possessed a house and the same was constructed in the mud wall. Therefore, in all, the plaintiff admitted as the vendor of the defendants alone constructed their house on the top of the mud wall and used the same.

20. The said circumstances coupled with the fact that the plaintiff is one of the witness signed in Ex.B2, Sale Agreement, it would suffice to accept the case of the defendants.



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Therefore, the lower appellate Court has also concurred with the same view and dismissed the suit filed by the plaintiff. Further, the findings arrived at by the trial Court do not raise any substantial question of law. The findings arrived at by the Courts below is entirely upon the factual issues.

21. Though, the learned counsel appearing for the appellant/plaintiff relied on the judgment of our Hon'ble Apex Court, in K.A.Selvanachi and Another Vs. Dr.S.R.Sekar and another, reported in 2003 (1) CTC 745, in support of his case, as already stated, the admission made by the plaintiff in his cross examination would suffice to accept the case of the defendants. Signing as a witness in a sale agreement, is a significant one. Accordingly, as already observed, no substantial question of law has arisen in the present appeal.

22. In fine, the Second Appeal is dismissed. The concurrent findings of the Courts below, are confirmed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge, Krishnagiri.

2.The District Munsif, Krishnagiri.

+1 CC to Mr.V. Nicholas, Advocate sr 66937
+1 CC to M/s. Sarvabhuman Associates sr 66931.

S.A.No.352 of 2010

VGII(CO)
SP(07/02/2022)